



EM-33.1

Category: Compliance
Topic: Federal Lending Regulations
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Overview

The descriptions and guidance below should not be interpreted as comprehensive statements of the regulations. Rather, they are intended to give a broad overview of each regulation's requirements and provide examiners with key considerations for examining compliance at Farm Credit System institutions.

This section contains FCA's standard procedures for examining compliance with federal lending regulations; however, the guidance for several of the procedures is currently under development. In the interim, the following links provide related guidance that was contained in the old FCA Examination Manual:

- [EM- 605 Introduction](#)
- [EM- 650 Flood Insurance](#)

Examination Procedures and Guidance

General

1. HMDA:

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

Guidance:

The Home Mortgage Disclosure Act (HMDA) is implemented by the Consumer Financial Protection Bureau (CFPB) [Regulation C](#), Home Mortgage Disclosure, Title 12 CFR Part 1003. Regulation C's purpose is to provide the public with loan data that can:

- Help determine whether financial institutions are serving the housing needs of their communities.
- Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed.
- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes.

Institutions covered by the regulation must report, in a HMDA Loan/Application Register (HMDA-LAR), specified information about their originations and purchases of mortgage loans (home purchase and refinancing) and home improvement loans. This includes loan applications that do not result in originations. Information to be reported includes, among other items:

- Application date; loan or application type, purpose, and amount; action taken on the application; and lien status.
- Race, ethnicity, sex, and gross income of applicants and borrowers.
- Loan pricing and whether a loan is subject to the Home Ownership and Equity Protection Act.

The reported data is compiled by the Federal Financial Institutions Examination Council (FFIEC) in the form of an individual disclosure statement for each institution, as well as aggregate reports for all covered institutions in each metropolitan area. The public may obtain the individual disclosures and aggregate reports from various sources, including financial institutions.

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

- **Applicability: Is the institution covered by the requirements of Regulation C?** A System institution, as a *for-profit mortgage-lending institution* under Regulation C, is covered by the regulation's requirements if:
 - In the preceding calendar year, it originated home purchase loans, including refinancings of home purchase loans, that either:
 - Equaled at least 10 percent of its loan origination volume, measured in dollars; or
 - Equaled at least \$25 million; and
 - On the preceding December 31, it had a home or branch office in a Metropolitan Statistical Area (MSA); and
 - Either:
 - On the preceding December 31, it had total assets of more than \$10 million, counting the assets of any parent corporation; or
 - In the preceding calendar year, it originated at least 100 home purchase loans, including refinancings of home purchase loans.
 - Note: When applying these criteria, a home purchase loan is defined under Regulation C as "a loan secured by and made for the purpose of purchasing a dwelling." This definition includes both loans made to farmers, ranchers, and aquatic producers and harvesters under FCA Regulation [613.3000](#) and loans made to rural homeowners under FCA Regulation [613.3030](#), as long as they are secured by and made for the purpose of purchasing a dwelling. However, the CFPB Staff Commentary to Regulation C explains that a farm loan – that is, a loan to purchase property used primarily for agricultural purposes – is not a home purchase loan even if the property includes a dwelling. It allows an institution to use any reasonable standard to determine the primary use of the property and to select the standard to apply case-by-case.
- **Policies and Procedures: Are policies and procedures sufficient to ensure regulatory compliance?** Institutions should have policies and procedures that address and ensure compliance with Regulation C requirements. Procedures should be in place for collecting and maintaining accurate data regarding each loan application. Processes for tracking applicable loans and loan applicants should be documented and serve to trigger reporting requirements. If an institution is not currently required to report, procedures should identify appropriate mechanisms to begin reporting if the reporting criteria under this rule are met during the year.

- **Internal Controls: Are internal controls sufficient to ensure compliance with the regulation and timely detection of violations?** Examiners should determine if internal control processes and audit programs cover the pertinent regulatory requirements associated with Regulation C. Specific individuals should be assigned responsibility for collecting and reporting data and be given sufficient resources to do so accurately. Data tracking systems need to collect and monitor related loan and application data to determine applicability and ensure compliance with Regulation C requirements. Institutions should make a good faith effort to accurately gather and record data. However, an error in compiling or recording data is not a HMDA or Regulation C violation if it was unintentional and occurred despite the maintenance of procedures reasonably adopted to avoid such errors. Audits should include a reasonable amount of transactional analysis to verify data accuracy and compliance with reporting requirements. To determine whether internal controls are adequate to ensure compliance, examiners should review the following for adequacy and effectiveness:
 - Policies and procedures
 - Process flowcharts and checklists
 - Loan file documentation (verification to the HMDA-LAR)
 - Public posting and disclosures
 - Training materials
- **Reporting: Has the institution submitted its HMDA-LAR in accordance with the regulations and instructions on the [FFIEC HMDA website](#)?** The institution must submit the HMDA-LAR 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. As discussed above, institutions must report data for, among other things, home purchase loans and refinancings. Also as discussed above, a farm loan is not considered a home purchase loan, even if the property includes a dwelling. Therefore, farm loans with dwellings are not reportable. In contrast, the *refinancing* of a farm loan is reportable as long as both the new loan and replaced loan are secured by a dwelling, even though the farm loan was not reportable as a home purchase loan. In a refinancing, the agricultural purpose of the property is not relevant.
- **Disclosure: Does the institution provide public disclosures as required by Regulation C?** An institution subject to the reporting requirements of Regulation C must make its disclosure statement and a modified HMDA-LAR available to the public (as specified in the regulation). It must post a notice at its home office and at each branch in an MSA advising the public that these materials are available. An institution must be prepared to make disclosure statements available for 5 years and modified HMDA-LARs available for 3 years. The unmodified HMDA-LARs must be retained for at least 3 years for examination purposes.

Examiners should refer to the HMDA section in the [CFPB Supervision and Examination Manual](#) for more detailed information and guidance on examining compliance with Regulation C. The FFIEC also provides helpful information on its [HMDA web page](#).

Note: The CFPB published amendments to Regulation C on October 28, 2015. The effective date for most provisions related to institutional coverage, transactional coverage, and data collection, recording, reporting, and disclosure is January 1, 2018. The effective date for changes to enforcement provisions and additional amendments to reporting provisions is January 1, 2019. FCA's Informational Memorandum on [Amendments to Regulation C and Regulation Z and Annual Threshold Adjustments under Regulation Z and Regulation M](#), dated January 13, 2016, briefly summarizes the amendments. Extensive information about implementation of the amendments can

be found on the [CFPB's website](#). Institutions are subject to the existing rules until the amendments become effective.

2. TILA:

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

Guidance:

3. ECOA:

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

Guidance:

4. RESPA:

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

Guidance:

5. Fair Credit Reporting:

Evaluate the adequacy of guidance and controls to ensure compliance with the Fair Credit Reporting Act (FCRA), including the applicable requirements of the Fair and Accurate Credit Transactions Act (FACTA) amendment.

Guidance:

6. Flood Insurance:

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

Guidance:

7. Fair Housing:

Evaluate the adequacy of guidance and controls to ensure compliance with the Fair Housing Act.

Guidance:

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) (Regulation G).

Guidance:

9. Margin Stock:

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

Guidance:

The Federal Reserve Board (FRB) issued [Regulation U](#) pursuant to the Securities Exchange Act of 1934. Regulation U sets out certain requirements for lenders who extend credit secured directly or indirectly by margin stock. Margin stock includes 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; and most mutual funds. Debt securities convertible into a margin stock would include publicly traded options, such as puts, calls, and combinations.

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

- ***Policies, Procedures, and Controls:*** Are policies, procedures, and controls sufficient to ensure compliance? Institutions should have policies, procedures, and controls that address and ensure compliance with the registration, reporting, and lending requirements of Regulation U.
- ***Registration:*** Is the institution required to register with the FRB? If so, did it register within the required time frame? Institutions that extend credit secured directly or indirectly by margin stock and that meet the following requirements 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:
 - Credit extended during the quarter secured by margin stock was \$200,000 or more.
 - Credit outstanding at any time during the quarter secured by margin stock was \$500,000 or more.
- ***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. Institutions 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): Institutions must file this form as discussed above under *Registration*.

- FRB Form FR G-2 – Deregistration Statement for Persons Registered Pursuant to Regulation U: Institutions 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 institutions that do not deregister 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. It must be kept in the lender's records for at least 3 years after the termination of the credit.
- FRB Form FR G-4 – Annual Report: Institutions (unless they have deregistered) must use this form to file an annual report with the FRB within 30 days of June 30. The report shows their lending activities secured by margin stock, including the amount of such credit outstanding and extended during the year.

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 Regulation M.

Guidance:

11. OFAC Requirements:

Determine compliance with the Office of Foreign Asset Control (OFAC) requirements related to monitoring for Specially Designated Nationals.

Guidance:

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:

13. 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 frequency should be commensurate with the complexity of the institution's operations and risk profile. The scope should include a review of policies and procedures as well as a transaction review. A reliable audit program provides the board reasonable assurance that processes are effective.

Evaluative questions and items to consider when examining the audit function regarding 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 should cover key processes and controls within the area being audited or reviewed. The depth of work should be sufficient to determine if internal controls are functioning as intended and regulatory requirements are met. The scope and depth of coverage should be consistent with the approved audit or review plan and engagement contract (if applicable). If audit or review work deviated materially from the original planned scope, the board (or Audit Committee, if so delegated) should be notified of the reasons for the change. Specific items that should be considered in the audit or review scope include:
 - Lending processes and controls. Internal audits or reviews should address all federal lending requirements that are applicable and relevant to the institution.
 - Policies, procedures, templates, and other guidance related to federal lending regulations.
 - Compliance with federal lending-related regulations, policies, and procedures. Audits or reviews should include sufficient transaction testing to detect noncompliance with established criteria.
 - Fraud-related threats and vulnerabilities, as well as anti-fraud controls.
- ***Reliability of Results: Did FCA identify any concerns with audit and review reliability?*** 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 of 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. Often, auditors and reviewers will complete line sheets, flowcharts, control matrices, standard work programs, workpaper forms, or other relevant documents when conducting work. Workpapers should adequately document the work performed and support the final

report. In addition, any proforma work programs, workpapers, or other tools should be accurate and sufficiently thorough. If there are material weaknesses identified by examiners that are not identified by internal audits or reviews, examiners should assess the underlying reasons.

- **Reports: Do internal audit reports sufficiently communicate review results and recommendations, if applicable?** Examiners should consider the following when evaluating the audit or review report:
 - Is the report prepared 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?
 - Are conclusions and recommendations realistic and reasonable given the institution’s size and complexity, 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)?
 - 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 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. In some cases, management commitments and agreements or any areas of disagreement are documented in the report or in a separate memo or tracking system. If corrective actions are not resolving the issues or concerns (based on repetitive audit findings, FCA findings, etc.), 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.

14. Transaction Testing:

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

Guidance: