

# CONSUMER COMPLIANCE OUTLOOK®

A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS

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## EARLY OBSERVATIONS ON THE TILA-RESPA INTEGRATED DISCLOSURE RULE

BY KATIE E. RINGWALD, SENIOR EXAMINER, FEDERAL RESERVE BANK OF ST. LOUIS

Before the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) was enacted and implemented, consumers applying for closed-end residential mortgages received two sets of disclosures. In general, Regulation Z, implementing the Truth in Lending Act (TILA), required creditors to provide early and final disclosures soon after application and at closing (and, if the annual percentage rate (APR) changed, several days before closing), concerning the cost of credit. Separately, Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA), required creditors to provide the Good Faith Estimate (GFE) soon after application and required settlement agents to provide the HUD-1 Settlement Statement at closing, concerning settlement costs. These disclosures overlapped to some degree, were not always understood by consumers, and could be difficult for lenders and settlement agents to explain.<sup>1</sup> Against this backdrop, Congress in the Dodd–Frank Act directed the Consumer Financial Protection Bureau (CFPB) to integrate the TILA and RESPA disclosures and make them easier to understand.<sup>2</sup>

In response, the CFPB issued a final TILA-RESPA Integrated Disclosure rule (TRID) in late 2013 that consolidated the GFE and early TILA disclosure into the Loan Estimate (LE), and the HUD-1 and final TILA disclosure statement into the Closing Disclosure (CD).<sup>3</sup> The language in these once-separate forms was aligned and subjected to consumer testing to improve consumer comprehension.

Because TRID required institutions to significantly change their mortgage origination systems that manage the process from application to closing, the industry expressed concerns about challenges implementing the rule as the mandatory October 3, 2015, compliance date approached. Some institutions experienced unique challenges early on because of the extent of change and the technical nature of the rule. However, Federal Reserve System examiners reviewed recent consumer compliance examinations and found that the majority of banks examined have successfully implemented TRID and demonstrated effective change management practices when preparing for the rule. This article discusses some common TRID violations we recently observed during 2017 Federal Reserve consumer compliance examinations,<sup>4</sup> the root causes, primary challenges, and sound practices to help institutions identify and correct potential issues.

### Recent TRID Observations

Most of the TRID violations Federal Reserve System examiners cited were technical, often reflecting isolated LE or CD fields being left blank. However, a few disclosure errors were systemic and reflected weaknesses in compliance management systems, such as a deficiency in oversight, training, or internal controls.

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FEDERAL RESERVE BANK OF PHILADELPHIA

# EARLY OBSERVATIONS ON THE TILA-RESPA INTEGRATED DISCLOSURE RULE

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## General Information

Most of the common TRID errors recently identified involved disclosures of the loan identification number,<sup>5</sup> settlement agent,<sup>6</sup> and file number,<sup>7</sup> which are part of the general loan information disclosed on page 1 of the LE and/or CD. The regulation requires creditors to disclose the loan identification number, a unique number used to identify the specific transaction, on the LE, the CD, and any revised disclosures to ensure the consumer can identify the transaction from application through origination. Examiners found that institutions frequently left this field blank. Similarly, examiners found the settlement agent and file number were also left blank on the CD. This information is important for borrowers who need to follow up with the settlement agent in the future about their loan.

## Closing Cost Details

Examiners also found violations in the *Closing Cost Details* table on page 2 of both the LE and CD. This section divides closing costs into two types: *Loan Costs* and *Other Costs*. *Loan Costs* on the LE include origination charges and services the borrower can and cannot shop for, and *Other Costs* include taxes and government fees, prepaid costs (such as homeowner's insurance and prepaid interest), and initial escrow payments. The *Closing Cost Details* section of the CD is similar to that of the LE but a bit more detailed. The CD indicates whether fees are borrower-paid, seller-paid (for purchase transactions), or paid by others. In addition, it details the name of the person receiving payment for closing cost services, and it reflects whether the borrower shopped for certain services.

Common violations in this section included failing to indicate the number of months for which homeowner's insurance is to be paid (on both the LE and CD)<sup>8</sup> and failing to identify the person receiving payment for closing cost services, as well as government entities to which taxes and other government fees were disbursed.<sup>9</sup> This information is important to ensure closing costs and fees are clearly disclosed to consumers. As in the general information section previously, violations in this section frequently occurred when information was required to be provided, but fields were left blank.

## Calculating Cash to Close

Examiners also observed violations in the *Calculating Cash to Close* table<sup>10</sup> found on page 2 of the LE and page 3 of the CD. This table outlines the amount of cash the borrower needs to close the loan by referencing the total closing costs and adding or subtracting other amounts needed to close, such as a down payment or seller credits. While the LE table contains only the estimated values, the CD carries these values forward into a *Loan Estimate* column so the borrower can easily compare the estimated with the final amounts. Moreover, this table includes a *Did This Change?* column reflecting whether amounts changed from the most recent LE provided to the consumer, and if so, where the consumer can look to find additional details. Examiners noted several instances in which lenders did not accurately complete the *Did This Change?* column.

### *Contact Information*

Finally, another common violation involved omitting portions of the required contact information on page 5 of the CD.<sup>11</sup> Full contact information for the lender, mortgage broker, consumer's real estate broker, seller's real estate broker, and settlement agent is required, if applicable, for the consumer's benefit. This generally includes:

- the legal or business name of the business entity;
- the business address;
- the name of a personal contact at the business entity;
- the Nationwide Mortgage Licensing System and Registry (NMLSR) ID number (if none, a license number for both the business entity and the personal contact); and
- the telephone number and email address of the personal contact.

If the borrower did not have a personal contact (for example, no mortgage broker), the corresponding column can be left blank; however, for each person identified, all pieces of contact information are generally required.

### **Sound Practices**

TRID is similar to other compliance regulations, in which different compliance risk management program elements contribute to an effective overall compliance system. We observed that institutions that successfully implemented TRID have strong compliance risk management programs that include effective training, open communication with third parties, knowledgeable compliance staff, formal procedures, and a secondary review process. The following are more detailed examples of some elements commonly identified in the compliance management systems of institutions that were deemed successful in implementing TRID rules and maintaining continued compliance.

#### *Vendor Management*

Many institutions rely on third-party loan origination software (LOS) to generate TRID disclosures. Using vendors to create regulatory disclosures can benefit institutions that do not have the internal expertise and resources to create such disclosures, especially complex disclosures such as TRID. However, some LOS vendors acknowledged difficulties with their TRID disclosures both before and after the compliance deadline of October 3, 2015. Accordingly, many LOS vendors continued to issue software updates as glitches were identified. These errors for critical disclosures underscore the importance of vendor management, including due diligence in vetting, selecting, and monitoring vendors, and in good communications during the engagement.<sup>12</sup>

We observed greater success in TRID disclosures at institutions in which staff members had a solid

understanding of how to properly use the software and manage the software settings. Additionally, while most systems require a certain level of manual input, banks are often able to code certain data fields to autopopulate disclosures or generate a hard stop when a field needs to be manually completed, which we observed could reduce the risk of an inadvertent data entry error or a blank field.

While examiners found APR and finance charge violations to be less common than violations of other LE and CD requirements, they carry the potential for consumer harm and restitution. Therefore, ensuring that prepaid finance charges are properly set up in the software is important. It is also important to conduct periodic testing and to have a system in place to ensure any new charges are treated appropriately. Exploring these options with IT staff will help ensure automated processes are effective in managing compliance risk. Moreover, if a bank identifies a TRID error, contacting the software vendor to work through a disclosure system issue can often result in a relatively quick fix.

Institutions successful in implementing and maintaining TRID compliance also had open communication with all parties involved in the transaction, including settlement agents and title companies to ensure both accurate and timely disclosures. Sound practices include establishing formal procedures that include specific deadlines for the exchange of title fee information and closing documents, frequent contact between bank personnel and title company staff, thorough reviews of any documents prepared by the title company, and written closing instructions.

#### *Procedures and Training*

At institutions most effective in maintaining TRID compliance, we observed residential mortgage staff whose understanding of TRID requirements is commensurate with their job responsibilities. If errors occur within the scope of an employee's responsibilities, management may consider whether follow-up training would be appropriate. Additionally, some institutions have told examiners that they have found that a higher degree of centralization helps to prevent TRID violations. For example, a central processing department can ensure that appropriately trained and specialized staff focus on TRID disclosures.

While timing violations were relatively less common, creditors may still consider incorporating controls into their disclosure processes to ensure disclosures are timely delivered to consumers and to evidence compliance with record retention requirements. For example, institutions that deliver the disclosures in person often find it easiest to ask the customer to sign and date the document to verify receipt of the disclosures rather than only signing the CD at closing. These types of procedural changes can help facilitate TRID compliance.

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# ENHANCING YOUR COMPLIANCE TRAINING PROGRAM

BY KATHLEEN BENSON, LEAD EXAMINER, FEDERAL RESERVE BANK OF CHICAGO

Training programs are one of the largest investments a financial institution can make in its employees after compensation. The benefits of training include:

**Mitigating compliance risk:** It can help maintain a sound compliance management system and mitigate compliance risk by providing staff with the needed technical knowledge to comply with internal policies and procedures and consumer protection laws and regulations.

**Promoting a proactive compliance culture:** It can also enable the board of directors to maintain a culture of compliance while executing its business plan.

**Implementing effective change management:** It is an important part of the change management process.

**Improving customer experience:** It can help ensure that staff treats customers fairly.

Generally, a financial institution's training program should be commensurate with its organizational structure and the activities in which it engages.<sup>1</sup> To help financial institutions maximize this investment and reap the benefits of an effective training program, this article discusses several specific key attributes of an effective training program, including comprehensiveness, timing, and tailoring.<sup>2</sup>

Financial institutions can use a variety of training methods. For example, computer-based training modules can be effective in delivering specific role-based content focused on legal and regulatory requirements. On the other hand, face-to-face training provides the opportunity to interact among participants and present organization-specific examples that may require further clarification. This approach can be particularly helpful with high-priority training (e.g., when regulatory requirements or financial institution policies or procedures have recently changed). Of course, financial institutions may deliver training using multiple methods that reinforce or complement one another.

A training program may be enhanced through external training opportunities, whether provided in person, through the Internet, or by teleconference. These sessions share knowledge from subject matter experts and often include a discussion of sound practices. These sessions also may provide credit for continuing education requirements, which enhances the credibility of the financial institution's compliance program and offers professional development opportunities to employees.

A training program is adaptable. When an examination, compliance review, or audit identifies violations or lack of adherence to compliance program standards, consider whether the existing training should be modified to prevent future instances of noncompliance or to strengthen program adherence. Perhaps most important, an effective training program remains current by ensuring that the program is regularly updated to reflect not only legal and regulatory changes but also changes in the financial institution's operations. For example, is a new product or modification of an existing product being introduced?

A training program should incorporate accountability, most commonly by including training attendance and achievement in employee performance measures.<sup>3</sup> For example, computer-based modules can test for comprehension and document training status and achievement levels. However, regardless of the training delivery method, formal training should be captured in training logs that document attendance and, as applicable, achievement measured through testing or similar evaluation.

## Timing

When developing a training program or a specific training event, the timing of the training should align with the training objective. Introductory training is typically provided for new employees or for those assuming new job responsibilities. Depending on an employee's specific responsibilities, many financial institutions have found it beneficial to provide "refresher" training routinely.

**STRONG TRAINING PROGRAMS ARE TYPICALLY TAILORED TO THE PARTICULAR JOB RESPONSIBILITIES AND EACH LEVEL OF EMPLOYEE EXPERIENCE.**

## Comprehensiveness

As stated in the Federal Financial Institutions Examination Council (FFIEC)'s Uniform Interagency Consumer Compliance Ratings System and the Federal Reserve's Community Bank Consumer Compliance Risk-Focused Supervision Program, the scope of a strong training program is comprehensive. The training program should focus on the requirements of laws and regulations applicable to the financial institution's products and services, sources of compliance risk within the bank's operations, and the specific risk mitigation methods incorporated in the organization's policies, procedures, monitoring, internal controls, and automated systems.

This may be particularly beneficial if the risk associated with noncompliance is high, given an employee’s scope of authority. For example, staff members who interact directly with customers may benefit from regular training on fair lending and unfair or deceptive acts or practices (UDAP). When compliance findings are identified through internal reviews, audits, or examinations, consider the need for additional training soon after the findings have been released. Training can be targeted to specific individuals, to all individuals occupying a specific role, or to entire business units or functions.

Depending on the complexity of the topic and the associated compliance risks, many financial institutions find that training is best staged by first providing a foundational understanding, followed by training on the specific operational procedures necessary to ensure compliance. This staging may be necessary when new products, services, laws, or regulations are implemented because it assists in building awareness, considering implications unique to the financial institution, and introducing procedures that support compliant business practices. After significant process changes, management may want to assess the need for follow-up training to clarify areas of confusion or to cover modifications made after the initial implementation.

### Tailored

Strong training programs are typically tailored to the particular job responsibilities and each level of employee experience. New employee training, for example, frequently focuses on the regulatory and institution-specific knowledge necessary for the employee to perform his or her job proficiently. As an employee’s scope of authority increases, the scope and frequency of training may also increase to include routine refresher training for critical compliance responsibilities. Training, regardless of timing, is typically structured to align with functional roles and will routinely target management and staff involved in lending and processing of loans (segmented as necessary by specialized type of lending), deposit activities, and marketing and product development functions. Strong training programs can also provide cross-functional instruction on critical compliance topics such as the Community Reinvestment Act (CRA), fair lending, and UDAP.

Training should be tailored not only to the job role but also to the specific compliance risks present in the financial institution’s operations. A compliance training program that explicitly establishes a link between identified compliance risk and employees’ day-to-day work supports a broader appreciation of the importance of a strong compliance



Outlook Live is the Federal Reserve System’s webinar series dedicated to consumer compliance. These events, which we host throughout the year, cover a broad range of consumer compliance topics. While the sessions are generally structured to assist community bankers in complying with federal consumer protection laws and regulations, the topics addressed during these sessions may be of value to the financial services industry more broadly. We conducted the following webinars in 2018:

Date	Webinar
12/3/18	2018 Interagency Fair Lending Hot Topics
11/1/18	Healthy Communities: Opportunities for CRA Collaboration
8/29/18	Complaints as a Supervisory and Risk Management Tool
7/16/18	Keeping Fintech Fair: Thinking About Fair Lending and UDAP Risks

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environment. For example, training might help an employee make a connection between customer service training and the potential compliance risks identified through the financial institution's complaint management program.

Some financial institutions enhance their training program to expose staff members to a broad range of compliance topics outside of their specific area of responsibility or direct span of authority. This approach can reinforce a financial institution-wide compliance culture and prepare staff for other roles in the organization. Managers and officers in particular may benefit from, or find a need for, compliance training that may be less detailed but focused on broader organizational compliance objectives and the interconnectedness of different business functions.

The need for training exists at all organizational levels, including board members. The training provided to a board of directors will typically differ from training provided to employees because of their different roles. The board member's role includes providing oversight to ensure that management identifies, measures, and manages risk effectively. Therefore, board members must not only understand risk but also be aware of actions management has implemented to mitigate risk. Stronger compliance programs will frequently accomplish this through periodic topical presentations to the board of directors that include an overview of a risk topic, with a specific focus on how the organization mitigates the risk.

Topics for the board can be prioritized based on an organization's compliance risk assessment. Director training will typically focus on higher risk areas that could lead to reputational damage, supervisory sanction, or financial penalties, or areas that could otherwise interfere with the bank's ability to execute its business strategy. Such topics would typically include periodic presentations on the CRA, fair lending, and UDAP. Additional training

for board members, at an appropriate level, is warranted when implementing significant new products or services or when serious compliance issues are identified that require corrective action.

To tailor training to specific responsibilities, training administrators can use computer-based modules to select content based on employee roles. In these instances, employees with responsibilities directly related to the topic would work on more detailed modules, while others may only require a high-level overview. For example, a high-level awareness of fair lending is typically appropriate for employees outside of the lending function, whereas staff with lending responsibilities, new product development, or marketing require more in-depth knowledge of fair lending laws to mitigate fair lending risk.

### Conclusion

Effective training programs are critical for sustaining a sound compliance management system. Therefore, the effectiveness of a financial institution's training program should be evaluated regularly during internal or external audits or review processes or whenever compliance issues are identified. Questions to routinely ask are:

- Is the training comprehensive enough to cover the institution's compliance risks and risk controls and to include accountability for attendance and achievement?
- Does the timing of the training align with the training objective?
- Is the training appropriately tailored to the particular job responsibilities and the specific compliance risks?

Strong training programs share all these attributes. Specific issues or questions regarding training-related expectations for your financial institution should be discussed with your primary regulator. ■

## ENDNOTES

<sup>1</sup> See Federal Reserve CA Letter 13-19, Community Bank Risk-Focused Consumer Compliance Supervision Program (RFS) at p. 25, <https://www.federalreserve.gov/supervisionreg/caletters/caltr1319.htm>. For more details regarding the Federal Reserve's evaluation of the adequacy of an institution's training program, see Appendix 3 to the attachment to CA Letter 13-19, which provides guidance on assessing consumer compliance risk management. In addition, see the Uniform Interagency Consumer Compliance Rating System, 81 *Fed. Reg.* 79473, 79482 (November 14, 2016) ("Consumer Compliance Rating System").

The revised Consumer Compliance Rating System evaluates compliance in three general areas: Board and Management Oversight, Compliance Program, and Violations of Law and Consumer Harm. For the Compliance Program, training is one of four factors considered.

<sup>2</sup> See Consumer Compliance Rating System.

<sup>3</sup> See RFS, p. 65.

# DON'T FORGET ABOUT THESE FEDERAL CONSUMER PROTECTION LAWS AND REGULATIONS

BY ALINDA MURPHY, SENIOR EXAMINER, FEDERAL RESERVE BANK OF KANSAS CITY

Various federal consumer protection laws and regulations compete for finite consumer compliance attention and resources. Understandably, financial institutions will normally focus the lion's share of their attention on compliance with the highest-profile statutes and regulations, which are frequently associated with greater inherent risk. Consequently, certain consumer protection laws and regulations that don't regularly attract headlines may be at risk of receiving insufficient attention or even of being overlooked altogether. This could potentially lead to supervisory violations and in some cases possibly enforcement action and civil money penalties. Here, we provide an illustrative overview of some of these consumer protection laws and regulations, providing information that should aid institutions' corresponding compliance efforts.

## Section 42 of the Federal Deposit Insurance Act<sup>1</sup> – Branch Closings

✓ *Does the institution plan on closing a branch?*

Section 42 of the Federal Deposit Insurance Act (FDIA) requires an insured depository institution to notify the appropriate federal banking agency and its customers about a proposed branch closing<sup>2</sup> at least 90 days before the proposed closing. The institution is also required to conspicuously post a notice on the branch premises at least 30 days before the proposed closing. Customers can be notified at least 90 days before a proposed branch closing via a regular account statement mailed to customers or a separate mailing.<sup>3</sup>

For interstate banks, if the branch being closed is in a low- or moderate-income census tract, the notice mailed to customers must include the mailing address of the institution's appropriate federal banking agency and a statement that comments on the proposed closing may be mailed to that agency.<sup>4</sup> Federal banking agencies do not have the authority to prevent an institution from closing a branch, providing that the notice requirements have been met<sup>5</sup>; however, if customer comments include nonfrivolous, specific reasons why a closure could adversely affect a community, the applicable agency is required to schedule a meeting. At the meeting, relevant individuals, organizations, depository institutions, and regulatory agencies can determine if the adverse effects from the closure can be mitigated.<sup>6</sup>

An insured depository institution is required to adopt policies for branch closings.<sup>7</sup> Additional information to help an institution comply with this and other branch closing requirements is available in the Interagency Branch Closings Joint Policy Statement.<sup>8</sup> As a final note, an institution should

also be aware that in addition to FDIA requirements, branch closures can raise Community Reinvestment Act and fair lending considerations.

## The Children's Online Privacy Protection Act<sup>9</sup>

✓ *Does the institution operate a website or other online service directed at children or have knowledge that it is collecting or maintaining personal information from children?*

The Children's Online Privacy Protection Act (COPPA) regulates how online services and websites can collect, use, and disclose personally identifiable information from children under the age of 13. COPPA and its implementing regulation<sup>10</sup> apply to "operators" (including banks and other financial institutions) of websites and online services that collect and maintain personal information of users and visitors or on whose behalf such information is collected or maintained for a commercial purpose.

Operators of websites and online services that are directed at children, or know that they are collecting or maintaining personal information from children, must do the following:

- provide written notice on their platforms of their practices relating to children for collecting, using, or disclosing information related to children<sup>11</sup>
- obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children<sup>12</sup>
- provide parents with means by which to review the personal information collected from their children and direct that it no longer be maintained or used<sup>13</sup>
- establish and maintain reasonable data security standards to protect the personal information collected from children,<sup>14</sup> and
- retain personal information collected from children only for as long as is reasonably necessary and thereafter delete such information while safeguarding against unauthorized access to or use of deleted information.<sup>15</sup>

In addition, COPPA prohibits conditioning a child's participation in a game, prize offering, or other activity on the disclosure of more personal information than is reasonably required to participate.<sup>16</sup>

The Federal Trade Commission's COPPA website provides detailed guidance and resources, including a six-step compliance plan that can help an institution determine if its website or online services are subject to COPPA.<sup>17</sup>

## Regulation G<sup>18</sup> — Disclosure and Reporting of Community Reinvestment Act-Related Agreements

- ✓ *Has the institution or its affiliates entered into any Community Reinvestment Act (CRA)-related covered agreements, and, if so, have those been appropriately disclosed and reported?*

Regulation G, which implements Section 48 of the FDIA,<sup>19</sup> applies when insured depository institutions and their affiliates enter into covered agreements with nongovernmental entities and persons (NGEPs) to fulfill their CRA obligations. This triggers a requirement that the institution “promptly” make those agreements available to the public, upon request,<sup>20</sup> and to the appropriate federal banking agency within 30 days of a request or otherwise within 60 days of the calendar quarter in which a covered agreement is entered into.<sup>21</sup> Institutions must also submit annual reports on such agreements to the appropriate federal banking agency.<sup>22</sup> Regulation G also includes corresponding disclosure and reporting requirements applicable to NGEPs.

Covered agreements are written contracts, understandings, and agreements between insured depository institutions or their affiliates and NGEPs, where:

- the agreement is with an NGEP that has had a CRA communication<sup>23</sup> before entering into the agreement
- the agreement is made in connection with fulfillment of the CRA;<sup>24</sup> and
- the agreement relates to an insured depository institution or an affiliate
  - providing to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (not loans) that have an aggregate value of more than \$10,000 in any calendar year or
  - making loans to one or more individuals or entities (whether or not parties to the agreement) in an aggregate principal amount of more than \$50,000 in any calendar year.<sup>25</sup>

Regulation G includes examples of covered agreements and loan agreements that are not covered agreements.<sup>26</sup>

## Homeownership Counseling Act<sup>27</sup>

- ✓ *Does the institution identify homeowners eligible for homeownership counseling and provide appropriate notice of the availability of homeownership counseling programs?*

The Homeownership Counseling Act (HCA) requires creditors, including banks, that service loans secured by liens on single-family residences (regardless of the loan’s purpose) to provide notification of the availability of homeownership counseling to an eligible borrower who

fails to pay any amount on the loan by the due date.<sup>28</sup> The notice must inform the homeowner of the availability of any homeownership counseling services offered by the creditor<sup>29</sup> and provide a list of U.S. Department of Housing and Urban Development (HUD)-approved nonprofit counseling organizations or HUD’s toll-free number to obtain a list of such organizations.<sup>30</sup>

The HCA was amended in 2006<sup>31</sup> to require creditors to issue a HUD notice explaining the mortgage and foreclosure rights of servicemembers, and their dependents, under the Servicemembers Civil Relief Act.<sup>32</sup> In addition, creditors are required to provide the toll-free Military OneSource number to call if servicemembers, or the dependents of such servicemembers, require further assistance.<sup>33</sup> The notice, form HUD-92070, must be sent within 45 days from the date that a missed payment was due, unless the borrower pays the overdue amount before the expiration of the 45-day period.<sup>34</sup>

The HCA also requires prospective creditors to provide notice that completing a homeownership counseling program is required for otherwise eligible mortgage applicants to qualify for insurance pursuant to Section 2013 of the National Housing Act.<sup>35</sup>

These requirements are separate from homeownership counseling provisions in Regulation X, which requires that lenders provide applicants for federally related mortgages with a list of local homeownership counseling organizations.<sup>36</sup>

## Regulation D<sup>37</sup> — Reserve Requirements

- ✓ *Does the institution comply with requirements regarding the use of deposit accounts?*

Among other monetary policy-related depository institution reserve requirements, Regulation D defines various categories of deposit accounts and includes rules regarding transaction limits, customer withdrawal notice requirements, and early withdrawal penalties.

Regulation D divides deposit accounts into two main categories: transaction accounts and nontransaction accounts. Under Regulation D, transaction accounts are limited to demand deposit, negotiable order of withdrawal (NOW), and automatic transfer service (ATS) accounts.<sup>38</sup> Transaction accounts allow account holders/depositors to make unlimited internal (between accounts of the same party at the same institution) and external transfers. NOW accounts are limited to individuals, sole proprietorships, governmental units, and nonprofit organizations,<sup>39</sup> and ATS accounts are limited to individuals and sole proprietorships.<sup>40</sup>

Nontransaction accounts include time deposit accounts,<sup>41</sup> savings deposit accounts,<sup>42</sup> and money market demand accounts (MMDAs).<sup>43</sup> Because time deposit accounts are subject to early withdrawal penalties, if an institution fails

to impose these as required, the account is no longer a time deposit (and must transition to a savings deposit account, if eligible, or to a transaction account).<sup>44</sup> Savings deposit accounts and MMDAs are subject to limits on the number of transfers or withdrawals per calendar month or statement cycle.<sup>45</sup> If these limits are exceeded, an institution is expected:

- to either prevent transfers and withdrawals that would violate the limits or monitor any such accounts;
- to contact customers who violate the limits more than occasionally; and
- for customers who continue to exceed the limits, either close the account and move the funds to a transaction account or discontinue the customers' transfer and draft capabilities.<sup>46</sup>

The *Federal Reserve's Regulation D Compliance Guide to Small Entities*<sup>47</sup> and the *Consumer Compliance Handbook*<sup>48</sup> provide additional background information on deposit account classification and related requirements.

## Conclusion

Properly managing risk is key to promoting compliance with consumer protection laws and regulations. Generally, whether in connection with headline-grabbing topics or otherwise, the greater the associated inherent risk, the stronger an institution's risk controls must be to effectively manage that risk. Accordingly, pursuant to an effective risk-focused consumer compliance management program, an institution is well advised to identify the full range of consumer compliance laws and regulations applicable, and related inherent risks, to its products, services, and practices. In turn, the institution's risk management practices should correspond to the amount of associated residual risk identified. Specific questions regarding facilitating compliance with the list of potentially overlooked federal consumer protection laws and regulations in this article and others should be discussed with your institution's primary regulator. ■

## ENDNOTES

<sup>1</sup> See 12 U.S.C. §1831r-1.

<sup>2</sup> The notice requirement is subject to certain exception. Notice is not required for an automated teller machine (ATM) or other nonbranch facility that is closed or moved, for emergency acquisitions, and for branch relocations in the immediate area that do not substantially affect customers or the nature of the bank's business 12 U.S.C. §1831r-1(e).

<sup>3</sup> See 12 U.S.C. §1831r-1(b)(2)(B).

<sup>4</sup> See 12 U.S.C. §1831r-1(d)(1).

<sup>5</sup> See 12 U.S.C. §1831r-1(d)(3).

<sup>6</sup> See 12 U.S.C. §1831r-1(d)(2).

<sup>7</sup> See 12 U.S.C. §1831r-1(c).

<sup>8</sup> See Interagency Branch Closings Joint Policy Statement, 64 *Fed. Reg.* 34844 (July 7, 1999). <https://www.gpo.gov/fdsys/pkg/FR-1999-06-29/pdf/99-16471.pdf>.

<sup>9</sup> See 15 U.S.C. §6501 *et seq.*

<sup>10</sup> See 16 C.F.R. §312.

<sup>11</sup> See 16 C.F.R. §312.4.

<sup>12</sup> See 16 C.F.R. §312.5.

<sup>13</sup> See 16 C.F.R. §312.6.

<sup>14</sup> See 16 C.F.R. §312.8.

<sup>15</sup> See 16 C.F.R. §312.10.

<sup>16</sup> See 16 C.F.R. §312.7.

<sup>17</sup> See Federal Trade Commission, *Children's Online Privacy Protection Rule: A Six-Step Compliance Plan for Your Business*, <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/children%27s-privacy>.

<sup>18</sup> See 12 C.F.R. §207.

<sup>19</sup> See 12 U.S.C. §1831y.

<sup>20</sup> See 12 C.F.R. §207.6(b).

<sup>21</sup> See 12 C.F.R. §207.6(b).

<sup>22</sup> See 12 C.F.R. §207.7.

<sup>23</sup> See 12 C.F.R. §207.3.

<sup>24</sup> See 12 C.F.R. §207.4.

<sup>25</sup> See 12 C.F.R. §207.2(a).

<sup>26</sup> See 12 C.F.R. §207.2(b) and (d).

<sup>27</sup> See Section 106(c)(5) of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701x(c)(5)).

<sup>28</sup> See 12 U.S.C. §1701x(c)(5)(A)(i).

<sup>29</sup> See 12 U.S.C. §1701x(c)(5)(A)(ii)(I).

<sup>30</sup> See 12 U.S.C. §1701x(c)(5)(A)(ii)(III).

<sup>31</sup> See Section 688 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163).

<sup>32</sup> See 50 U.S.C. §3901 *et seq.*; <https://www.hud.gov/sites/dfiles/OCHCO/documents/92070.pdf>.

<sup>33</sup> See 12 U.S.C. §1701x(c)(5)(a)(ii)(IV).

<sup>34</sup> See 72 *Fed. Reg.* 14130, 14131 (March 6, 2007).

<sup>35</sup> See 12 U.S.C. §1701x(c)(5)(A)(ii)(II).

<sup>36</sup> See 12 C.F.R. §1024.20(a).

<sup>37</sup> See 12 C.F.R. §204.

<sup>38</sup> See 12 C.F.R. §204.2(e).

<sup>39</sup> See 12 U.S.C. §1832(a).

<sup>40</sup> See 12 U.S.C. §371a.

<sup>41</sup> See 12 C.F.R. §204.2(c).

<sup>42</sup> See 12 C.F.R. §204.2(d).

<sup>43</sup> See 12 C.F.R. §204.2(f)(1).

<sup>44</sup> See 12 C.F.R. §204.2(c)(1).

<sup>45</sup> See 12 C.F.R. §204.2(d)(2).

<sup>46</sup> See 12 C.F.R. §204.2(d)(2).

<sup>47</sup> See Board of Governors of the Federal Reserve System, *Compliance Guide to Small Entities*, <https://www.federalreserve.gov/supervisionreg/regdceg.htm>.

<sup>48</sup> See Federal Reserve Board, "Regulation D Reserve Requirements," *Consumer Compliance Handbook*, [https://www.federalreserve.gov/boarddocs/supmanual/cch/int\\_depos.pdf](https://www.federalreserve.gov/boarddocs/supmanual/cch/int_depos.pdf).

**The Consumer Financial Protection Bureau issues an interpretive and procedural rule to implement the Home Mortgage Disclosure Act amendments in the Economic Growth Regulatory Relief and Consumer Protection Act.**

On September 7, 2018, the Consumer Financial Protection Bureau (Bureau) issued an interpretive rule to implement and clarify Section 104(a) of the Economic Growth Regulatory Relief and Consumer Protection Act (EGRRCPA), which partially exempts certain insured depository institutions from the data collection and reporting requirements of the Home Mortgage Disclosure Act (HMDA). Under this amendment, if an insured depository institution originates fewer than 500 closed-end loans, or fewer than 500 open-end lines of credit, in *each* of the two preceding calendar years, it is partially exempt from reporting most of the expanded HMDA data fields for the respective types of loans.

The interpretive rule clarifies several HMDA issues related to the EGRRCPA amendment. First, the Bureau interpreted the amendment to be effective on May 24, 2018, the date the EGRRCPA was enacted. Second, only those closed-end loans and open-end lines of credit that would otherwise be reported under Regulation C will count toward the respective 500 loan threshold. Third, HMDA filers qualifying for the partial exemption can still choose to voluntarily report the exempt data fields, provided they include all other fields associated with that data field (i.e., all subset fields). For example, if a partially exempt institution optionally reports the property address for an exempt transaction, then it must report all other data fields that are part of the property address, such as city, state, and zip code.

Fourth, partial exemption is not available to institutions

**Effect of EGRRCPA’s Partial Exemption for Certain HMDA Data Points**

Covered by the Partial Exemption	Not Covered by the Partial Exemption
Universal Loan Identifier	Application Date
Property Address	Loan Type
Rate Spread	Loan Purpose
Credit Score	Preapproval
Mandatorily Reported Reasons for Denial	Construction Method
Total Loan Costs or Total Points and Fees	Occupancy Type
Origination Charges	Loan Amount
Discount Points	Action Taken
Lender Credits	Action Taken Date
Interest Rate	State
Prepayment Penalty Term	County
Debt-to-Income Ratio	Census Tract
Combined Loan-to-Value Ratio	Ethnicity
Loan Term	Race
Introductory Rate Period	Sex
Non-Amortizing Features	Age*
Property Value	Income
Manufactured Home Secured Property Type	Type of Purchaser
Manufactured Home Land Property Interest	HOEPA status
Multifamily Affordable Units	Lien Status
Application Channel	Number of Units
Mortgage Loan Originator Identifier	Legal Entity Identifier
Automated Underwriting System	
Reverse Mortgage Flag	
Open-End Line of Credit Flag	
Business or Commercial Purpose Flag	

\*The Age field was added by Section 1094 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, but the EGRRCPA amendment did not include this field in the partial exemption, so even banks qualifying for the partial exemption must still collect and report this new field.

whose Community Reinvestment Act (CRA) rating is “needs to improve” during its two most recent examinations or “substantial noncompliance” during the last examination. An institution should look to its CRA rating as of December 31 of the preceding calendar year to determine if its rating affects eligibility for the partial exemption.

Fifth, the rule emphasizes that because the Bureau had temporarily raised the HMDA reporting threshold for open-end lines of credit from 100 to 500 for 2018 and 2019, respectively, institutions that fall below this threshold will

not report *any* HMDA data for these open-end lines of credit. In 2020, the threshold for collecting and reporting on open-end lines of credit is scheduled to revert to 100 loans, but the Bureau stated that it intends to revisit the 100 loan threshold during 2019.

Finally, the interpretive rule identifies the 26 data points that do not need to be collected and reported on those transactions covered by the partial exemption. ■

## EARLY OBSERVATIONS ON THE TILA-RESPA INTEGRATED DISCLOSURE RULE

CONTINUED FROM PAGE 5

### Secondary Reviews

Finally, while the appropriate approach for an institution depends to some degree on its size, complexity, and product offerings, we have observed many institutions with strong TRID compliance conduct secondary reviews. Depending on a bank’s size, complexity, resources, and structure, reviews may be in-depth and cover all aspects of the LE and CD, or they may be risk-focused and limited to higher-risk TRID disclosures, such as charges subject to tolerances, APRs, and finance charge calculations. Regardless, having an effective secondary review of TRID-covered loans prior to loan consummation can help prevent violations.

Depending on the depth of routine secondary reviews, periodic transaction testing or an internal review of disclosures and management information systems postconsummation may be considered necessary to identify issues not captured during routine secondary reviews. For example, an institution might

review a sample of disclosures generated for various types of loans, check finance charge settings in software systems, test the accuracy of APR calculations, and conduct a transaction test to ensure any charges outside of the tolerance were cured with a lender credit.

As with other areas of compliance, prompt corrective action to address any identified issues indicates strong and effective internal controls.

### Conclusion

Despite the challenge of complying with TRID’s complex disclosure requirements, Federal Reserve-supervised financial institutions have largely been successful in implementing the significant changes in this rule. We hope that sharing early observations will assist institutions with their compliance efforts. Specific issues and questions related to TRID should be raised with your primary regulator. ■

## ENDNOTES

<sup>1</sup> Small Entity Compliance Guide (May 2018), [https://files.consumerfinance.gov/f/documents/2017-10\\_cfpb\\_KBYO-Small-Entity-Compliance-Guide\\_v5.pdf](https://files.consumerfinance.gov/f/documents/2017-10_cfpb_KBYO-Small-Entity-Compliance-Guide_v5.pdf), p. 16.

<sup>2</sup> Dodd–Frank Act Sections 1098 and 1100A (codified at 12 U.S.C. §2603(a) and 15 U.S.C. §1604(b)), respectively.

<sup>3</sup> 78 *Fed. Reg.* 79730 (December 13, 2013). The GFE, HUD-1, and TIL are still required for certain closed-end real estate transactions that are not subject to TRID, such as reverse mortgages and chatel-dwelling loans.

<sup>4</sup> Prior to the implementation of TRID, technical violations of the GFE and HUD-1 were relatively common because of the detailed nature of the regulations governing those forms.

<sup>5</sup> See 12 C.F.R. §1026.37(a)(12)(LE), 12 C.F.R. §1026.38(a)(5)(v) (CD).

<sup>6</sup> See §1026.37(a)(12) (LE) and §1026.38(a)(3)(iv) (CD).

<sup>7</sup> See §1026.38(a)(3)(v) (CD).

<sup>8</sup> See §1026.37(g)(2)(i) (LE) and §1026.38(g)(2) (CD).

<sup>9</sup> See §1026.38(g)(1)(ii) (CD).

<sup>10</sup> See §1026.37(h)(LE); §1026.38(i) (CD).

<sup>11</sup> See §1026.38(r) (CD).

<sup>12</sup> The Federal Reserve Board published *Guidance on Managing Outsourcing Risk*, which discusses ways to mitigate vendor risk. *Consumer Compliance Outlook* also published two articles on this subject: Cathryn Judd and Mark Jennings, “Vendor Risk Management — Compliance Considerations,” Fourth Quarter 2012, and Anthony W. Ricks and Timothy P. Stacy, “Vendor Risk Management,” First Quarter 2011.

**The Consumer Financial Protection Bureau (Bureau) issues final policy guidance about modifying loan-level data under the Home Mortgage Disclosure Act (HMDA) before releasing it to the public.** On January 31, 2019, the Bureau issued final policy guidance to explain how it will make 2018 HMDA loan-level data available to the public. The Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) amended the HMDA in 2011 to add new data fields.

In 2015, the Bureau issued a final rule to implement the statutorily required data fields and to use its discretionary authority to add additional fields. Some of the new fields contain sensitive information such as an applicant’s credit score. The Dodd–Frank Act requires the Bureau to balance the benefits of disclosure to fulfill HMDA’s purposes against potential privacy risks and to modify the data set accordingly before releasing it to the public.

After conducting this analysis, the Bureau intends to either withhold or modify certain HMDA data before releasing them to the public as follows. The Bureau will not release the following 2018 loan-level data to the public:

- universal loan identifier or nonuniversal loan identifier;
- date the application was received or date shown on the application form;
- date of action taken by the financial institution on a covered loan or application;
- address of property securing the covered loan or, in the case of an application, proposed to secure the covered loan;
- credit score or scores relied on in making the credit decision;
- unique identifier assigned by the Nationwide Mortgage Licensing System and Registry for the mortgage loan originator; and
- results generated by the automated underwriting system used by the financial institution to evaluate the application.

The Bureau will also exclude free-form text fields used to report the following data:

- applicant or borrower race;
- applicant or borrower ethnicity;
- the name and version of the credit scoring model used;
- the principal reason or reasons the financial institution denied the application, if applicable; and
- the automated underwriting system name.

In addition, the Bureau will only release a range of values for certain data fields:

- loan amount;
- applicant age;
- debt-to-income ratio;
- value of property securing the loan; and
- number of individual dwelling units related to the property securing the loan.

This policy guidance, which is nonbinding and does not impose any compliance obligations on covered institutions, applies to the HMDA data that financial institutions collected in 2018 and reported in 2019. The guidance states that the Bureau will engage in formal rulemaking in 2019 concerning its treatment of loan-level data released to the public for HMDA data collected in 2019 and beyond, based in part on its experience with this guidance.

**The Board of Governors of the Federal Reserve System (Board) and the Consumer Financial Protection Bureau (Bureau) announce dollar thresholds in Regulations Z and M for exempt consumer credit and lease transactions.** On November 23, 2018, the Board and the Bureau published dollar thresholds that will apply under Regulation Z (Truth in Lending Act (TILA)) and Regulation M (Consumer Leasing Act) for determining exempt consumer credit and lease transactions in 2019. The annual adjustment is based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If the CPI-W has not increased, the Board and the Bureau maintain the exemption threshold from the prior year.

Transactions at or below the thresholds are subject to the protections of the regulations. Based on the annual

\*Links to the announcements are available in the online version of *Outlook* at [consumercomplianceoutlook.org](http://consumercomplianceoutlook.org).

percentage increase in the CPI-W as of June 1, 2018, the protections of TILA and the Consumer Leasing Act generally will apply to consumer credit transactions and consumer leases of \$57,200 or less in 2019. Note, however, that private education loans and loans secured by real property (such as mortgages) are subject to TILA regardless of the loan amount.

**The Board and the Bureau issue a joint rulemaking proposal under the Expedited Funds Availability Act (EFAA).** On December 10, 2018, the Board and the Bureau published a proposal under Regulation CC, which implements the EFAA to adopt a calculation methodology to make inflation adjustments to the dollar amounts that depository institutions must make available to their customers under the EFAA, as required by the Dodd–Frank Act. Under the proposal, dollar amounts in the EFAA and Regulation CC would be adjusted by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers rounded to the nearest multiple of \$25, effective April 1, 2020, and would be readjusted every five years.

The proposal also would implement a provision in the Economic Growth Regulatory Relief and Consumer Protection Act (EGRRCPA) that expands the application of the EFAA and Regulation CC to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. Finally, the proposal solicits additional comments on amendments the Board previously proposed in 2011 regarding funds availability schedule provisions and associated definitions. The comment period closed on February 8, 2019.

**The Bureau issues its fall 2018 regulatory agenda.** On October 17, 2018, the Bureau released its fall 2018 agenda, consistent with the Regulatory Flexibility Act. The agenda includes rulemaking in the following areas:

- Implementing an amendment in the EGRRCPA to expand an exemption from the mandatory five-year escrow requirement for higher-priced mortgage loans under the TILA
- Drafting implementing regulations for the Fair Debt Collection Practices Act (FDCPA) concerning communication practices and consumer disclosures

(the FDCPA does not have any implementing regulations at this time)

- Reconsidering the 2017 final rule for payday, vehicle title, and certain other high-cost loans; the rule currently has an August 2019 compliance date, and the Bureau expects to issue a rulemaking proposal prior to this date.

**Update:** On February 14, 2019, the Bureau issued a rulemaking proposal that would rescind the requirement that creditors verify a borrower's repayment ability before issuing a payday, vehicle title, or longer-term balloon payment loan and postpone the current August 19, 2019, compliance date to November 19, 2020. The proposal would not change requirements in the final rule prohibiting payday lenders from attempting to clear a consumer's payment after two failed attempts and requiring notice to consumers before attempting to cash a check the first time. The comment period closed on March 18, 2019.

**The Bureau issues an interim final rule to amend two model forms under the Fair Credit Reporting Act (FCRA) to implement provisions of the EGRRCPA.** On September 18, 2018, the Bureau issued an interim final rule to revise two model forms required under Section 609 of the Fair Credit Reporting Act (FCRA).

The rule amends two FCRA disclosures — the Summary of Consumer Identify Theft Rights (Appendix I to Regulation V) and the Summary of Consumer Rights (Appendix K to Regulation V) — to add the new notice of rights required by Section 605A(i)(5) of the FCRA, a new FCRA section added by the EGRRCPA. The rule also amends the current Summary of Consumer Identify Theft Rights to reflect a change to the minimum duration of initial fraud alerts from 90 days to one year in the EGRRCPA.

In addition, the Summary of Consumer Rights is amended to update contact information for certain FCRA enforcement agencies. The interim final rule also provides that the use of prior versions of the model forms published in Appendices I and K on November 14, 2012, will continue to comply with the FCRA if a separate page containing the additional required information is provided in the same transmittal.

## SERVICEMEMBERS CIVIL RELIEF ACT

**The Ninth Circuit applies a four-year statute of limitations to the foreclosure protection provision of the Servicemembers Civil Relief Act (SCRA).** *McGreevey v. PHH Mortg. Corp.*, 897 F.3d 1037 (9th Cir. 2018). In January 2009, a lender initiated foreclosure proceedings against a servicemember who was not on active duty. The borrower was subsequently called to active duty in May 2009, and his service ended on July 21, 2010. After the borrower's service ended, the lender sold the property at a foreclosure sale in August 2010. Nearly six years later, the borrower sued the lender, alleging it violated Section 3953 of the SCRA, which prohibited a foreclosure sale of a servicemember's property during service or within nine months of the release from service. (In 2012, Congress extended this period to one year and made the one-year provision permanent in 2018.) The district court granted the lender's motion to dismiss the lawsuit based on the statute of limitations (SOL). Although the SCRA does not contain an SOL, the district court applied the SOL of an analogous state law with a four-year period of limitation. On appeal, the Ninth Circuit affirmed but on a different basis. The court found that prior to 1990, courts analyzing federal laws without an SOL would use the SOL of a state law most analogous to the federal law. However, in 1990, Congress enacted 28 U.S.C. §1658(a), which created a four-year catchall SOL for federal laws enacted after December 1, 1990, that have a private right of action but do not specify an SOL. Although the predecessor of the SCRA was enacted in 1918, Section 3953 did not expressly provide a private cause of action until the Veterans' Benefits Act was enacted in 2010. The court therefore found that because the plaintiff's lawsuit arose from a law with a private cause of action enacted after December 1, 1990, it was subject to the four-year SOL in Section 1658(a). Accordingly, the court ruled that the complaint was time-barred and affirmed the dismissal of the lawsuit.

## FAIR DEBT COLLECTION PRACTICES ACT

**The Seventh Circuit interprets a debt collector's obligation to obtain verification of a disputed debt to mean the collector must confirm that the information in the validation notice matches the information it received from the creditor and that a collector is not required to further investigate the accuracy of the creditor's information.** *Walton v. EOS CCA*, 885 F.3d 1024 (7th Cir. 2018). Section 1692g(b) of the Fair Debt Collection Practices Act (FDCPA) requires a debt collector to obtain verification of the debt (or a copy of a judgment) if a consumer disputes the debt after receiving a debt collector's validation notice for the debt. EOS, a debt collector, sent a collection notice to the plaintiff stating she was obligated to pay a debt with AT&T unless she disputed it. The notice identified the debt with an AT&T account number that did not belong to the plaintiff because AT&T had transmitted the wrong number. The plaintiff initially disputed the debt by stating only that the debt did not belong to her; EOS reviewed its records and responded that it had verified that the information identifying the debt matched the information it had received from AT&T. EOS reported the debt as disputed to two consumer reporting agencies, although it later asked the agencies to delete the report after the plaintiff subsequently disputed the debt by identifying her correct account number.

The plaintiff's lawsuit alleged EOS violated the FDCPA's requirement to obtain verification of the debt. The court had to determine whether the FDCPA requires the collector to investigate the validity of the debt, as the plaintiff's lawsuit alleged, or to verify that the information in the debt collection notice is accurate, as EOS argued. The court held that because the FDCPA's purpose is to protect against abusive collection practice, the statute only requires that a debt collector "verify that its letters to the consumer accurately convey the information received from the creditor." The court therefore concluded that EOS properly validated the debt by confirming that the person to whom it mailed the debt collection notice was the same person AT&T identified as the debtor and for the amount sought. The consumer also alleged that EOS violated the FCRA by not reasonably investigating the disputed information, as required by §1682s-2(b)(1)(A) of the FCRA. The court explained that EOS conducted a reasonable investigation by verifying the information it had on record in response to the plaintiff's initial general dispute that the account did not belong to her, and, subsequently, in asking the consumer reporting agencies to remove the report after receiving the plaintiff's more specific dispute that the account number was wrong.

\*Links to the court opinions are available in the online version of *Outlook* at [consumercomplianceoutlook.org](http://consumercomplianceoutlook.org).



## FAIR DEBT COLLECTION PRACTICES ACT

**The Third Circuit holds that a debt collection notice stating that the debt collector will report information about a debt to the Internal Revenue Service (IRS), when the debt collector knows reporting is not required, can violate the FDCPA, even if the notice includes conditional language.** *Schultz v. Midland Credit Mgmt.*, 905 F.3d 159 (3d Cir. 2018). A debt collector sent separate notices to the plaintiffs, husband and wife, to collect debts they owed individually. None of the debts exceeded \$600. The collection notice stated: “If you pay less than your full balance, we will report your account as Paid in Full for less than the full balance ... We will report forgiveness of debt as required by IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case.” The plaintiffs’ class-action lawsuit alleged that this language was intended to intimidate the plaintiffs into paying their debt with false information because IRS regulations only require that forgiven debts exceeding \$600 be reported.

The lawsuit alleged that this conduct violated Section §1692e of the FDCPA, which broadly prohibits “false, deceptive, or misleading representation[s].” The district court dismissed the lawsuit, but the Third Circuit reversed on appeal, finding that the threat of reporting debt forgiveness to the IRS for debts below the \$600 threshold potentially violated the FDCPA. The notice said that reporting to the IRS “might not be required in your case,” even though only debts in excess of \$600 must be reported. The court found the notice could imply to the “least sophisticated debtor” that debt forgiveness *could* be reported. The court also noted that the “FDCPA sweeps broadly — it is not just outright lies that it condemns. ... [A]nytime a debt collector includes ‘language in a debt collection letter [that] can reasonably be interpreted to imply that the debt collector will take action it has no intention or ability to undertake, the debt collector that fails to clarify that ambiguity does so at its peril.’ ” (Citation omitted). The case was remanded to the district court for further proceedings.

## FAIR CREDIT REPORTING ACT

**The Eleventh Circuit holds that a bank did not violate the Fair Credit Reporting Act (FCRA) by reporting a mortgage account as past due and delinquent when the borrower made reduced payments under a forbearance agreement.** *Felts v. Wells Fargo Bank, N.A.*, 893 F.3d 1305 (11th Cir. 2018). Section 623(b) of the FCRA (15 U.S.C. §1681s-2(b)) requires a furnisher to conduct an investigation if it receives notice that a consumer has filed a dispute with a consumer reporting agency about furnished information. In *Felts*, a borrower entered into an unemployment forbearance agreement that reduced her monthly payment amount from \$2,197.38 to \$25 for six months. During this period, Wells Fargo reported the account status as past due and delinquent. The borrower sued Wells Fargo, alleging that it failed to conduct a reasonable investigation after she disputed the delinquency status. The district court granted summary judgment in favor of Wells Fargo, and the borrower appealed.

On appeal, the Eleventh Circuit observed that a claim for failing to conduct a reasonable investigation under Section 623(b) cannot succeed without identifying some fact in the record establishing that the information reported was inaccurate or incomplete. The borrower argued that because her reduced payments complied with the terms of the forbearance agreement, it was inaccurate or materially misleading to report the loan status as past due and delinquent. The court determined, however, that because the forbearance agreement did not modify the loan note, it was not inaccurate or materially misleading to report the loan status as past due and delinquent when payments were made for less than the amounts due under the note. The borrower also argued that if Wells Fargo had followed the reporting guidelines of the Consumer Data Industry Association, the trade group of the consumer reporting agencies, the loan would have been reported on the borrower’s credit report more favorably. But the court found that the guidelines did not preclude Wells Fargo from reporting the status as past due and delinquent during the months that the borrower paid less than the full payments due under the note. Accordingly, the court affirmed the district court’s summary judgment in favor of Wells Fargo.

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