



## EM-33.1

**Category:** Compliance  
**Topic:** Federal Lending Regulations  
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### Overview

The *Federal Lending Regulations* topic provides guidance on evaluating compliance with applicable consumer financial protection and related requirements imposed by various federal laws, as well as by regulations issued by the Consumer Financial Protection Bureau (CFPB) and other federal agencies. Some of these requirements apply to every Farm Credit System (System) institution, while other requirements may or may not apply to particular System institutions depending on the activities they engage in. It is important for institutions to have effective internal controls, including policies, procedures, standardized forms, checklists, training, and other staff communications, to ensure compliance with applicable federal lending requirements. Institutions should also consider a designated compliance officer and centralized processing.

*Note: The descriptions and guidance below should not be interpreted as comprehensive statements of the laws and regulations. Rather, they are intended to give a broad overview of each law or regulation's requirements and provide examiners with key considerations for examining compliance at System institutions. For additional guidance on many of these requirements, see the CFPB [Supervision and Examination Manual](#) and [Circulars](#). In addition, as a courtesy, the Farm Credit Administration (FCA) periodically issues Informational Memorandums that communicate important information and changes related to these requirements (some Informational Memorandums may be obsolete or outdated).*

### Examination Procedures and Guidance

#### General

#### **1. HMDA:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Home Mortgage Disclosure Act (HMDA) and Regulation C.

#### Guidance:

The HMDA, [12 U.S.C. 2801-2811](#), is implemented by CFPB [12 CFR Part 1003](#) Home Mortgage Disclosure (Regulation C). Regulation C's purpose is to provide the public with loan data that can be used to do the following:

- Help determine whether financial institutions are serving the housing needs of their communities.
- Assist public officials in distributing public-sector investments to attract private investment to areas where it is needed.

- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes.

Regulation C applies to financial institutions, as that term is defined in the regulation. Per [12 CFR 1003.2\(g\)\(2\)](#), a non-depository lending institution (such as a System institution) is a financial institution for purposes of Regulation C if it meets both of the following:

- On the preceding December 31, it had a home or branch office in a Metropolitan Statistical Area (MSA) (MSA is defined in [12 CFR 1003.2\(m\)](#); Comment 2(m)-1 of the [Official Interpretations](#) in Supplement I to Part 1003 provides additional guidance). As addressed in [12 CFR 1003.2\(c\)\(2\)](#), a non-depository lending institution has a branch office in an MSA if it has an office in the MSA that takes applications from the public for covered loans. It is also deemed to have a branch office in an MSA if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA (even if it does not have an office in the MSA).
- It originated at least 25 covered closed-end mortgage loans or at least 200 covered open-end lines of credit in each of the two preceding calendar years.

If an institution does not satisfy the above criteria, it is not subject to Regulation C.

A financial institution is required to report information about a transaction if it is an application for, an origination of, or a purchase of a covered loan. Covered loan is defined in [12 CFR 1003.2\(e\)](#) as a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction under [12 CFR 1003.3\(c\)](#).

Covered transactions generally include applications for and originations of the following loans that are secured by a dwelling:

- Consumer-purpose (personal, family, or household purposes), closed-end loans, and open-end lines of credit.
- Business-purpose, closed-end loans and open-end lines of credit, if the loans or lines of credit are home purchase loans, home improvement loans, or refinancings.

Covered transactions include preapproval requests for home purchase loans that were denied, approved with written commitments but not accepted, or resulted in the origination of home purchase loans.

[12 CFR 1003.3\(c\)](#) lists a number of excluded transactions. [12 CFR 1003.3\(c\)\(9\)](#) contains an exclusion that is particularly relevant for System institutions – an exclusion for closed-end mortgage loans and open-end lines of credit used primarily for agricultural purposes (even if the loan is secured by a dwelling). A loan or line of credit is used primarily for agricultural purposes if one of the following is true:

- The loan funds will be used primarily for agricultural purposes.
- The loan or line of credit is secured by a dwelling that is located on real property primarily used for agricultural purposes (e.g., a farm).

Regulation C refers users to [Regulation Z](#) for guidance on what is an agricultural purpose. Regulation Z explains that an agricultural purpose transaction includes a transaction involving real estate that includes a dwelling (e.g., the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes. It allows the institution to use any reasonable standard to determine the primary use of the property and to select the standard to apply case-by-case.

If a home purchase, home improvement, or refinancing loan or line of credit is secured by a dwelling and is not for an agricultural purpose, it is subject to Regulation C, whether it is a loan made to a farmer, rancher, or aquatic producer or harvester under FCA Regulation [613.3000](#) or a loan made to a rural homeowner under FCA Regulation [613.3030](#).

An institution covered by the regulation must report, in a HMDA Loan Application Register (HMDA-LAR), specified information about its originations and purchases of mortgage loans (home purchase and refinancing) and home improvement loans. This includes loan applications that do not result in originations. Per [12 CFR 1003.4](#), the following four broad categories of information must be reported:

- Information about applicants, borrowers, and the underwriting process, such as sex, ethnicity, age, credit score, debt-to-income ratio, and automated underwriting system results.
- Information about the property securing the loan, such as construction method, property value, and additional information about manufactured and multifamily housing.
- Information about the features of the loan, such as pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and the type of loan.
- Certain unique identifiers, such as a universal loan identifier, property address, loan originator identifier, and legal-entity identifier for the financial institution.

Data for each covered institution, as well as aggregate data for all covered institutions in a metropolitan area, will be available to the public on the CFPB's HMDA page per [12 CFR 1003.5](#).

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the HMDA and Regulation C include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have policies and procedures that effectively address the HMDA and Regulation C requirements and processes for ensuring compliance with these requirements. At a minimum, policies and procedures should include guidance for determining institutional and transactional coverage, compiling reportable data points, and ensuring compliance with disclosure and reporting requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with the policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the HMDA and Regulation C. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable

statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures.

Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the HMDA and Regulation C so that required disclosures are made.

- **Reporting: Has the institution submitted its HMDA-LAR in accordance with [12 CFR 1003.5](#)?**  
The institution must submit the HMDA-LAR in electronic format by March 1 following the calendar year for which data is compiled. The institution also must retain a copy for its records for at least 3 years. Submissions can be viewed on the Federal Financial Institutions Examination Council (FFIEC) [LAR Register](#).
- **Posted Notices: Does the institution provide public notice as required by [12 CFR 1003.5](#)?**  
The institution must post a general notice in the lobby of its home office and each branch physically located in an MSA or metropolitan division that its HMDA data is available on the CFPB's [HMDA website](#). The institution must be prepared to make disclosure statements available for 5 years and HMDA-LARs (as modified by the CFPB to protect privacy) available for 3 years. The unmodified HMDA-LARs must be retained for at least 3 years for examination purposes.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the HMDA and Regulation C because the requirements are very detailed and complex. Refer to the HMDA section in the CFPB [Supervision and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information (including HMDA reporting guidance in the case of mergers). Additional information can be found on the CFPB and FFIEC websites at [HMDA Reporting Requirements and Resources](#), [Resources for HMDA Filers](#), and [HMDA webpage](#).

## 2. TILA:

Evaluate the adequacy of guidance and controls to ensure compliance with the Truth in Lending Act (TILA) and Regulation Z.

### Guidance:

The TILA, [15 U.S.C. 1601-1667f](#), is implemented by CFPB [12 CFR Part 1026](#) Truth in Lending (Regulation Z). The TILA is intended to ensure credit terms are disclosed in a meaningful way, so consumers can compare credit terms more readily and knowledgeably. In addition, the TILA does the following:

- Protects consumers against inaccurate and unfair credit billing and credit card practices.
- Provides consumers with rescission rights.
- Provides for rate caps on certain dwelling-secured loans.
- Imposes limitations on home equity lines of credit and certain closed-end home mortgages.
- Provides minimum standards for most dwelling-secured loans.

- Delineates and prohibits unfair or deceptive mortgage lending practices.

Generally, the TILA and Regulation Z apply to all creditors that regularly offer or extend credit to consumers (natural persons) primarily for personal, family, or household purposes, if the credit is subject to a finance charge or is payable by a written agreement in more than four installments. However, certain transactions are exempt per [12 CFR 1026.3](#). The most common exemptions for System institutions include the following:

- Extensions of credit primarily for business, commercial, or agricultural purposes. The agricultural purpose exemption also applies to a transaction involving real property that includes a dwelling (e.g., the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes, as discussed in [Official Interpretation 3\(a\)-8](#). A creditor must determine in each case if a transaction is primarily for an agricultural or other exempt purpose, as discussed in [Official Interpretation 3\(a\)-1](#).
- Extensions of credit to other than a natural person (e.g., partnership, corporation).
- Extensions of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount.
  - This exemption does not apply to an extension of credit secured by any real property or by personal property used or expected to be used as the principal dwelling of the consumer, or to a private education loan as defined in [12 CFR 1026.46\(b\)\(5\)](#).
  - The CFPB announces the threshold amount annually and posts the notice on its [website](#). FCA generally issues an Informational Memorandum on this announcement.

The disclosure and other rules that creditors must follow differ depending on whether the creditor is offering open-end credit (e.g., credit cards, home equity lines) or closed-end credit (e.g., car loans, mortgages). Regulation Z imposes requirements regarding the form of disclosures, including disclosures in electronic form. Certain, but not all, electronic disclosures are subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) ([15 U.S.C. 7001-7031](#)). FCA Regulations at [Part 609](#) address electronic commerce rules. Refer to the *E-Commerce* procedure in the *Information Technology & Security Examination Manual* topic for examining compliance with the E-Sign Act.

The following summarizes key regulatory requirements of Regulation Z:

- [Subpart A General \(Sections 1026.1 through 1026.4\)](#) – Provides general information that applies to open-end and closed-end credit transactions. It sets forth definitions and stipulates which transactions are covered, and which are exempt from the regulation. It also contains the rules for determining which fees are finance charges.
- [Subpart B Open-End Credit \(Sections 1026.5 through 1026.16\)](#) – Relates to open-end credit. It contains rules on account-opening disclosures, periodic statements, and other requirements, including special rules that apply to credit card transactions.

- [Subpart C Closed-End Credit \(Sections 1026.17 through 1026.24\)](#) – Relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission rights, and advertising.
- [Subpart D Miscellaneous \(Sections 1026.25 through 1026.30\)](#) – Contains rules on record retention, oral disclosures, disclosures in languages other than English, effect on state laws, state exemptions, and rate limitations.
- [Subpart E Special Rules for Certain Home Mortgage Transactions \(Sections 1026.31 through 1026.45\)](#) – Contains special rules and exemptions for certain home mortgage transactions. It sets forth requirements for high-cost mortgages, higher-priced mortgage loans, home equity plans, and other credit secured by a dwelling; it contains requirements for mortgage transfer disclosures and periodic statements for residential mortgage loans. It also specifies the contents of the TILA-Real Estate Settlement Procedures Act (RESPA) Integrated Disclosures (TRID) – the Loan Estimate and Closing Disclosure. FCA’s Informational Memorandum on [TILA-RESPA Integrated Mortgage Disclosures – Clarification of Borrower Stock and Participation Certificates Disclosure](#) dated April 28, 2015, provides direction on how to disclose borrower stock in the Loan Estimate and Closing Disclosure.
- [Subpart F Special Rules for Private Education Loans \(Sections 1026.46 through 1026.48\)](#).
- [Subpart G Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students \(Sections 1026.51 through 1026.60\)](#).
- [Appendices to Part 1026](#) – Several appendices contain information on multiple advance construction loans, annual percentage computations, ability to pay, and other topics. They also contain model disclosure forms.
- [Supplement I to Part 1026](#) – The official interpretations in this supplement include more detailed information on disclosures or other actions required of creditors. The CFPB cautions that it is virtually impossible to comply with Regulation Z without reference to and reliance on the interpretations. Good faith compliance with the interpretations protects creditors from civil liability under the TILA.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the TILA and Regulation Z include:

- **Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?** The board and management should have written policies and procedures that effectively address the TILA and Regulation Z requirements and processes for ensuring compliance with these requirements.
- **Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?** The board and management should implement effective internal control processes to ensure compliance with the TILA and Regulation Z. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is

expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the TILA and Regulation Z so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the TILA and Regulation Z because the requirements are very detailed and complex. Refer to the TILA section in the CFPB [Supervision and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, see the following CFPB resources:

- [TILA-RESPA integrated disclosure resources \(TRID\)](#)
- [CFPB mortgage resources](#)
- [Mortgage servicing resources](#)
- [Truth in Lending annual threshold adjustments](#)
- [Rural and underserved counties list](#)

### **3. ECOA:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Equal Credit Opportunity Act (ECOA) and Regulation B.

#### Guidance:

The ECOA, as amended, [15 U.S.C. 1691](#), is implemented by CFPB [12 CFR Part 1002](#) ECOA (Regulation B). The ECOA and Regulation B apply to creditors, as defined in [12 CFR 1002.2\(l\)](#), and they prohibit discrimination in any aspect of a credit transaction. Creditors are persons, including System institutions, who in the ordinary course of business regularly participate in credit decisions. The ECOA and Regulation B apply to every aspect of an applicant's or borrower's dealings with a creditor regarding an application for or extension of credit. They apply whether the applicant or borrower is a consumer, sole proprietor, partnership, corporation, trust, or any other form, and whether the credit is for consumer or business (including agricultural) purposes. The purpose of Regulation B is to promote the availability of credit to all creditworthy applicants, which it accomplishes by prohibiting creditor practices that discriminate in any aspect of a credit transaction based on the following prohibited bases:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has the capacity to contract)
- The applicant's receipt of income derived from any public assistance program
- The applicant's good faith exercise of any right under the Consumer Credit Protection Act



Official Interpretations to Regulation B are published in [Supplement I to Part 1002—Official Interpretations](#) to the regulation. The appendices to the regulation contain sample forms and indicate that FCA is to be listed in adverse action notices provided by System institutions.

The following summarizes key regulatory requirements of Regulation B:

- [12 CFR 1002.1](#), [12 CFR 1002.2](#), and [12 CFR 1002.3](#) – Set forth authority, scope, and purpose; definitions; and limited exemptions for certain classes of transactions.
- [12 CFR 1002.4](#) *General rules* –
  - Prohibits a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction.
  - Prohibits a creditor from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.
  - Requires written applications for certain dwelling-related types of credit.
  - Imposes requirements regarding the form of disclosures, including disclosures in electronic form. Certain, but not all, electronic disclosures are subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) ([15 U.S.C. 7001-7031](#)). FCA Regulations at [Part 609](#) address electronic commerce rules. Refer to the *E-Commerce* procedure in the *Information Technology & Security Examination Manual* topic for examining compliance with the E-Sign Act.
  - Permits foreign-language disclosures provided they are also available in English.
- [12 CFR 1002.5](#) *Rules concerning requests for information* – Permits a creditor to ask for any information in connection with a credit transaction, subject to the following:
  - A creditor may not request or collect information about an applicant’s race, color, religion, national origin, or sex, unless an exception applies.
  - A creditor may not request information about an applicant’s spouse or former spouse; marital status; or alimony, child support, or separate maintenance income except in specified circumstances.
- [12 CFR 1002.6](#) *Rules concerning evaluation of applications* – Except as provided, permits a creditor, in evaluating an application, to consider any information it obtains, as long as it does not use the information to discriminate against an applicant on a prohibited basis. A creditor must not take a prohibited basis into account when evaluating an applicant’s creditworthiness. The regulation imposes requirements and restrictions concerning a creditor’s consideration of the following information about an applicant:
  - Age
  - Receipt of public assistance
  - Childbearing or childrearing
  - Telephone listing
  - Income



- Credit history
  - Immigration status
  - Marital status
  - Race
  - Color
  - Religion
  - National origin
  - Sex
- [12 CFR 1002.7](#) *Rules concerning extensions of credit* –
    - Prohibits a creditor from refusing to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.
    - Requires a creditor to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant’s birth-given surname, the spouse’s surname, or a combined surname.
    - Limits the actions a creditor can take in connection with existing open-end accounts. ([12 CFR 1002.2\(w\)](#) defines open-end credit as credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.)
    - Imposes rules on when a creditor can and cannot require the signature of a spouse or other person.
    - Prohibits a creditor from refusing to extend credit or terminate an account because credit-related insurance is not available on the basis of the applicant’s age.
  - [12 CFR 1002.8](#) *Special purpose credit programs* – Allows creditors to establish special purpose credit programs for applicants who meet certain eligibility requirements. Generally, these programs target an economically disadvantaged class of individuals and are authorized by federal or state law.
  - [12 CFR 1002.9](#) *Notifications* – Generally requires a creditor to notify an applicant of action taken on the applicant’s request for credit, whether favorable or adverse, within 30 days after receiving a completed application. Among other provisions, this regulation contains requirements regarding adverse action notices, incomplete applications, applications submitted through third parties, and notifications to business credit applicants.
  - [12 CFR 1002.10](#) *Furnishing of credit information* – Sets forth requirements for a creditor if it furnishes credit information to a consumer reporting agency.
  - [12 CFR 1002.12](#) *Record retention* – Imposes record retention requirements on creditors for records connected with applications.
  - [12 CFR 1002.13](#) *Information for monitoring purposes* – Requires creditors request certain demographic information (ethnicity, race, sex, marital status, age) about the applicant(s) on requests for credit to purchase or refinance a principal residence where the credit will be secured by the dwelling being financed.

- [12 CFR 1002.14](#) *Rules on providing appraisals and other valuations* – Requires a creditor to provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit to be secured by a first lien on a dwelling.
- [12 CFR 1002.15](#) *Incentives for self-testing and self-correction* – Provides that the report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged if certain factors are met.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the ECOA and Regulation B include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the ECOA and Regulation B requirements and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the ECOA and Regulation B. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the ECOA and Regulation B so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the ECOA and Regulation B because the requirements are very detailed and complex. For additional information refer to the following CFPB guidance:

- [ECOA Compliance Resources](#)
- [Supervision and Examination Manual](#)
- [Circulars](#)
- [ECOA Valuations Rule – Small Entity Compliance Guide](#)

Note: In addition to the requirements of the ECOA and Regulation B, FCA Regulations at [Part 626](#) prohibit discrimination in lending. FCA Regulations at Part 626 are consistent with the requirements of the Fair Housing Act (FHA), as amended, and the Department of Housing and Urban Development's (HUD) implementing regulations, as well as with the requirements of the ECOA and Regulation B. The FHA and its implementing regulations prohibit discrimination on specified

prohibited bases in all aspects of residential real estate-related transactions. Refer to the *Nondiscrimination in Lending* procedure for additional information.

#### 4. RESPA:

Evaluate the adequacy of guidance and controls to ensure compliance with the Real Estate Settlement Procedures Act (RESPA) and Regulation X.

##### Guidance:

The RESPA ([12 U.S.C. 2601-2617](#)) is implemented by CFPB [12 CFR Part 1024](#) RESPA (Regulation X). The RESPA and Regulation X are intended to eliminate abusive practices in the real estate settlement process and provide home buyers and sellers with accurate disclosures of settlement costs. The RESPA also provides protections for borrowers with delinquent loans and addresses general servicing policies, procedures, and requirements. The RESPA and Regulation X apply to all federally related mortgage loans not subject to an exemption. A federally related mortgage loan, as defined in [12 CFR 1024.2](#), is a loan (other than a temporary loan like a construction loan), including a refinancing, made by a lender that is regulated by a federal agency (this includes all System institutions), if the loan is secured by a lien on residential property upon which either a one to four family structure or a manufactured home is located or is to be constructed using loan proceeds. The institution must do the following (among other things) for loans not subject to a full or partial exemption from the RESPA and Regulation X (as discussed below):

- Provide certain disclosures, when applicable, and ensure the disclosures allow for comparison by borrowers.
- Follow required escrow practices.
- Not pay kickbacks or unearned referral fees to other parties in connection with the referral of business.
- Provide loan applicants a list of homeownership counseling organizations.
- Follow mortgage servicing requirements, including requirements pertaining to foreclosure.

The following summarizes regulatory requirements of Regulation X:

- [Subpart A General Provisions](#) (Sections 1024.1 through 1024.5) – Provides definitions and explains covered and exempt transactions and allows for providing disclosures in electronic form. *Note:* FCA Regulations at [Part 609](#) address electronic commerce rules. Refer to the *E-Commerce* procedure in the *Information Technology & Security Examination Manual* topic for examining compliance with the E-Sign Act.
- [Subpart B Mortgage Settlement and Escrow Accounts](#) (Sections 1024.6 through 1024.20) – Establishes requirements regarding mortgage settlements and escrow accounts, including requirements related to disclosures, kickbacks and unearned fees, affiliated business arrangements, and escrow accounts.
- [Subpart C Mortgage Servicing](#) (Sections 1024.30 through 1024.41) – Establishes mortgage servicing requirements, including requirements related to information that servicers must provide to borrowers, resolution of errors, force-placed insurance, and protections for borrowers who have fallen behind on their mortgage payments.

- [Appendices to Part 1024](#) – Several appendices contain information on completing certain required disclosures, model clauses for a required notice, and other information.
- [Supplement I to Part 1024](#) – Official bureau interpretations are published in this supplement. Good faith compliance with the interpretations affords protection from liability under the RESPA.

The RESPA and Regulation X exempt certain transactions from their scope, either in full or in part. Full exemptions that might apply to a System institution, depending on the nature of the loan, are contained in [12 CFR 1024.5\(b\)](#). The following discusses loans that are commonly made by System institutions that are fully or partially exempt from RESPA coverage.

- *Full Exemption* – [12 CFR 1024.5\(b\)\(2\)](#) sets forth an exemption from all RESPA coverage for loans primarily for business, commercial, or agricultural purposes. Persons may rely on Regulation Z in determining whether this exemption applies.
- *Qualified Lender Partial Exemption* – [12 CFR 1024.30\(b\)\(3\)](#) provides for partial exemptions from certain mortgage servicing requirements ([12 CFR 1024.38](#) through [12 CFR 1024.41](#)) for mortgage servicers that are qualified lenders, as that term is defined in FCA Regulation [617.7000](#) (i.e., institutions when making loans that are subject to FCA’s borrower rights regulations). See the CFPB’s [Official Interpretation](#) of this exemption. In adopting this exemption, the CFPB recognized that some FCA borrower rights regulations, at [12 CFR Part 617](#), offer protections comparable to, but potentially inconsistent with, some RESPA and Regulation X servicing requirements. The qualified lender exemption is for the following requirements:
  - General servicing policies, procedures, and requirements ([12 CFR 1024.38](#)).
  - Early intervention with delinquent borrowers ([12 CFR 1024.39](#)).
  - Continuity of contact with delinquent borrowers ([12 CFR 1024.40](#)).
  - Loss mitigation procedures ([12 CFR 1024.41](#)).
- *Small Servicer Partial Exemption* – [12 CFR 1024.30\(b\)\(1\)](#) provides that servicers (including System institutions) that qualify as a small servicer, are generally subject to the same exemptions that qualified lenders are, except as otherwise provided in [12 CFR 1024.41\(j\)](#). In addition, [12 CFR 1024.17\(k\)\(5\)\(iii\)](#) provides different requirements for small servicers with respect to force-placed insurance. Per [12 CFR 1026.41\(e\)\(4\)](#), a small servicer is one that services 5,000 or fewer mortgage loans and that services only loans for which it is the creditor or assignee.

Note: Qualified lenders and small servicers remain subject to all other requirements of the RESPA and Regulation X, unless another exemption applies.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the RESPA and Regulation X include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the RESPA and Regulation X requirements and processes for ensuring compliance with these requirements. In addition, for mortgage servicing, [12 CFR 1024.38\(a\)](#) requires servicers to maintain policies and procedures that are reasonably

designed to achieve objectives set forth in [12 CFR 1024.38\(b\)](#). These objectives include the following:

- Accessing and providing timely and accurate information.
  - Properly evaluating loss mitigation applications.
  - Facilitating oversight of, and compliance by, service providers.
  - Facilitating transfer of information during servicing transfers.
  - Informing borrowers of the written error resolution and information request procedures.
- **Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?** The board and management should implement effective internal control processes to ensure compliance with the RESPA and Regulation X. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the RESPA and Regulation X so that required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the RESPA and Regulation X because the requirements are very detailed and complex. Refer to the RESPA section in the CFPB [Supervision and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, see the following CFPB resources:

- [Mortgage Servicing Rules](#)
- [TILA-RESPA Integrated Disclosure Resources \(TRID\)](#)
- [Other Applicable RESPA Documents](#)

### **5. Fair Credit Reporting:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Fair Credit Reporting Act (FCRA) and Regulation V.

#### Guidance:

The FCRA ([15 U.S.C. 1681-1681x](#)) provides the framework for the credit reporting system in the United States. It governs the collection, assembly, and use of consumer report information. CFPB's regulations implementing most provisions of the FCRA are at [12 CFR Part 1022](#) Fair Credit Reporting (Regulation V). However, Section 615(e) [[15 U.S.C. 1681m\(e\)](#)] (red flag guidelines and regulation) and Section 628 [[15 U.S.C. 1681w](#)] (disposal of records), are implemented for System institutions by Federal Trade Commission (FTC) regulations at [16 CFR Part 681](#) and [16 CFR Part 682](#), respectively. To

fully understand the FCRA, consideration of both the statute and regulations are necessary since some requirements are set forth only in the statute, while other requirements are implemented by Regulation V and the FTC regulations.

The FCRA protects information collected by consumer reporting agencies (CRAs) such as credit bureaus, medical information companies, and tenant screening services. Information in a consumer report cannot be provided to anyone who does not have a purpose as specified in the FCRA (i.e., permissible purpose). Companies that provide information to CRAs also have specific legal obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken based on such reports.

The FCRA applies to System institutions that operate in any of the following capacities with respect to consumer report information:

- Procurers and users of information (e.g., as credit grantors)
- Furnishers and transmitters of information (by reporting information to CRAs, other third parties, or affiliates)
- Marketers of credit or insurance products
- Employers

The following summarizes the statutory and regulatory provisions of the FCRA, Regulation V, and FTC FCRA regulations that are generally applicable to System institutions:

- *Regulation V [Subpart A](#) (Sections 1022.1 – 1022.3) General provisions* – Purpose, scope, model forms, and disclosures; examples; and definitions.
- *Section 604 [[15 U.S.C. 1681b](#)] Permissible purposes of consumer reports and Section 606 [[15 U.S.C. 1681d](#)] Disclosure of investigative consumer reports* – Requires any prospective user of a consumer report (e.g., a lender, insurer, landlord, or employer) to have a legally permissible purpose to use or obtain a report.
- *Section 603(d) [[15 U.S.C. 1681a\(d\)](#)] Consumer report and information sharing* – Sets forth exceptions that enable entities to share information, under certain circumstances, without becoming CRAs.
- *Section 624 [[15 U.S.C. 1681s-3](#)] and Regulation V [Subpart C](#) Affiliate marketing (Sections 1022.20-1022.27)* – Contain rules for using information from, or providing information to, affiliates for the purpose of marketing solicitations, including consumer notice and opt-out requirements.
- *Section 604(g) [[15 U.S.C. 1681b\(g\)](#)] and Regulation V [Subpart D](#) Medical information (Sections 1022.30-1022.32)* – Sets forth restrictions on obtaining or using medical information in connection with a credit eligibility determination.
- *Section 604(b) [[15 U.S.C. 1681b\(b\)](#)] Use of consumer reports for employment purposes* – Sets forth requirements for obtaining consumer reports of employees or prospective employees prior to, or during, the employment term, including disclosure and adverse action requirements.
- *Section 604(c) [[15 U.S.C. 1681b\(c\)](#)], Section 615(d) [[15 U.S.C. 1681m\(d\)](#)], and Regulation V [Section 1022.54](#) Duties of users regarding obtaining and using consumer reports* – Sets forth

requirements for obtaining and using prescreened consumer reports to make offers of credit or insurance.

- *Section 615(e) [15 U.S.C. 1681m(e)] and FTC regulations at 16 CFR Part 681 Duties regarding the detection, prevention, and mitigation of identity theft* – Sets forth requirements, for creditors that offer or maintain covered accounts, regarding the detection, prevention, and mitigation of identity theft.
- *Section 609(g) [15 U.S.C. 1681g(g)] Disclosure of credit scores by certain mortgage lenders* – Requires creditors that use credit scores in connection with applications, secured by one to four units of residential real property, to provide disclosures to applicants after using credit scores.
- *Section 615(a) and (b) [15 U.S.C. 1681m(a) and (b)] Adverse action disclosures* – Requires users of consumer reports to provide certain disclosures when taking adverse action based in whole or in part on information contained in a consumer report or on information obtained from third parties, including affiliates.
- *Section 615(g) [15 U.S.C. 1681m(g)] Debt collector communications concerning identity theft* – Requires an entity that is collecting a debt on behalf of a third party to do the following:
  - Notify the third party if the entity is notified that any information relating to the debt may be fraudulent or the result of identity theft.
  - Provide, upon request, information about the transaction to the consumer to whom the debt relates.
- *Section 615(h) [15 U.S.C. 1681m] and Regulation V Subpart H Duties of users regarding risk-based pricing (Sections 1022.70-1022.75)* – Generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor, based on a consumer report, extends credit to the consumer on terms that are *materially less favorable* than the terms the creditor has extended to other consumers. (Does not apply to an extension of credit to a consumer primarily for a business purpose.)
- *Section 623(a) [15 U.S.C. 1681s-2(a)] Duties of furnishers to provide accurate information* – Imposes requirements on furnishers who are notified, know, or have reasonable cause to believe that information they furnished is inaccurate or incomplete.
- *Section 623(b) [15 U.S.C. 1681s-2(b)] Duties upon notice of dispute from a CRA* – Imposes requirements on furnishers that receive notices of dispute from CRAs.
- *Section 623(a)(8) [15 U.S.C. 1681s-2(a)(8)] Regulation V Section 1022.43 Duties upon notice of dispute from a consumer (direct disputes)* – Imposes requirements on furnishers that receive notice of a dispute from a consumer.
- *Section 628 [15 U.S.C. 1681w] and FTC regulations at 16 CFR Part 682 Disposal of consumer report information and records* – Sets forth requirements, for any person that, for a business purpose, maintains or otherwise possesses consumer information, regarding the proper disposal of consumer information.
- *Regulation V Section 1022.82 Duties of users regarding address discrepancies* – Contains requirements for responding to notices of address discrepancies received from a nationwide CRA.



- *Regulation V [Subpart E Duties of furnishers of information \(Sections 1022.40-1022.42\) and Interagency Guidelines \(Appendix E\)](#)* – Requires entities that furnish information to a CRA to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information that it furnishes.
- *Section 623(a)(4) [[15 U.S.C. 1681s-2\(a\)\(4\)](#)]* *Voluntary closures of accounts* – Requires an entity that regularly, and in the ordinary course of business, furnishes information to a CRA to notify the CRA of a consumer’s voluntary account closure.
- *Section 623(a)(5) [[15 U.S.C. 1681s-2\(a\)\(5\)](#)]* *Notice involving delinquent accounts* – Requires entities that furnish information to a CRA about a delinquent account placed for collection, charged off, or any similar action, to notify the CRA, within 90 days after furnishing, of the month and year of the commencement of the delinquency that immediately preceded the action.
- *Section 623(a)(6) [[15 U.S.C. 1681s-2\(a\)\(6\)](#)]* *Duties of furnishers upon notice of identity theft-related information* – Requires furnishers to establish and follow reasonable procedures to prevent re-reporting information that may be fraudulent as a result of identity theft.
- *Section 605A(h)(1)(B) [[15 U.S.C. 1681c-1\(h\)\(1\)\(B\)](#)]* *Limitations on use of information for credit extensions* – Requires users of consumer reports to verify a consumer’s identity before extending or increasing credit if their consumer report includes a fraud, active duty, or extended alert.
- *Section 609(e) [[15 U.S.C. 1681g\(e\)](#)]* *Information available to victims* – Requires an entity to provide records of fraudulent transactions to identity theft victims within 30 days after receipt of a request for the records, provided certain conditions are satisfied.
- *[16 CFR 681.1](#) Duties regarding the detection, prevention, and mitigation of identity theft* – Requires entities to implement a written identity theft prevention program designed to detect identify theft red flags, take steps to prevent the crime, and mitigate its damage.

The appendices to [Regulation V](#) contain additional guidance for complying with fair credit reporting requirements, including model forms and disclosures.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the FCRA and Regulation V include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the FCRA and Regulation V requirements and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the FCRA and Regulation V. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also

be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the FCRA and Regulation V so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the FCRA and Regulation V, because the requirements are very detailed and complex. Refer to the FCRA section in the CFPB [Supervision and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, the CFPB's [Compliance Overview](#) web page includes links to a number of resources.

## **6. Flood Insurance:**

Evaluate the adequacy of guidance and controls to ensure compliance with flood insurance requirements (FCA Regulations Part 614, Subpart S).

### Guidance:

The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, among other laws (all of which are codified at [42 U.S.C. 4001-4131](#)), govern the National Flood Insurance Program (NFIP). Five federal regulatory agencies, including FCA, have issued interagency rules implementing the flood insurance laws. System institutions must comply with FCA's regulations found at [Part 614 Subpart S](#). Additional information about FCA's regulations can be found on FCA's website at [Flood Insurance](#).

Flood insurance program objectives include the following:

- Provide flood insurance to owners of improved real estate located in standard flood hazard areas (SFHAs) of communities participating in the NFIP.
- Require communities to enact measures designed to reduce or avoid future flood losses as a condition for making federally subsidized flood insurance available.
- Require each federal financial regulatory agencies to adopt regulations prohibiting its regulated lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or mobile home located or to be located in an SFHA of a community participating in the NFIP, unless the property securing the loan is covered by flood insurance.

Flood insurance, either issued through the NFIP or from a private insurance provider, is required for the term of the loan on buildings or mobile homes when the institution makes, increases, extends, or renews a designated loan, when the following three factors are present:

- The loan (commercial or consumer) is secured by improved real estate, or a mobile home that is affixed to a permanent foundation (security property).

- The property securing the loan is located or will be located in an SFHA as identified by the Federal Emergency Management Agency (FEMA).
- The community in which the property is located participates in the NFIP.

When the institution makes, increases, extends, or renews any loan secured by improved real estate or a mobile home, it must use the standard flood hazard determination form (SFHDF) developed by FEMA. This form determines whether the building or mobile home offered as security is or will be located in an SFHA in which flood insurance is available under the federal flood insurance statutes.

The flood insurance statutes and regulations provide that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in an SFHA unless the improved real property is covered by the minimum amount of flood insurance required by statute. This includes situations where a security interest in improved real property is taken only out of an abundance of caution.

The following summarizes FCA's regulatory provisions in Part 614, Subpart S regarding flood insurance requirements:

- *FCA Regulations [614.4920](#) and [614.4925](#)* – Sets forth the purpose and scope of the regulations and definitions used in the regulations.
- *FCA Regulation [614.4930](#)* – Prohibits the institution from making, increasing, extending, or renewing designated loans unless the building, mobile home, or personal property securing the loan is covered by flood insurance.
- *FCA Regulation [614.4932](#)* – Provides exemptions to the flood insurance requirement.
- *FCA Regulation [614.4935](#)* – Requires the institution to escrow premiums and fees for flood insurance, unless an exception applies. The exception most applicable to System institutions is the exception for extensions of credit primarily for business, commercial, or agricultural purposes. There is also an exception for small lenders.
- *FCA Regulation [614.4940](#)* – Requires the institution to use the SFHDF developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a SFHA in which flood insurance is available. The institution must retain a copy of the completed form.
- *FCA Regulation [614.4945](#)* – Imposes requirements on the institution pertaining to the forced placement of flood insurance.
- *FCA Regulation [614.4950](#)* – Allows the institution to charge a reasonable fee when determining whether the building or mobile home securing the loan is located or will be located in a SFHA.
- *FCA Regulation [614.4955](#)* – Requires the institution, when it makes, increases extends, or renews a loan secured by a building or mobile home in a SFHA, to provide a written notice to the borrower.
- *FCA Regulation [614.4960](#)* – Requires the institution to provide notice to FEMA regarding the identity of the loan servicer.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with flood insurance laws and requirements include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the federal flood insurance requirements in applicable federal laws and FCA regulations and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the federal flood insurance laws and requirements listed above. Examples of effective controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate forms or disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the flood insurance requirements so required disclosures and forms are completed.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

Because the federal flood insurance requirements are very detailed and complex, the guidance in this procedure does not discuss them comprehensively. The federal agencies that implement the flood insurance laws have issued [Interagency Questions and Answers on Flood Insurance](#) that provide guidance on the flood insurance requirements.

### ***7. Nondiscrimination in Lending:***

Evaluate the adequacy of guidance and controls to ensure compliance with FCA regulations prohibiting discrimination in lending consistent with the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA).

#### Guidance:

Discrimination in lending is prohibited by FCA Regulations at [Part 626](#). FCA's regulations are consistent with the requirements of the following:

- FHA, as amended ([42 U.S.C. 3601-3631](#))
  - Department of Housing and Urban Development's (HUD) implementing regulations ([24 CFR Subtitle B, Chapter I](#))
- ECOA ([15 U.S.C. 1691-1691f](#))
  - CFPB's implementing regulations ([12 CFR Part 1002](#), Regulation B)

The FHA and its implementing regulations prohibit discrimination in all aspects of residential real estate-related transactions including, but not limited to the following:

- Making loans to buy, build, repair, or improve a dwelling.
- Purchasing real-estate loans.
- Selling, brokering, or appraising residential real estate.
- Selling or renting a dwelling.

The FHA and its implementing regulations prohibit discrimination based on the following prohibited bases:

- Race
- Color
- Religion
- Sex
- Handicap
- Familial status
- National origin

The ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction based on the following prohibited bases:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has the capacity to enter into a binding contract)
- Receipt of public assistance
- Exercising rights in good faith under the Consumer Credit Protection Act

[42 U.S.C. 3608\(d\)](#) of the FHA requires any federal agency having regulatory or supervisory authority over financial institutions to administer their programs in a manner to further the goal of fair housing. FCA Regulations at [Part 626](#) carries out this requirement and incorporates the lending and advertising prohibitions of the ECOA and [Regulation B](#). System institutions are subject to all applicable requirements in the FHA (including its implementing regulations), the ECOA, and Regulation B, whether or not these requirements are also included in FCA Regulations at [Part 626](#). Refer to the *ECOA* procedure for additional information on the ECOA and Regulation B requirements.

The requirements of FCA Regulations at Part 626 are summarized below:

- *FCA Regulation [626.6000](#) Definitions* – Sets forth regulatory definitions.
- *FCA Regulation [626.6005](#) Nondiscrimination in lending and other services* – Prohibits discrimination on a prohibited basis in any aspect of a residential real estate-related transaction or a credit transaction, including but not limited to discrimination in fixing the amount, interest rate, duration, or other terms or conditions of any loan; or a financial service involving a credit transaction; or in the purchase of loans and securities. This

prohibition does not change the eligibility requirements imposed by the Farm Credit Act of 1971, as amended, or FCA regulations.

- *FCA Regulation [626.6010](#) Nondiscrimination in applications* – Prohibits discouraging or refusing to allow, receive, or consider an application, request, or inquiry regarding an eligible loan or other eligible credit service; or discrimination in imposing conditions upon, or in processing an application, request, or inquiry on a prohibited basis.
- *FCA Regulation [626.6015](#) Nondiscriminatory appraisal* – Prohibits discrimination on an FHA-prohibited basis when conducting, using, or relying upon an appraisal of residential real property that is subject to sale, rental, or other financing transaction.
- *FCA Regulation [626.6020](#) Nondiscriminatory advertising* – Prohibits the use of words, phrases, symbols, directions, forms, or models in advertising that express, imply, or suggest a policy of discrimination or exclusion on a prohibited basis. In addition, written advertisements relating to dwellings must include an Equal Housing Lender logotype and legend.
- *FCA Regulation [626.6025](#) Equal housing lender poster* – Requires each System institution that makes loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling to post and maintain an Equal Housing Lender Poster in the lobby of each of its offices.
- *FCA Regulation [626.6030](#) Complaints* – Provides that complaints under the FHA shall be referred to both HUD and FCA and that complaints under the ECOA shall be referred to FCA.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with nondiscrimination laws and regulations, including FCA Regulations at Part 626, include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address nondiscrimination requirements in applicable federal laws and regulations, including FCA Regulations at [Part 626](#), and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with nondiscrimination provisions in federal lending laws and regulations, including FCA Regulations at [Part 626](#). Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate advertisements. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should

ensure employees recognize which loans are subject to the requirements of FCA Regulations at [Part 626](#) so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the ECOA and FHA and their implementing regulations because the requirements are very detailed and complex. Refer to the *ECOA* procedure for additional information on ECOA and Regulation B and the HUD website for additional information on [Housing Discrimination](#).

#### **8. SAFE Act:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) and Regulation G.

##### Guidance:

The SAFE Act, [12 U.S.C. 5101-5117](#), is implemented by CFPB [12 CFR Part 1007](#) SAFE Act – Federal Registration of Residential Mortgage Loan Originators (Regulation G). Regulation G applies to all federally regulated financial institutions, including System institutions that originate residential mortgage loans, and to their employees who act as mortgage loan originators (MLOs).

The purpose of the SAFE Act includes the following:

- Enhance consumer protections and reduce fraud.
- Provide a comprehensive supervisory database.
- Improve information flow among regulators.
- Facilitate the collection and disbursement of consumer complaints among state and federal regulators.
- Provide increased accountability and tracking of MLOs.
- Provide consumers with easily accessible information, at no additional charge, about the employment history and publicly adjudicated disciplinary and enforcement actions against MLOs.

A residential mortgage loan is defined as any loan primarily for personal, family, or household use that is secured by mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the TILA ([15 U.S.C. 1602\(w\)](#)) or residential real estate upon which is constructed or intended to be constructed a dwelling. Residential mortgage loans include refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet certain qualifications specified in the definition of [residential mortgage loan](#) in Regulation G.

Loans that are primarily for agricultural or commercial purposes, which do not receive a TILA disclosure, are not subject to the SAFE Act. Rural home loans under FCA Regulation [613.3030](#) are covered by the SAFE Act and Regulation G. In addition, residential mortgage loans that are not designated as rural home loans, as defined in FCA Regulation [613.3030](#), but that receive a TILA disclosure, are covered by the SAFE Act.

The applicable provision of the SAFE Act, [12 U.S.C. 5103\(a\)](#), prohibits an individual from engaging in the business of a residential MLO without first completing both of the following:

- Obtaining and maintaining annually at least one of the following:



- Registration as a registered MLO who is an employee of a depository institution, a federally regulated subsidiary of a depository institution, or a System institution.
- A license and registration as a state-licensed MLO.
- Obtaining a unique identifier.

Under the SAFE Act, all residential MLOs (whether employed by lenders regulated by the federal banking agencies or FCA, or licensed by a state), must register and annually renew their registration with the online [Nationwide Mortgage Licensing System and Registry](#) (Registry). This Registry is also the repository of publicly available information about such MLOs.

The following summarizes key requirements of Regulation G:

- [12 CFR 1007.101](#) and [12 CFR 1007.102](#) – Set forth authority, scope, and purpose; limited de minimis exceptions; and definitions.
- [12 CFR 1007.103](#) – Requires an MLO employee of a covered financial institution to register with the Registry, obtain a unique identifier, maintain the registration by updating certain information within 30 days of specified changes, and annually renew the registration during the annual renewal period.
- [12 CFR 1007.104](#) – Requires each covered financial institution that employs one or more MLOs to adopt and follow written policies and procedures designed to ensure compliance with Regulation G.
- [12 CFR 1007.105](#) – Requires the covered financial institution to make unique identifier(s) of its registered MLOs available to consumers in a manner and method practicable to the institution. An MLO must provide their unique identifier to consumers upon request, before acting as an MLO, and through the originator's initial written communication with a consumer, if any, whether on paper or electronically.
- [Appendix A to Part 1007](#) – Provides examples to aid in the understanding of activities that would cause an employee of the institution to fall within or outside the definition of MLO.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the SAFE Act and Regulation G include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** [12 CFR 1007.104](#) requires any covered financial institution that employs one or more MLOs to adopt and follow written policies and procedures designed to assure compliance with the SAFE Act and Regulation G. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the institution's mortgage lending activities and apply only to those employees acting within the scope of their employment. Regulation G outlines specific items and issues that an institution's policies and procedures must address, including the following:
  - Annual independent testing of policies and procedures for compliance with Regulation G.
  - Reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements.

- Providing appropriate disciplinary action in case of employees who fail to comply with the registration requirements of the SAFE Act, Regulation G, and policies or procedures.
- Establishing processes for reviewing employee criminal history background reports received pursuant to this regulation and taking appropriate action consistent with [Section 5.65\(d\)](#) of the Farm Credit Act, as amended and other applicable federal laws.
- **Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?** The board and management should implement effective internal control processes to ensure compliance with the SAFE Act and Regulation G. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the SAFE Act and Regulation G so required disclosures are made.

Examiners should consider any audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the SAFE Act and Regulation G, because the requirements are very detailed and complex. Refer to the SAFE Act section in the CFPB [Supervisory and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, the CFPB's [Compliance Resources](#) web page includes links to a number of resources.

### **9. Margin Stock:**

Evaluate the adequacy of guidance and controls to ensure compliance with Regulation U.

#### Guidance:

The Federal Reserve Board (FRB) issued [12 CFR Part 221](#) Credit by Banks and Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock (Regulation U) pursuant to the Securities Exchange Act of 1934 ([15 U.S.C. 78a-78rr](#)). Regulation U sets out certain requirements for lenders who extend credit secured directly or indirectly by margin stock. Margin stock includes the following:

- Any equity security registered on a national securities exchange, such as the New York Stock Exchange or the American Stock Exchange.
- Any over-the-counter security trading in the NASDAQ Stock Market's National Market.

- Any debt security convertible into a margin stock (e.g., publicly traded options such as puts, calls, and combinations).
- Most mutual funds.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with Regulation U include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure regulatory compliance?*** The board and management should have policies and procedures that effectively address Regulation U requirements and processes for ensuring compliance with the registration, reporting, and lending requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with Regulation U. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant regulations. Training should ensure employees recognize which loans are subject to Regulation U so required disclosures are made.
- ***Registration: If the institution is required to register with the FRB, did it register within the required timeframe?*** The institution must register with the FRB using Form [FR G-1](#). This one-time registration must be completed within 30 days after a quarter-end where either of the following has occurred:
  - The institution extended credit, during the quarter, \$200,000 or more in credit secured directly or indirectly by margin stock.
  - The institution had, at any time during the quarter, \$500,000 or more in credit secured directly or indirectly by margin stock.
- ***Margin Requirements: Did the institution comply with the margin requirements (currently 50 percent) for purpose credit secured directly or indirectly by margin stock?*** Purpose credit is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock. The institution must not extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds 50 percent of the margin stock's current market value.
- ***Reporting: Is the institution appropriately completing and filing the required FRB forms?***
  - *FRB Form [FR G-1](#) Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers)* – The institution must file this form as discussed above in *Registration*.

- *FRB Form [FR G-2](#) Deregistration Statement for Persons Registered Pursuant to Regulation U* – The institution may use this form to deregister with the FRB if, during the preceding 6 calendar months, it has not had more than \$200,000 of credit secured by margin stock outstanding. Deregistering is optional, but if the institution does not deregister, it must file an annual report (FRB Form FR G-4) every year.
- *FRB Form [FR G-3](#) Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration under Regulation U* – The borrower and lender must complete this form for each extension of credit secured directly or indirectly by margin stock. The lender must keep it for at least 3 years after the termination of the credit.
- *FRB Form [FR G-4](#) Annual Report* – An institution (unless it has deregistered) must use this form to file an annual report with the FRB within 30 days of June 30. The report shows its lending activities secured by margin stock, including the amount of such credit outstanding and extended during the year.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of Regulation U because the requirements are very detailed and complex. For detailed information and forms, see the FRB's [Regulation U Compliance Guide](#).

## **10. Consumer Leasing:**

Evaluate the adequacy of guidance and controls to ensure compliance with consumer leasing requirements in Regulation M.

### Guidance:

The Consumer Leasing Act (CLA), [15 U.S.C. 1667-1667f](#), is implemented by CFPB [12 CFR Part 1013](#) Consumer Leasing (Regulation M). The CLA and Regulation M apply to lessors as defined in [12 CFR 1013.2\(h\)](#). A lessor is a person who regularly (more than five times in a year) leases, offers to lease, or arranges for the lease of personal property under a consumer lease.

The CLA's purpose is to assure meaningful and accurate disclosure of lease terms is provided to consumers before entering a contract. With this information, consumers can more easily compare one lease with another, as well as compare the cost of leasing with the cost of buying on credit or the opportunity cost of paying cash. In addition, the CLA puts limits on balloon payments due at the end of a lease and regulates advertising.

The following summarizes key regulatory requirements of Regulation M:

- [12 CFR 1013.1](#) and [12 CFR 1013.2](#) – Set forth authority, scope, purpose, enforcement, and definitions.
- [12 CFR 1013.3](#) and [12 CFR 1013.4](#) – Describe the general disclosure requirements and required disclosure content that lessors must disclose. Model disclosure forms are in [Appendix A](#). The disclosures required by Regulation M may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable

provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) ([15 U.S.C. 7001-7031](#)), except for certain advertisements. For advertisements accessed by the consumer in electronic form, the disclosures required by [12 CFR 1013.7](#) may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act. FCA Regulations at [Part 609](#) address electronic commerce rules. Refer to the *E-Commerce* procedure in the *Information Technology & Security Examination Manual* topic for examining compliance with the E-Sign Act.

- [12 CFR 1013.5](#) – Addresses under what circumstances new disclosures are required for renegotiations, extensions, and assumptions.
- [12 CFR 1013.7](#) – Requires advertisements concerning consumer leases to comply with certain disclosure requirements.
- [12 CFR 1013.8](#) – Requires lessors to maintain evidence of compliance, other than the advertising requirements, for at least 2 years after the date of disclosures are required to be made or an action is required to be taken.
- [12 CFR 1013.9](#) – Provides guidance on how Regulation M and state law work together to ensure the consumer has the greatest protection and benefit.
- [Supplemental I to Part 1013](#) – Includes official interpretations of the regulation.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the CLA and Regulation M include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the CLA and Regulation M requirements and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the CLA and Regulation M. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which leases are subject to the CLA and Regulation M so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the CLA and Regulation M, because the requirements are very detailed and complex. Refer to the CLA section in the CFPB [Supervisory and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information.

#### **11. OFAC Requirements:**

Evaluate the adequacy of guidance and controls to ensure compliance with Office of Foreign Assets Control (OFAC) requirements.

##### Guidance:

The Department of the Treasury's OFAC administers and enforces economic and trade sanctions against hostile targets to further U.S. foreign policy and national security objectives. OFAC regulations, at [31 CFR Parts 501-599](#), restrict transactions by U.S. persons or entities with certain foreign countries (and their nationals) and with specially designated nationals (SDN). Violations of these sanctions can expose System institutions to enforcement authority and substantial penalties. OFAC applies to all U.S. persons and entities. System institutions must maintain appropriate internal controls to ensure business is not conducted with prohibited parties.

Although there are many OFAC regulations, the key requirements that apply to System institutions are as follows:

- *Part 501, Sections 501.601-606 Reports* – Identifies recordkeeping, reporting, and retention requirements for any entity engaging in any transaction subject to the OFAC provisions, including blocked, unblocked, or rejected transactions.
- *Appendix A to Part 501 Economic Sanctions Enforcement Guidelines* – Provides a general framework for the enforcement of all economic sanctions programs administered by OFAC.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with OFAC requirements include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure regulatory compliance?*** The board and management should have written policies and procedures that effectively address OFAC requirements in applicable federal regulations and processes for ensuring compliance with these requirements. Policies and procedures should address the following OFAC requirements at a minimum:
  - Updating and maintaining OFAC lists.
  - Flagging and screening suspect transactions.
  - Identifying and reviewing suspect transactions.
  - Reporting to OFAC requirements.
  - Recordkeeping requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with OFAC requirements in federal lending regulations. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities,

internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant regulations. Training should ensure employees recognize which loans are subject to OFAC requirements so required reporting is made. Regular screening of transactions and customers against the OFAC SDN list should occur to ensure accurate reporting.

The guidance in this procedure does not discuss every OFAC requirement, because the requirements are very detailed and complex. Refer to the FFIEC [OFAC Examination Manual](#), including [Appendix M: Quantity of Risk Matrix–OFAC Procedures](#), for more detailed information. Also, the OFAC [website](#) includes links to several resources including the following:

- [OFAC Contact Information](#)
- [Specially Designated Nationals and Blocked Persons List](#)
- [OFAC Consolidated FAQs](#)

## **12. SCRA & MLA:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Servicemembers Civil Relief Act (SCRA) and Military Lending Act (MLA).

### Guidance:

The SCRA and MLA provide legal and financial protections for active-duty servicemembers and certain dependents. The servicemembers and dependents who are covered by the two laws are not identical and each law includes different protections as discussed below.

### **Servicemembers Civil Relief Act**

The SCRA ([50 U.S.C. 3901-4043](#)) applies to all System institutions interacting with servicemembers or their dependents. The SCRA protects the following servicemembers:

- Active-duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.
- Members of the Reserves when on active duty.
- Members of the National Guard mobilized under federal orders for more than 30 consecutive days.
- Active-service commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration.
- Note: Some benefits accorded to a servicemember by the SCRA also extend to anyone holding a valid power of attorney for the servicemember and to servicemembers' spouses and other dependents.



The purpose of the SCRA is to provide extra protections for servicemembers in the event that legal or financial transactions adversely affect their rights during military or uniformed service, to allow them to devote their entire energy to the nation's defense needs. The SCRA provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the servicemembers' civil rights during their military service.

Among other things, the SCRA establishes the following protections:

- Reduces the interest rate on any pre-service loans to a maximum of 6 percent.
- Protects against default judgments in civil cases.
- Protects against foreclosures on servicemembers' homes.
- Protects against repossession of personal property, including vehicles.
- Permits early termination of certain residential housing and motor vehicle leases without penalty.

### **Military Lending Act**

The MLA ([10 U.S.C. 987](#)) is implemented by Department of Defense regulations at [32 CFR Part 232](#). Subject to certain exceptions, the regulations generally apply to persons who meet the creditor definition in [Regulation Z](#) and are engaged in the business of extending certain types of consumer credit to covered borrowers, as defined in [32 CFR 232.3\(g\)\(1\)](#). Covered borrowers include the following:

- Members of the Armed Forces (Air Force, Army, Coast Guard, Marine Corps, Navy, and Space Force) serving on active duty, including Active Guard and Reserve duty.
- Spouses, children, and certain other dependents of members on active duty.

The purpose of the MLA is to protect covered borrowers from certain lending practices in connection with loans they take out while on active duty. Specifically, the MLA and its regulations contain limitations on, and requirements for, certain types of consumer credit.

The MLA applies to consumer credit (as defined in [32 CFR 232.3\(f\)\(1\)](#)) that is extended to covered borrowers. Consumer credit under the MLA does not extend to lines of credit used for business, agriculture, or commercial purposes. The consumer credit definition under the MLA generally aligns with the definition of the same term in [Regulation Z](#) (which implements the Truth in Lending Act (TILA)). However, the following types of loans are excluded from the MLA definition:

- Residential mortgages (any credit transaction secured by an interest in a dwelling).
- Credit transactions expressly intended to finance the purchase of a motor vehicle when the credit is secured by the motor vehicle being purchased.
- Credit transactions expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased.

For covered transactions, the MLA limits the amount a creditor may charge, including interest; fees; charges imposed for credit insurance, debt cancellation, and suspension; and other credit-related ancillary products sold in connection with the transaction. The total charge, as expressed through an annualized rate referred to as the Military Annual Percentage Rate (MAPR), may not exceed 36 percent. The MAPR includes charges that are not included in the finance charge or the annual

percentage rate disclosed under the TILA. Credit agreements that violate the MLA are void at inception. Among other provisions, the MLA, as implemented by the regulations, also does the following:

- Provides an optional safe harbor from liability for certain procedures that creditors may use in connection with identifying covered borrowers.
- Requires creditors to provide written and oral disclosures in addition to those required by the TILA.
- Prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses, and certain notice requirements that are considered unreasonable.
- Restricts loan rollovers, renewals, and refinancings by some types of creditors.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the SCRA and MLA include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address SCRA and MLA requirements and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the SCRA and MLA. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates include all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the SCRA and MLA, so employees can comply with the protections afforded to the servicemember (or their dependents).

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the SCRA and MLA, because the requirements are very detailed and complex.

### **13. Electronic Fund Transfer Act:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Electronic Fund Transfer Act and Regulation E.

## Guidance:

The EFTA of 1978, [15 U.S.C. 1693-1693r](#), is implemented by CFPB [12 CFR Part 1005](#) Electronic Fund Transfers (Regulation E). Regulation E applies to electronic fund transfers (EFTs) that debit or credit a consumer's account, which is an account established primarily for personal, family, or household purposes. Business purpose accounts (e.g., to a sole proprietor) are exempt from Regulation E. Certain Regulation E provisions apply only to financial institutions, which does not include System institutions; but other provisions apply to any person, which does include System institutions. The EFTA and Regulation E are intended to protect individual consumers engaging in EFTs and remittance transfers. The EFTA and Regulation E require financial institutions and third parties to comply with certain requirements before providing such services. These services include the following:

- Transfers through automated teller machines
- Direct deposit
- Overdraft
- Point-of-sale terminals
- Automated clearinghouse systems
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated
- Remote banking programs
- Remittance transfers

The following summarizes Regulation E requirements that are relevant for persons, including System institutions (provisions that are relevant only for financial institutions are not included):

- [12 CFR 1005.1](#) and [12 CFR 1005.2](#) – Set forth authority, purpose, and definitions.
- [12 CFR 1005.3\(a\)](#) – Provides that Regulation E generally applies to financial institutions but that [12 CFR 1005.3\(b\)\(2\)](#) and [\(3\)](#); [12 CFR 1005.10\(b\)](#), [\(d\)](#), and [\(e\)](#); [12 CFR 1005.13](#); and [12 CFR 1005.20](#) apply to any person.
- [12 CFR 1005.3\(b\)\(2\)](#) – Sets forth requirements for an EFT using information from a check.
- [12 CFR 1005.3\(b\)\(3\)](#) – Sets forth requirements for the collection of returned item fees via EFT.
- [12 CFR 1005.10\(b\)](#) – Requires written authorization for preauthorized transfers from a consumer's account.
- [12 CFR 1005.10\(d\)](#) – Requires written notice when a preauthorized EFT from a consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount.
- [12 CFR 1005.10\(e\)](#) – Generally prohibits, with limited exceptions, a person from conditioning an extension of credit to a consumer on the consumer's repayment by preauthorized EFTs. It also prohibits requiring a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit.
- [12 CFR 1005.13](#) – Addresses administrative enforcement and record retention requirements.
- [12 CFR 1005.20](#) – Establishes requirements for gift cards and gift certificates.

- [Supplement I to Part 1005](#) – Includes official interpretations of the regulation.
- [Appendix A to Part 1005](#) – Contains model clauses and forms the institution may use to comply with the regulation.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the EFTA and Regulation E include:

- **Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?** The board and management should have written policies and procedures that effectively address the EFTA and Regulation E requirements and processes for ensuring compliance with these requirements.
- **Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?** Management should implement effective internal control processes to ensure compliance with the EFTA and Regulation E. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures or notices. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the EFTA and Regulation E, because the requirements are very detailed and complex. Refer to the EFTA section in the CFPB [Supervisory and Examination Manual](#), the CFPB Compliance Bulletin [2015-06](#), and any applicable CFPB [Circulars](#) for more detailed information. Also, the CFPB's [Compliance Resources](#) webpage includes links to a number of resources.

#### **14. Homeowners Protection Act:**

Evaluate the adequacy of guidance and controls to ensure compliance with the Homeowners Protection Act (HPA) (PMI Cancellation Act).

##### Guidance:

The HPA of 1998, [12 U.S.C. 4901-4910](#), also known as the Private Mortgage Insurance (PMI) Cancellation Act, addresses homeowner difficulties in cancelling PMI coverage. The HPA protects homeowners by prohibiting life-of-loan PMI coverage for borrower-paid PMI products, establishing uniform procedures for the cancellation and termination of PMI policies, and imposing disclosure and notification requirements.

The HPA applies primarily to residential mortgage transactions, defined as mortgage loan transactions consummated on or after July 29, 1999, to finance the acquisition, initial construction,

or refinancing of a single-family dwelling that serves as a borrower's principal residence. The HPA also includes provisions for annual written disclosures for residential mortgages, defined as mortgages, loans, or other evidence of a security interest created for a single-family dwelling that is the borrower's principal residence. A condominium, townhouse, cooperative, or mobile home is considered to be a single-family dwelling covered by the HPA. Single-family dwellings include rural home loans closed under FCA Regulation [613.3030](#) as well as residential mortgage loans closed under FCA Regulation [613.3000](#) that receive TILA disclosures.

The HPA's requirements vary depending on the following characteristics of the mortgage:

- Is the mortgage a residential mortgage or a residential mortgage transaction?
- Is it financed under a fixed rate or an adjustable rate?
- Is it covered by borrower-paid PMI or lender-paid PMI (LPMI)?
- Is it defined as high risk (in accordance with guidelines of the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) in the case of conforming loans, or by the lender in the case of nonconforming loans) or not defined as high risk?

The following summarizes statutory provisions of the HPA that are generally applicable to System institutions:

- [12 U.S.C. 4901](#) – Sets forth definitions.
- [12 U.S.C. 4902](#) – Sets forth PMI termination provisions for residential mortgage transactions.
  - *Borrower-Requested Cancellation* – A borrower may submit a written request to the servicer to request cancellation of PMI coverage. The servicer must cancel PMI on the cancellation date, defined at [12 U.S.C. 4901\(2\)](#), or any later date that the mortgagor fulfills specified requirements. Per [12 U.S.C. 4902\(e\)\(1\)](#), once PMI is cancelled, the servicer may not require further PMI payments or premiums more than 30 days after the date on which the written request was received, or the date on which the mortgagor satisfied the evidence and certification requirements of the mortgage holder (whichever is later). To request cancellation of PMI coverage, the mortgagor must fulfill the following requirements of [12 U.S.C. 4902\(a\)](#):
    - Submit a request in writing to the servicer that cancellation be initiated.
    - Have a good payment history with respect to the residential mortgage.
    - Be current on the payments required by the terms of the residential mortgage transaction.
    - Satisfy any requirement of the mortgage holder for evidence that the value of the property securing the mortgage has not declined below the original value of the property and for certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.
  - *Automatic Termination* – The HPA requires a servicer to automatically terminate PMI for residential mortgage transactions on the termination date, defined at [12 U.S.C. 4901\(18\)](#), if the borrower is current; or if the borrower is not current on that date, on the first day of the first month following the date that the borrower becomes current. Per [12 U.S.C. 4902\(e\)\(2\)](#), if PMI is terminated, the servicer may not

require further payments or premiums of PMI more than 30 days after the termination date or the date following the termination date on which the borrower becomes current on the payments, whichever is sooner.

- *Final Termination* – If PMI coverage on a residential mortgage transaction was not cancelled at the borrower’s request or by the automatic termination provision, the servicer must terminate PMI coverage by the first day of the month immediately following the date that is the midpoint of the loan’s amortization period if, on that date, the borrower is current on the payments required by the terms of the mortgage. If the borrower is not current on that date, PMI must be terminated when the borrower does become current. Per [12 U.S.C. 4902\(e\)\(3\)](#), the servicer may not require further payments or premiums of PMI more than 30 days after PMI is terminated.
- *Loan Modifications* – If a borrower and mortgage holder agree to modify the loan terms and conditions pursuant to a residential mortgage transaction, the cancellation, termination, or final termination dates must be recalculated to reflect the modification.
- *Return of Unearned Premiums* – The servicer must return all unearned PMI premiums to the borrower within 45 days after cancellation or termination of PMI coverage.
- *Exceptions to Cancellation and Termination Provisions for High-Risk Residential Mortgage Transactions* – The borrower-requested cancellation at 80 percent loan-to-value (LTV) and the automatic termination at 78 percent LTV requirements of the HPA do not apply to high-risk loans. However, high-risk loans are subject to final termination requirements.
- [12 U.S.C. 4903](#) – Sets forth disclosure and notice requirements applicable to residential mortgage transactions and residential mortgages.
  - The HPA requires the lender in a residential mortgage transaction to provide to the borrower, at the time of consummation, certain disclosures that describe the borrower’s rights for PMI cancellation and termination. Initial disclosures vary, based upon whether the transaction is a fixed-rate mortgage, adjustable-rate mortgage, or high-risk loan.
  - The HPA also requires that borrowers be provided with certain annual and other notices concerning PMI cancellation and termination.
  - Residential mortgages are subject to certain annual disclosure requirements.
- [12 U.S.C. 4904](#) – Sets forth notification requirements upon cancellation or termination of PMI relating to residential mortgage transactions.
  - The servicer must, no later than 30 days after PMI relating to a residential mortgage transaction is cancelled or terminated, notify the borrower in writing that PMI has terminated and the borrower no longer has PMI. The notification must include that no further premiums, payments, or other fees are due or payable by the borrower in connection with PMI.

- If a servicer determines a borrower in a residential mortgage transaction does not qualify for PMI cancellation or automatic termination, the servicer must provide the borrower with a written notice no later than 30 days following the date the borrower's request for cancellation is received or the date on which the borrower satisfies any evidence and certification requirements of the mortgage holder, whichever is later. If the borrower does not meet the requirements for automatic termination, the notice must be provided no later than 30 days following the scheduled termination date. The notice must include the grounds relied on for the determination (including the results of any appraisal used to make that determination).
- [12 U.S.C. 4905](#) – Sets forth disclosure requirements for LPMI. The HPA's cancellation and termination provisions do not apply to residential mortgage transactions for which LPMI is required.
- [12 U.S.C. 4906](#) – States that a borrower may not be charged for any disclosure required by the HPA.
- [12 U.S.C. 4907](#) – Addresses civil liability, including individual and class actions for violations of the HPA. A borrower must bring an action under the HPA within 2 years after discovery of the violation.
- [12 U.S.C. 4908](#) – Provides that the HPA, with limited exceptions, supersedes state laws relating to the areas covered by the HPA and conflicting provisions in agreements with servicers, investors, and noteholders.
- [12 U.S.C. 4909](#) – Provides that the HPA is enforced by FCA in the case of System institutions.
- [12 U.S.C. 4910](#) – Provides that the HPA shall not be construed to require PMI in connection with a residential mortgage transaction or to preclude a mortgage holder from cancelling or terminating PMI before the required cancellation or termination date.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the HPA include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory compliance?*** The board and management should have written policies and procedures that effectively address the HPA requirements and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the HPA. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate



disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws. Training should ensure employees recognize which loans are subject to the HPA so required disclosures are made.

Examiners should consider any FCA transaction testing and audit results to aid in evaluating the effectiveness of guidance and controls.

The guidance in this procedure does not discuss every requirement of the HPA, because the requirements are very detailed and complex. Refer to the HPA section in the CFPB [Supervisory and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, see the [CFPB Compliance Bulletin 2015-03](#) regarding PMI cancellation and termination provisions of the HPA.

### **15. Other Laws and Regulations:**

Evaluate the adequacy of guidance and controls to ensure compliance with other federal lending laws and regulations that apply to System institutions.

#### Guidance:

This procedure provides an overview of other consumer-related laws and regulations that apply to System institutions. This procedure does not discuss every requirement of these laws and regulations.

**Fair Debt Collection Practices Act (FDCPA)** – The FDCPA, [15 U.S.C 1692-1692p.](#), is implemented by CFPB [12 CFR Part 1006](#) Debt Collection Practices (Regulation F). The FDCPA was designed to eliminate abusive, deceptive, and unfair debt collection practices. It generally governs the collection of debt incurred by a consumer primarily for personal, family, or household purposes. It does not apply to corporate debt or to debt owed for business or agricultural purposes. In addition, it does not apply to a creditor that collects its own debt in its own name, unless the debt was in default when the creditor obtained it. Refer to the FDCPA section in the CFPB [Supervisory and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information. Also, the CFPB's [Debt Collection](#) webpage includes links to a number of resources.

**Mortgage Acts and Practices Advertising Rule (MAP Rule)** – The MAP Rule was adopted by the CFPB at [12 CFR Part 1014](#) (Regulation N). It applies to persons over which the Federal Trade Commission (FTC) has jurisdiction under the Federal Trade Commission Act (FTC Act), including System institutions. The MAP Rule prohibits any person from making any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to terms outlined in Regulation N. The MAP Rule also imposes recordkeeping requirements and prohibits waivers of its protections.

**Credit Practices Rule** – The Credit Practices Rule was adopted by the FTC at [16 CFR Part 444](#) pursuant to the FTC Act, [15 U.S.C 45](#) and [15 U.S.C 57a\(a\)\(1\)](#). It applies to all creditors subject to FTC jurisdiction, including System institutions, [15 U.S.C 45\(a\)\(2\)](#). The rule has three main provisions. First, it prohibits creditors from using certain specified contract provisions that are unfair to consumers. Second, it requires creditors to advise consumers who cosign obligations about their potential liability if the other person fails to pay. Third, it prohibits late charges in some situations. It covers all consumer credit transactions, except for those involving the purchase of real estate. It covers loans made to consumers who purchase goods or services for personal, family, or household uses, even if

those loans are secured by real estate owned by the consumers. It also applies to the sale of goods or services under lease-purchase plans.

**Prohibition of Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)** – Under provisions of the Dodd-Frank Act codified at [12 U.S.C. 5531](#), it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive, or abusive act or practice. UDAAP can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Refer to the UDAAP section in the CFPB [Supervisory and Examination Manual](#) and any applicable CFPB [Circulars](#) for more detailed information.

**Protecting Tenants at Foreclosure Act (PTFA)** – The PTFA, codified at [12 U.S.C. 5220](#) Statutory Note, protects tenants from eviction resulting from foreclosure on properties they occupy. It applies to any foreclosure on a federally related mortgage loan (as defined in RESPA), dwelling, or residential real property. Any immediate successor in interest in such a foreclosed property, including a creditor that takes complete title to the property, assumes the interest subject to the rights of any bona fide tenant and must comply with certain notice and other requirements.

**Homeownership Counseling Act** – Section 106(c)(5) of the Housing and Urban Development Act of 1968, [12 U.S.C. 1701x\(c\)\(5\)](#), requires a creditor that services a home loan (including a commercial or agricultural loan that includes a primary residence as collateral) to provide notification of the availability of homeownership counseling to any borrower who satisfies specified eligibility criteria and who fails to pay any amount by the due date under the terms of the home loan.

Evaluative questions and items to consider when examining guidance and controls designed to ensure compliance with the applicable laws and regulations discussed above include:

- ***Policies and Procedures: Are policies and procedures sufficient to ensure statutory and regulatory compliance?*** The board and management should have written policies and procedures that effectively address the applicable statutory and regulatory requirements discussed above and processes for ensuring compliance with these requirements.
- ***Internal Controls: Are internal controls sufficient to ensure compliance with policies, procedures, and statutory and regulatory requirements?*** The board and management should implement effective internal control processes to ensure compliance with the applicable statutory and regulatory requirements. Examples of effective internal controls include documented guidance, training, standardized forms, checklists, centralized processing, monitoring activities, internal audit or review coverage, and a designated compliance officer. In addition, if templates are used, management should ensure the templates encompass all applicable statutory and regulatory requirements they are intended to address. Templates should also be updated, as needed, and used consistently throughout the institution. The institution is expected to have sufficient resources and processes to manage statutory and regulatory changes, which should include completing appropriate due diligence over updates to any vendor-provided processes, forms, and templates used to generate disclosures. Furthermore, periodic training or other communications should reinforce policy and procedure expectations as well as relevant laws and regulations. Training should ensure employees recognize which loans are subject to the applicable laws or regulations so required disclosures are made (if applicable).

Examiners should consider any FCA transaction testing and audit results to aide in evaluating the effectiveness of guidance and controls.

#### **16. Audit:**

Determine if the institution conducts an effective audit (scope, reporting, and followup) of compliance with federal lending regulations.

##### Guidance:

The internal audit and review program is a key mechanism for ensuring compliance with federal lending regulations and policies. The internal auditor or other qualified, independent party should review the adequacy of lending practices to ensure compliance with applicable criteria. The audit risk assessment and scope should address federal lending regulations, and audit or review frequency should be commensurate with the complexity of the institution's operations and risk profile. A reliable audit program provides the board reasonable assurance that processes are effective.

Note: This procedure focuses on evaluating the reliability and effectiveness of internal audits and reviews in this topical area. Refer to the *Audit & Review Programs* topic in the Examination Manual for guidance on examining the overall internal audit and review program.

Evaluative questions and items to consider when examining the audit or review of compliance with federal lending regulations include:

- **Audit Coverage: Is there periodic audit or review coverage of all applicable federal lending regulations?** Audit or review coverage and frequency should be appropriate relative to risks, changes in the operating environment, regulatory requirements, and periodic testing needs. Coverage should also be consistent with the institution's risk assessment results and annual audit plan.
- **Scope and Depth: Are audit or review scope and depth sufficient to conclude on the adequacy, completeness, and timeliness of lending processes?** The scope and depth of work, including transaction testing, should cover the primary processes and controls within the area being audited or reviewed and be sufficient to determine if internal controls are functioning as intended and regulatory requirements are met. The scope and depth of coverage should be documented and consistent with the approved audit or review plan and engagement contract (if applicable). Audit or review workpapers should be examined to verify the actual scope and depth of work performed. The workpapers may indicate the scope and depth deviated from what was identified (or implied) in the audit plan. For example, workpapers may indicate the work performed was limited to evaluating the existence of policies and procedures and didn't include reviewing other controls, such as training or reporting, or testing compliance with regulations or institution guidance. If the work deviated materially from the original planned scope, internal audit should notify the board (or Audit Committee, if so delegated) of the reasons for the change. Specific items that should be considered in the audit or review scope include:
  - Policies and procedures for all federal lending requirements that are applicable and relevant to the institution.
  - Compliance with federal lending-related policies, procedures, laws, regulations, and other regulatory guidance.

- Monitoring and control processes (e.g., reporting, management oversight, templates, delegated authorities, separation of duties, management information systems).
  - Sufficient transaction testing to evaluate compliance with established criteria, laws, and regulations.
  - Fraud-related threats and vulnerabilities, as well as anti-fraud controls.
- **Reliability of Results: Did FCA identify any concerns with audit or review reliability?** It is important to understand the scope and depth of the audit or review being examined, as discussed above, when evaluating audit or review reliability. With this understanding, the following are key considerations when evaluating the reliability of audit or review results:
    - *FCA Testing* – Evaluate the reliability of internal audit or review work by comparing the results to FCA’s examination results in this area. This comparison often includes FCA testing transactions that were covered in the internal audit or review (transactions are often loans or loan applications, but may include other types of transactional activity, as well). In addition to the audit or review report, examiners should request and review the workpapers and hold discussions with the auditor to obtain a more thorough understanding of work completed. This can be especially important if the audit or review report is not sufficiently detailed or FCA’s examination work and testing identifies potential concerns. Auditors and reviewers complete line sheets, flowcharts, control matrices, standard work programs, workpaper forms, or other relevant audit evidence when conducting and supporting their work. (IIA Standards 2240, 2300, 2310, and 2320) Workpapers should adequately document the work performed and support the final report. If FCA identifies weaknesses that were not identified in the audit or review, the cause for any discrepancy should be determined.
    - *Audit/Review Staffing* – Whether internal or outsourced, auditors and reviewers conducting the work need to be qualified, independent, and objective to ensure reliable results. They should have the right mix of knowledge, skills, and other competencies needed to perform the work. (IIA Standard 2230) Additionally, auditors and reviewers need to be independent of the activities they audit so they can carry out their work freely and objectively. (IIA Standards 1100, 1112, 1120, and 1130) For example, audit and review staff should not be involved in developing and installing procedures, preparing records, operating a system of internal controls, or engaging in any other activity that they would normally review. Examiners should evaluate the staffing on the individual audit or review being examined as part of determining the reliability of results.
    - *Institution Review of Work Performed* – The institution should complete an independent review of the workpapers to ensure audit or review objectives and scope were met and the results and conclusions were reliable and supported. (IIA Standard 2340) Examples could include a supervisory review of in-house audit work by the Chief Audit Executive (CAE) or other audit staff, or a review of outsourced work by the CAE or audit coordinator. Examiners should consider whether the institution completed these reviews, and if any concerns were identified, when concluding on audit or review reliability.

- **Reports: Does the internal audit or review report sufficiently communicate review results and recommendations, if applicable?** Examiners should consider the following when evaluating the audit or review report:
  - Is the report prepared and communicated in accordance with the institution’s guidelines?
  - Is an executive summary or overview included to provide the board with a general conclusion on audit or review results?
  - Is the report accurate, concise, supported, and timely in communicating the audit or review objectives, scope, results, conclusions, and recommendations? (IIA Standards 2330, 2400, 2410, 2420, 2440, and 2450)
  - Are conclusions and recommendations realistic and reasonable, with material and higher risk issues clearly identified and prioritized?
  - Are conclusions and recommendations supported by convincing evidence and persuasive arguments (condition, criteria, cause, and effect)?
  - Do results in the workpapers align with report conclusions?
  - Does the report conclude whether the institution adheres to policies, procedures, and applicable laws or regulations, and whether operating processes and internal controls are effective?
  - Does the report address potential vulnerabilities to fraud, if applicable?
  
- **Corrective Action: Are management responses to audit or review findings in this area reasonable, complete, and timely? Have corrective actions been effective?** Audits and reviews are only effective if corrective action is taken to remedy the weaknesses identified. As such, there should be a reasonable, complete, and timely management response to the audit or review report. Management commitments and agreements or any areas of disagreement should be documented in the report or in a separate memo or tracking system. (IIA Standards 2500 and 2600) If corrective actions are not resolving the issues or concerns in a timely manner, examiners should further investigate the reasons. For example, this could indicate the audit or review did not sufficiently identify the underlying causes or materiality of weaknesses, sufficient resources are not being directed toward corrective actions, or weaknesses exist in the institution’s corrective action process, including board oversight of the process.

### **17. Transaction Testing:**

Examine individual loans and applications to assess compliance with federal lending regulations and the effectiveness of institution control processes.

#### Guidance:

The examination of federal lending laws and regulations should be supplemented, as necessary, with transaction testing conducted as part of FCA’s loan examination or as a separate examination activity. This testing should ensure that federal lending laws and regulations are being applied as required and that related policies, procedures, and internal controls are working as intended. Effectively administering federal lending laws and regulations on individual transactions is an important part of managing reputation risk. Examiners should consider the following when selecting loans for transaction testing:

- Prior examination scope and results, including any compliance Horizontal Exam Activities (HEA).

- The most-recent compliance HEA activity plan for loan examination sampling strategies.
- The institution's internal audit program scope and results for federal lending laws and regulations.
- Applicability of federal lending laws and regulations to the institution and the level of consumer compliance transactions.

Based on the survey work above, examiners should prioritize which federal lending laws and regulations will be selected for the examination scope. For certain federal lending laws and regulations, consider a sample of new, denied, and delinquent loans to determine whether the institution disclosed all required information within appropriate timeframes and to verify compliance with applicable laws and regulations, including the following:

- HMDA
- TILA
- ECOA
- RESPA
- Fair Credit Reporting
- Flood Insurance
- Margin Stock
- Consumer Leasing
- Servicemembers Civil Relief Act (SCRA) and Military Lending Act (MLA)
- Electronic Fund Transfers (EFTs)
- Homeowners Protection
- Credit Practices and Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)
- Protecting Tenants at Foreclosure
- Homeownership Counseling

To ensure each applicable federal lending law and regulation receives transaction testing approximately once every 3 to 4 years, examiners should develop a rotation schedule for examination scopes. Examiners need to provide examination information regarding the ECOA and TILA to the senior compliance specialist to aide in FCA's yearend reporting requirements to the CFPB.