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Inside

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Smartphone interactive scan

Compliance Requirements for the Servicemembers Civil Relief Act

By Margo A. Anderson, Examiner, Federal Reserve Bank of Boston

Financial institutions should be mindful of the requirements of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §501 et seq.,[1] when lending to and servicing accounts for members of the armed services. This article reviews those requirements.

The confluence of the financial crisis and our nation's involvement in several military conflicts has caused service members to invoke the protections of the SCRA with greater frequency than in the past. In February 2011, a subcommittee of the House Committee on Veterans' Affairs conducted a hearing on mortgage-related violations of the SCRA. A representative of a large financial institution testified that the institution had violated the SCRA in 4,500 instances by charging interest rates on mortgages above the 6 percent limit during the period service members were on duty and one year thereafter.[2] The hearing and testimony were widely reported in the news media. The bank later refunded $2.4 million in interest in excess of the SCRA's limits, began new programs for service members and veterans, enhanced its controls to ensure compliance with the SCRA, and settled a class-action lawsuit for $27 million.

PROTECTIONS AFFORDED BY THE SCRA

The SCRA was enacted on December 19, 2003, to clarify and strengthen the protections provided to military personnel through the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA protects active duty military personnel,[3] and in limited instances their spouses and dependents,[4] by requiring creditors to reduce interest rates on certain loans, by prohibiting foreclosures

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[1] http://1.usa.gov/scra-text. This version of the SCRA, which is maintained by the Justice Department, reflects amendments made in October 2010.

[2] http:/bit.ly/scra-hearing

[3] Under the act, service members are divided into two types: 1) members of the Army, Navy, Air Force, Marine Corps, or Coast Guard on full-time duty in the active service of the United States, including training duties and service schools; and 2) members of the National Guard who are under the call of duty authorized by the President or Secretary of Defense for more than 30 consecutive days and service members who are engaged in active service.

[4] Section 511 defines a service member's dependent as: 1) a spouse; 2) a child; or 3) any individual for whom the service member provided more than half of his or her support for the 180 days preceding any application for relief under the act.

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Home Mortgage Disclosure Act (HMDA) and Community Reinvestment Act (CRA) Data Reporting: Questions and Answers

By Karin Modjeski Bearss, Senior Examiner, Federal Reserve Bank of Minneapolis, and Jason Lew, Compliance Risk Coordinator, Federal Reserve Bank of San Francisco

On November 17, 2010, the Federal Reserve System conducted an *Outlook Live* webinar titled "Tips for Reporting Accurate HMDA and CRA Data." Participants submitted a significant number of questions before and during the session. Because of time constraints, only a limited number of these questions were answered during the webcast. This article addresses some of the questions we received.

HMDA DATA REPORTING QUESTIONS AND ANSWERS

Coverage

1. *We are taking a piece of land as collateral. The land contains a mobile home that is incidental to the loan (for example, the bank is not requiring insurance on the mobile home). It will be booked on the system as a "land-only" loan; we will take the mobile home as collateral by default. Is this loan reportable?*

   The manner in which you code the loan into your system generally does not determine if the loan is HMDA reportable. The primary question is whether this loan meets the definition of a home purchase loan or a refinancing under Regulation C. Section 203.2(h) defines a home purchase loan as a loan secured by and made for the purpose of purchasing a dwelling. Section 203.2(k) defines a refinancing as a dwelling-secured loan that satisfies and replaces a dwelling-secured loan to the same borrower. The definition of dwelling in §203.2(d) is a residential structure, including a mobile home or manufactured home. Because a mobile home is a dwelling under Regulation C, the loan would be reportable as a home purchase loan if the loan was used to purchase the land and the mobile home or reportable as a refinancing if the loan replaces another dwelling-secured loan with the same borrower.

2. *Our bank brokers most of its mortgage loans through another bank. Currently, I report applications denied by our bank or withdrawn while still at our bank. Do I report on our loan application register (LAR) only those loan applications that do not close with the other bank?*

   The entity that makes the credit decision on a loan application has responsibility for reporting that application if the loan is HMDA-reportable. As noted in comment 203.1(c)-2 of the Official Staff Commentary (Commentary) for Regulation C, an institution that makes a credit decision prior to closing reports that decision regardless of whose name the loan closes in. Therefore, your institution would report any applications for which it makes the credit decision, whether or not those applications close with the other bank.

3. *Is this loan reportable: A 12-month construction loan that must be refinanced at the end of the 12-month period? (The loan does not include an option for rolling into permanent financing.)*

   Based on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Frequently Asked Questions (HMDA FAQs),[1] a primary consideration for determining if a loan is temporary financing is whether it will be replaced by permanent financing of a much longer term. Therefore, if this loan will likely be replaced by permanent financing by the bank or another lender, even if the loan does not include a permanent financing rollover option, it would likely be considered temporary financing and therefore exempt from HMDA reporting.

4. *Do we report short-term home improvement loans that have a documented take-out commitment?*

   If a home improvement loan is set up like a construction-permanent loan, the loan should be reported, as explained in comment 203.2(h)-5. This section states that a construction-permanent home purchase loan is not considered a temporary loan and should be reported for HMDA purposes. If the short-term home improvement loan will be replaced with permanent financing of a much longer term, the bank would report the permanent take-out loan but not the short-term temporary loan.

5. *We have a mobile-home-secured loan that does not involve real property. Most of the funds will be used for debt consolidation; however, a small portion will also be used for home improvement purposes. The loan is not coded as a home improvement loan. Should this loan be reported?*

   Yes. Regulation C has two standards for reporting home improvement loans. Under §203.2(g)(1), a dwelling-secured loan made for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located is considered a home improvement loan. Under this standard, a loan does not have to be classified as home improvement to be covered. Conversely, under §203.2(g)(2), a non-dwelling-secured loan for the same purposes stated above is a HMDA-reportable loan if it is classified by the financial institution as a home improvement loan. In this example, the loan would be reported because it is: (1) dwelling secured (mobile home) and (2) made in part for home improvement purposes.

6. *Is the reporting of home equity lines of credit (HELOCs) optional, even if funds are used for home improvement purposes or to provide funds for a down payment on a home purchase loan?*

   Yes. Section 203.4(c)(3) specifically states that it is optional for banks to report home equity lines of credit made in whole or in part for the purpose of home improvement or home purchase.

7. *Do we have to report all HELOCs even if the borrower does not advance on the line of credit? For example, if the borrower intends to use $10,000 of a $30,000 HELOC for home improvement purposes but does not advance on the loan, does this loan need to be reported for HMDA?*

   If the bank chooses to report HELOCs for HMDA, the bank should report all HELOCs intended for home improvement or home purchase purposes, even if the borrower does not advance on the line of credit. The HMDA LAR instructions included in Appendix A to Regulation C (HMDA instructions) explain that the bank should report only the portion of the HELOC *intended* for home improvement or home purchase purposes. The use of the word "intended" implies that the bank should report the line of credit even if the borrower does not actually advance on the funds as anticipated.

8. *If the bank modifies, but does not refinance, a temporary construction loan into permanent fi-*

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[1] HMDA FAQs are available at: http://bit.ly/hmda-faq.

nancing, does this loan become a HMDA-reportable loan?

Yes. Comment 203.2(h)-5 explains that when permanent financing replaces a construction-only loan, the loan should be reported for HMDA. In addition, construction-permanent loans must also be reported for HMDA. In essence, the bank has replaced its temporary construction loan with permanent financing through this loan modification. Because it is no longer a temporary loan and has not been previously reported, it should be reported as a home purchase loan if it meets Regulation C's definition of home purchase.

Mergers-Acquisitions

9. *We are a HMDA-reportable bank. In September, we merged with a bank that does not report HMDA. Do we need to report loans originated by the other bank prior to September?*

   If the surviving institution is a HMDA reporter, the institution has the option of reporting the transactions handled in the offices of the previously exempt institution during the year of the merger, as discussed in comment 203.2(e)-3. For example, if Bank A (a HMDA reporter) merges with Bank B (a non-HMDA reporter) in 2010 with Bank A as the surviving institution, Bank A would report all of its 2010 HMDA activity and have the option of reporting 2010 HMDA transactions handled by Bank B.

HMDA Applications

10. *Are we required to report as a home purchase loan an application based on an oral property address even though the applicant did not provide any documents showing the acceptance of the offer to purchase the home?*

    The primary issue is whether you have an "application," as defined in §203.2(b). Under this section, an application is an oral or written request for a home purchase, home improvement, or refinancing made in accordance with the procedures used by the institution for the type of credit requested. In general, if the borrower has requested credit in accordance with the bank's application procedures, the institution would likely consider the request as an application. The regulation does not require that an institution obtain an offer and acceptance on a home purchase loan for it to be considered a HMDA-reportable application.

    If the application is a prequalification (a request by a prospective applicant for a preliminary determination on whether the applicant would qualify for a loan and for how much), it is not a HMDA-reportable application. If the application is a preapproval request for a home purchase loan, the institution has a covered preapproval program, and the bank approved or denied the request, the application is HMDA reportable. As discussed in §203.2(b)(2), a covered preapproval program has these primary elements:

    - The institution reviews home purchase preapproval requests using a comprehensive creditworthiness review;
    - Based on this review, it issues a written commitment agreeing to extend a loan up to a specified amount for a designated period of time; and
    - The written commitment contains only limited conditions, such as the identification of a suitable property.

    Prequalification and preapproval requests that transition to the application stage, such as when the borrower identifies a property, become HMDA-reportable applications if they meet Regulation C's definition of home purchase.[2]

11. *We have 20 bank locations; however, only two locations have a formal preapproval program as defined by Regulation C. Is our bank considered to have a preapproval program for all locations, or is it acceptable for the 18 locations without a preapproval program to use "3" (NA) when reporting the preapproval code on home purchase loans?*

    Under §203.4(a)(4), an institution must report whether an application is a request for preapproval. The HMDA instructions explain that an institution should enter code 3 (NA) if an institution

[2] See HMDA FAQs regarding approved and accepted preapproval requests.

does not have a covered preapproval program. An institution should report code 2 if the institution has a covered preapproval program but the applicant does not request a preapproval.

If applications submitted at the 18 branches will not or could not be evaluated under a covered preapproval program, these applications could be reported as code 3 or "NA" because the bank does not have a program at those offices for issuing preapprovals, as defined under Regulation C.

12. *If the bank discontinued its preapproval program during the first quarter, may the bank report the preapproval codes 1 and 2 for home purchase applications received before the change and code 3 (NA) for the applications received after the change?*

    If the bank no longer has a covered preapproval program as defined by Regulation C, it would be appropriate to report code 3 or "NA" for applications received after the bank discontinued its program.

HMDA Data Fields

Loan Purpose

13. *Is a loan to pay off a contract for deed considered a home purchase or a refinancing for HMDA reporting purposes?*

    A loan to pay off a contract for deed should generally be reported as a home purchase loan for HMDA reporting purposes if a dwelling secures the loan. Section 203.2(h) defines a home purchase loan as a loan secured by and made for the purpose of purchasing a dwelling. Although the borrower acquires some interest in the home through the contract, the borrower generally purchases and acquires full title for the home upon paying off the contract for deed. Conversely, a contract for deed transaction generally does not meet the definition of refinancing under §203.2(k). Because the contract for deed is not a dwelling-secured obligation, the loan to pay off the contract does not replace an existing dwelling-secured obligation and, thus, does not meet the definition of refinancing under HMDA.

Loan Amount

14. *What is the appropriate loan amount to report for withdrawn, denied, and approved not accepted HMDA applications?*

    An institution should report the amount applied for on a withdrawn or denied HMDA application, as discussed in the HMDA instructions. An institution should also report the amount applied for on an approved not accepted HMDA application, including when the institution issues a counteroffer that the applicant does not accept.

AN INSTITUTION SHOULD REPORT THE AMOUNT APPLIED FOR ON A WITHDRAWN OR DENIED HMDA APPLICATION... AND THE AMOUNT APPLIED FOR ON AN APPROVED NOT ACCEPTED HMDA APPLICATION, INCLUDING WHEN THE INSTITUTION ISSUES A COUNTEROFFER THAT THE APPLICANT DOES NOT ACCEPT.

15. *Should we report the entire loan amount or only the amount used for home improvement purposes for a HMDA-reportable unsecured home improvement loan?*

    An institution should report the entire loan amount even if only part of the proceeds will be used for home improvement or home purchase purposes, as discussed in Comment 203.4(a)(7)-2. For HELOCs, however, the institution should report only the portion of the line of credit intended for home improvement or home purchase purposes. See comment 203.4(a)(7)-3.

Type of Action Taken

16. *An applicant applies for a HMDA loan. The bank pulls the credit report and qualifies the borrower based on the information provided. The borrower decides not to continue with the application prior to an appraisal being ordered. Should we report*

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Compliance Requirements for Young Consumers

By Margo A. Anderson, Examiner, Federal Reserve Bank of Boston

Young consumers — defined as persons under 21 years of age or college students — have been an attractive demographic for financial institutions. According to a recent report on college credit card agreements prepared by the Board of Governors of the Federal Reserve System (Board) for Congress, card issuers made payments totaling approximately $83.5 million to institutions of higher education in 2009 for the right to market credit cards to college students and affiliated organizations, resulting in 53,164 new credit card accounts.[1] Additionally, students at institutions of higher education borrowed approximately $10 billion in private education loans in the 2008-2009 school year.[2]

In the past, consumer protection laws relied primarily on disclosures, assuming that if financial institutions clearly and conspicuously disclosed the terms and conditions of the account, consumers would have the necessary tools to make informed decisions. But more recently, Congress has also used substantive provisions that ban or restrict certain practices. Thus, in 2009 Congress passed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act), which amended the Truth in Lending Act (TILA) and the Fair Credit Reporting Act (FCRA) to provide greater substantive protections, including special provisions for borrowers under age 21 and college students. Similarly, in 2008, Congress passed the Higher Education Opportunity Act (HEOA), which amended TILA to provide new disclosures and substantive protections for students at institutions of higher education applying for private education loans. This article reviews these compliance requirements.

CREDIT CARD ACT

Marketing to Underage Consumers

The Credit CARD Act amended §604(c)(1)(B)(iv) of the FCRA, 15 U.S.C. §1681b(c)(1)(B)(iv), to prohibit creditors and insurance companies from obtaining the credit report of consumers whose age is not specified in their report or those under 21 for purposes of making an unsolicited pre-screened offer of credit or insurance (known as a firm offer of credit or insurance). Creditors cannot obtain the consumer report of a young consumer unless the consumer has authorized it. Thus, this provision imposes a significant restriction on creditors wishing to make unsolicited credit offers to underage consumers, such as the ubiquitous credit card offers mailed to many consumers.

Credit Card Applications from Underage Consumers

In addition to amending the FCRA, the Credit CARD Act extensively revised TILA. To implement these revisions, the Board amended Regulation Z in January 2010.[3] Under the new §226.51(b)(1), credit card issuers cannot open a credit card account for consumers under age 21 unless the applicant submits a written application. More important, card issuers must also obtain financial information indicating underage consumers have independent means to make the minimum periodic payment on the debt based on the terms and conditions of the loan. For purposes of estimating the minimum payments on the account, Regulation Z contains a safe harbor if issuers determine the minimum payment by assuming that the credit line will be fully utilized on the borrower's first use (including applicable mandatory fees if used to calculate the minimum payment), and the minimum payment includes any finance charges likely to be incurred and any mandatory fees for the card.[4]

In determining whether the applicant has sufficient income or assets to pay the debt, comment 226.51(a)(1)-4 of the Regulation Z Official Staff Commentary

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[1] http://1.usa.gov/card-rpt

[2] The College Board, *Trends in Student Aid*, at http://bit.ly/loans-student. This figure is down from approximately $21.8 billion in the previous school year, following an upward trend from $5 billion in the 2000-2001 school year.

[3] The Board's announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb-card. *Outlook* published an article on the changes in the First Quarter 2010 issue, which is available at: http://bit.ly/card-act.

[4] The full requirements of the safe harbor are set forth in §226.51(a)(1)(2)(ii).

(Commentary) states that an issuer may consider any reasonably expected assets or income, including current or expected salary, wages, bonus pay, tips, commissions, dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. This comment also states that an issuer may rely on information provided by the consumer and may consider any other information obtained through an empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

The requirement that an issuer evaluate a young consumer's repayment ability applies not only during the initial credit card application but also when an issuer is evaluating whether to increase a credit limit on an existing account, regardless of whether the consumer requested the increase or the issuer initiated it.

If the applicant cannot pay the debt independently, the applicant can still qualify with a co-signer who is over age 21 and has the ability to pay the debt. In addition, for an account issued with a co-signer, §226.51(b)(2) prohibits issuers from increasing the credit line unless the co-signer agrees to assume liability on the increase.

Special Rules for Credit Cards on College Campuses

In addition to the rules in §226.51(b) that apply to all young consumers, §226.57 includes requirements that apply only to part- and full-time students at institutions of higher education. Specifically, credit card issuers cannot offer inducements to students to apply for a card if the offer is made on a college campus, within 1,000 feet of the campus, or at a college-sponsored event. In clarifying the requirements of the rule, comment 226.57(c)-2 explains that inducements do not include gifts that are not contingent on accepting the credit card. In addition, promotional rates, discounts, or reward points are not inducements because they apply only after the credit line is approved.

For transparency, the Credit CARD Act requires issuers to submit an annual report to the Board summarizing and detailing any affinity agreements the issuer has with an institution of higher learning, alumni association, or foundation (covered institution). The issuer must identify any agreements it has with a covered institution for the issuance of cards; the amount of any payments the issuer paid to the covered institution during the period; the terms of the agreement; the number of card accounts opened during the period; and the total number of accounts covered by the agreement outstanding at the end of the period. The Board maintains a searchable database of these agreements, which can be accessed at: http://www.federalreserve.gov/creditcardagreements/Search.aspx.

HIGHER EDUCATION OPPORTUNITY ACT

The HEOA creates new substantive protections for private education loans and also requires new TILA disclosures at the three stages of the loan process: application/solicitation, approval, and consummation. To ensure consumer comprehension of the disclosures, the HEOA directed the Board to develop model disclosure forms based on consumer testing. The Board retained a consultant for this purpose, who determined after extensive research and testing that:

> Families turn to private loans due to time constraints, incomplete funding to cover all costs of education, and ineligibility for Federal aid. In most cases, the decision maker relied heavily on the school to provide information about the loan options available. Many took loans from education financing organizations or banks they recognized by name. The incidence of comparison shopping varies, with many going with the first loan offered to them. Given that the process is confusing and complicated for consumers, it is critical that the private loan disclosures provided to families are clear and concise, as well as educational in helping them understand the loan they are considering and other educational funding options available.[5]

After it finished researching and testing disclosures, the Board announced a final rule under Regulation Z, effective February 14, 2010, to implement the HEOA's requirements.[6] The Board codified its implementing

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[5] Rockbridge Associates, Inc., "Consumer Research and Testing for Private Education Loans: Final Report of Findings," p. 6. The full report is available at: http://1.usa.gov/report-loan.

[6] The *Federal Register* notice is available at: http://1.usa.gov/frb-loan. *Outlook* published a full article on the changes, which is available at: http://bit.ly/cco-loans.

The Federal Reserve Board (Board) proposes a rule under Regulation Z pertaining to a consumer's ability to repay a mortgage and minimum mortgage underwriting standards. The proposed rule, announced on April 19, 2011, would require creditors to determine a consumer's ability to repay a mortgage before making the loan and would establish minimum mortgage underwriting standards. The rule, which is being made pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), would apply to all consumer mortgages, except home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans.

The proposal provides four compliance options for the ability-to-repay requirement. First, a creditor can meet the general ability-to-repay standard by considering and verifying specified underwriting factors. Second, a creditor can make a "qualified mortgage," which provides the creditor with special protection from liability provided the loan does not have certain features, such as negative amortization; the fees are within specified limits; and the creditor underwrites the mortgage payment using the maximum interest rate in the first five years. Third, a creditor operating predominantly in rural or underserved areas can make a balloon-payment qualified mortgage. This option is meant to preserve access to credit for consumers located in rural or underserved areas where banks originate balloon loans to hedge against interest rate risk for loans held in portfolio. Finally, a creditor can refinance a "nonstandard mortgage" with risky features into a more stable "standard mortgage" with a lower monthly payment. The proposal also contains limits on prepayment penalties. Comments on the proposed rule are due by July 22, 2011. General rulemaking authority for TILA transfers to the Consumer Financial Protection Bureau on July 21, 2011. Accordingly, this rulemaking will not be finalized by the Board. The announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_repay. *Outlook Live* conducted a webinar on the proposed rules: http://bit.ly/webinar-repay.

The Board issues a final rule clarifying regulations issued under the Credit Card Accountability Responsibility and Disclosure Act (Credit CARD Act). The final rule, announced on March 18, 2011, is intended to enhance protections for consumers who use credit cards and to resolve areas of uncertainty so that card issuers fully understand their compliance obligations. The Credit CARD Act requires card issuers to consider a consumer's ability to make the required payments on the account before opening a new credit card account or increasing the credit limit on an existing account. The Board's rule addresses practices that can result in extensions of credit to consumers who lack the ability to pay. Specifically, the rule states that credit card applications generally cannot request a consumer's "household income" because that term is too vague to allow issuers to properly evaluate the consumer's ability to pay. Instead, issuers must consider the consumer's individual income or salary. In addition, the Board's rule clarifies that promotional programs that waive interest charges for a specified period of time are subject to the same Credit CARD Act protections as promotional programs that apply a reduced rate for a specified period. The rule is effective October 1, 2011. The Board's announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_clarify.

The Board proposes amendments to Regulation CC. The proposed amendments, announced on March 3, 2011, encourage banks to clear and return checks electronically, add provisions that govern electronic items cleared through the check-collection system, and shorten the "exception" hold periods on deposited funds. The proposal provides that a depositary bank would be entitled to the expeditious return of a check only if it agrees to receive returned checks electronically. In addition, the proposal would permit the bank responsible for paying a check to require that checks presented to it for same-day settlement be presented electronically. The proposal would apply Regulation CC's collection and return provisions, including warranties, to electronic check images that meet certain requirements. Because of the faster collection and return time frames that result from electronic collection and return, the proposal would shorten the safe-harbor period for an exception hold to four business days, which should enable the depositary bank to learn of the return of virtually all unpaid checks before being required to make these deposits available for withdrawal. The proposal also eliminates references in Regulation CC to "nonlocal" checks because the Reserve Banks have ceased operations in all but one of their check processing offices so all checks are now local. Appendix C to the regulation sets forth model funds availability forms that banks may use as the basis for their disclosures to customers. The Board's announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_cc.

The Board and the Federal Trade Commission (FTC) propose regulations for the credit score disclosure requirements of the Dodd-Frank Act. The jointly proposed regulations, announced on March 1, 2011, implement the credit score disclosure requirements of the Dodd-Frank Act. The statute requires creditors to disclose credit scores and related information to consumers in risk-based pricing and adverse action notices under the Fair Credit Reporting Act (FCRA) if a credit score was used in setting the credit terms or taking adverse action. The Board also proposed to amend certain model notices in Regulation B (Equal Credit Opportunity Act), which combine the adverse action notice requirements for both Regulation B and the FCRA. The amendments would revise those model notices to incorporate the new credit score disclosure requirements. The Board's announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_rbp.

The Board issues a final rule under Regulation Z to increase the APR threshold used to determine whether escrow accounts are required for jumbo loans. The final rule, announced on February 23, 2011, revises the escrow account requirements for certain home mortgage loans. The rule increases the annual percentage rate (APR) threshold used to determine whether a mortgage lender is required to establish an escrow account for property taxes and insurance for first-lien "jumbo" mortgage loans. Under the final rule, the escrow requirement will apply to first-lien jumbo loans only if the loan's APR is 2.5 percentage points or more above the average prime offer rate. The APR threshold for nonjumbo loans remains unchanged. The final rule is effective for covered loans for which the creditor receives an application on or after April 1, 2011. The announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_jumbo.

The Board proposes a rule under Regulation Z to expand the minimum period for mandatory escrow accounts for first-lien higher-priced mortgage loans (HPMLs). The proposed rule, announced on February 23, 2011, implements the Dodd-Frank Act requirements for first-lien escrow accounts for HPMLs. The length of the escrow would be expanded from one year to five years. The escrow would be longer in certain circumstances, such as when the loan is delinquent or in default. The proposed rule would also provide an exemption from the escrow requirement for certain creditors operating in "rural or underserved" counties, as authorized by the legislation. The proposal would implement new disclosure requirements that would be required at least three business days before consummation of a mortgage loan to explain how the escrow account works, or the effects of not having an escrow account if one is not being established, and require consumers to receive disclosures three days before an escrow account is closed. The comment period closed on May 2, 2011. The announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_escrow.

Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board, and Office of Personnel Management (the agencies) issue interim rule on garnishment of federal benefit payments. On February 23, 2011, the agencies issued an interim final rule to implement statutory restrictions on the garnishment of federal benefit payments. The rule, which became effective May 1, 2011, establishes procedures that financial institutions must follow when they receive a garnishment order against an account holder who receives certain types of federal benefit payments by direct deposit. The rule requires financial institutions to determine the sum of such federal benefit payments deposited to the account during a two-month period and ensure that the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower. The *Federal Register* notice is available at: http://1.usa.gov/garnish-rules.

On the Docket: Recent Federal Court Opinions*

REGULATION Z —TRUTH IN LENDING ACT (TILA)

Change-in-terms notice. *Chase Bank USA, N.A. v. McCoy,* 131 S. Ct. 871 (2011). The U.S. Supreme Court resolved a split among the federal appeals courts as to whether, under the version of Regulation Z in effect before August 2009, a card issuer must provide a change-in-terms notice for a rate increase if the cardholder agreement permitted the issuer to increase the rate because of delinquency or default. In *Shaner v. Chase Bank USA, N.A.,* 587 F. 3d 488 (1st Cir. 2009), the First Circuit concluded that a rate increase in this circumstance does not constitute a change in terms requiring a notice under the version of §226.9 then in effect. In *Swanson v. Bank of America, N.A.*, 559 F.3d 653 (7th Cir. 2009), the Seventh Circuit reached the same conclusion for a rate increase imposed because the borrower continued to exceed her credit limit. To the contrary, the Ninth Circuit, in *McCoy v. Chase Manhattan Bank, U.S.A., N.A.,* 559 F.3d 963 (9th Cir. 2009), *cert. granted,* 130 S. Ct. 3451 (2010), held that §226.9 required a change-in-terms notice in this circumstance. The Supreme Court invited the Board of Governors of the Federal Reserve System (Board), the agency charged with implementing TILA, to submit a friend-of-the-court brief. The Board's brief stated that the Ninth Circuit "erred in concluding that, at the time of the transactions at issue in this case, Regulation Z required credit card issuers to provide a change-in-terms notice before implementing a contractual default-rate provision." The Supreme Court found that the regulation was ambiguous on this issue and deferred to the Board's interpretation, reversing the Ninth Circuit's decision. Since August 2009, §226.9(c)(2)(i), as amended, requires creditors to provide a change-in-terms notice 45 days in advance before applying a penalty rate increase, even if the possibility of the rate increase had previously been disclosed.

Rescission lawsuit must be filed within three years of consummation. *Williams v. Wells Fargo Home Mortgage, Inc.,* 2011 WL 395978 (3d Cir. 2011). The Third Circuit affirmed the dismissal of a lawsuit to rescind a mortgage loan that was filed more than three years after consummation. The plaintiff consummated her mortgage on November 14, 2002, and notified her lender more than two years later that she was exercising her right of rescission. However, she did not file a lawsuit seeking rescission until more than three years after consummation. Under TILA and Regulation Z, a consumer has three business days to rescind certain mortgages, but the period can be extended to three years if the creditor fails to provide the rescission notice or the TILA material disclosures. The issue on appeal was whether the consumer exercises the right by sending notice to the creditor within three years of consummation or whether a lawsuit must be filed within that period. Relying on the Supreme Court's decision in *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), the Third Circuit concluded that "a legal action to enforce the right must be filed within the three-year period or the right will be completely extinguished." Because the plaintiff's lawsuit was filed more than three years after consummation, the court affirmed the dismissal of the case.

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Retroactive application of amended SCRA permitted. *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 637 F.3d 454 (4th Cir. 2011). The Fourth Circuit reversed the dismissal of a service member's lawsuit because of a recent amendment to the SCRA permitting a private cause of action for damages for SCRA violations. While the plaintiff was away on deployment, the apartment complex where he lived had his car towed because of a flat tire. The towing company later sold the vehicle. The plaintiff had previously notified the landlord that he was subject to deployment and listed his wife as an emergency contact, but neither was notified of the towing. The plaintiff sued the towing company for violating the SCRA, which prohibits creditors from foreclosing or enforcing a lien on the property of a service member during military service and 90 days thereafter without a court order. The trial court dismissed the case because the SCRA did not provide for a private cause of action for damages when the suit was filed. However, in October 2010, while the appeal was pending, Congress enacted the Veterans' Benefits Act of 2010 (VBA), which amended the SCRA to permit recovery of damages and attorney's fees. The Fourth Circuit had to determine whether the amended SCRA could retroactively be applied to the plaintiff's case. The court noted that if a statute does not expressly allow retroactive application, a law cannot be applied retroactively if doing so would attach "new legal consequences to events completed before its enactment." The court found that the right to compensatory and punitive damages for a wrongful asset execution was already available under Virginia's conversion laws, so allowing the plaintiff's case to proceed under the amended SCRA was not adding a new legal consequence but simply permitting a federal forum. The court therefore reversed the dismissal of the lawsuit and remanded the case to the trial court for further proceedings. The VBA allows civil damages of up to $55,000 for the first SCRA violation and up to $110,000 for subsequent violations.

FAIR CREDIT REPORTING ACT (FCRA)

Furnishers' duties for disputed information. *Anderson v. EMC Mortgage Corp.,* 631 F.3d 905 (8th Cir. 2011). The Eighth Circuit affirmed the dismissal of a lawsuit under the FCRA against a furnisher of credit information. The plaintiff made timely payments to EMC, his mortgage lender, but EMC lost his December 2006 check and waited four months before presenting it. By the time the check was presented, the plaintiff had closed the account. In May 2007, the plaintiff made an extra payment that brought his account up-to-date. EMC reported the account as more than 30 days late to the consumer reporting agencies (CRAs) because of the dishonored check. As a result of the negative reporting, the plaintiff lost favorable financing for a real estate purchase and filed suit against the furnisher for damages. The trial court determined, and the Eighth Circuit agreed, that the plaintiff's claim under §1681s-2(b) of the FCRA was deficient because the plaintiff did not allege that he disputed EMC's reporting to the CRAs. A furnisher's duty to investigate is triggered when a consumer files a dispute with a CRA and the CRA notifies the furnisher. Moreover, EMC produced evidence that it responded to automated consumer dispute verification forms from the CRAs about the account and accurately indicated the account was past due. The court also noted that the plaintiff did not challenge the trial court's determination that the account was past due as a matter of state law. Based on this, EMC properly reported to the CRAs that the plaintiff's account was past due for more than 30 days.

Effect of the Red Flag Program Clarification Act of 2010 (Clarification Act) on scope of red flag rules. *American Bar Association v. Federal Trade Commission,* 636 F.3d 64 (D.C. Cir. 2011). In 2007, the Federal Trade Commission (FTC) enacted the Identity Theft Rules, 16 C.F.R. 681 et seq., to implement requirements of the Fair and Accurate Credit Transactions Act of 2003. The regulations require financial institutions and creditors to establish a program to protect consumers from identity theft. The FTC later published an extended enforcement policy indicating that professionals who bill their clients after services are provided, such as attorneys and doctors, qualify as creditors and are therefore subject to the regulations. The American Bar Association (ABA) successfully sued the FTC to challenge the regulations as applied to attorneys and the FTC appealed. While the appeal was pending, Congress passed the Clarification Act in December 2010 to exclude service professionals from the definition of creditors subject to the FCRA's red flag rules. "Creditor" is now defined in §615(e) of the FCRA as someone who not only regularly extends, renews, or continues credit but also regularly uses or obtains consumer reports, furnishes information to consumer reporting agencies, or advances funds with an obligation of future repayment. The definition excludes a creditor "that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person." Because Congress specifically passed the Clarification Act to exclude service professionals, including attorneys, from the scope of the red flag rules, the court dismissed the appeal as moot.

* Links to the court opinions are available in the online version of *Outlook* at: http://www.consumercomplianceoutlook.org.

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Compliance Requirements for the Servicemembers Civil Relief Act

without a court order, and by allowing service members to terminate motor vehicle leases in certain circumstances.

Interest Rate Reductions

Section 527 of the SCRA requires that for debts entered into by service members or service members and spouses jointly before the service member enters military service, the interest rate cannot exceed 6 percent during the period of military service and one year thereafter for mortgages or 6 percent during the period of military service for nonmortgage debt. Interest includes all fees and charges associated with the loan. Interest in excess of 6 percent must be forgiven and not deferred. Creditors must also adjust the periodic payments on the loan to reflect the reduced interest rate.

The protections under §527 are triggered when a service member sends written notice to the creditor and includes a copy of the military order calling the service member to military service. The notice can be sent to the creditor as late as 180 days after the date of the service member's termination or release from military service. After the notice is received, the creditor must adjust the loan retroactive to the date on which the service member was called to military service. Note, however, that §527(c) permits a creditor to seek relief from the interest rate cap if it can demonstrate "the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service."

Foreclosure Procedures

Under §533 of the SCRA, real property owned by a service member before military service that is secured by a mortgage or deed of trust cannot be foreclosed upon, sold, or seized during the period of military service or up to nine months after service without a court order or the written agreement of the service member.[5] Failure to comply with this requirement voids the sale or foreclosure. If a creditor files a legal action to enforce a mortgage obligation, such as a foreclosure action, §533(b) permits the court to postpone proceedings until the service member is available to attend, extend the mortgage maturity date to facilitate lower monthly payments, grant foreclosure subject to the action being re-opened if the service member challenges it, and extend the period during which the service member can redeem the property by paying the mortgage. To determine if a customer is a service member, financial institutions can search a database maintained by the Department of Defense at: http://1.usa.gov/dod_scra.

It should also be noted that creditors originating mortgage loans insured by the U.S. Department of Housing and Urban Development (HUD), such as Federal Housing Administration loans, must provide a notice to borrowers who default on these loans, informing them of the rights available to service members under the SCRA. The required notice and further details are discussed in HUD's Mortgagee Letter 2006-28 (Mortgage and Foreclosure Rights of Servicemembers under the SCRA), which is available at: http://1.usa.gov/hud-scra.

Lease Terminations for Motor Vehicles

Under §535(a)(1) of the SCRA, a service member has the right to terminate a lease of a motor vehicle that will be used by the member or a dependent for business or personal transportation in the following circumstances:

- the lease is executed by a person who subsequently, during the term of the lease, is called to service for a period of more than 180 days or for a period of less than 180 days if that order is later extended to more than 180 days; or
- a service member executes a lease while in military service and subsequently receives an order
    - for a permanent change of station from with-

[5] Section 533 originally applied to the period of active service or 90 days after service. In 2010, Congress temporarily extended this period to nine months after service in the Helping Heroes Keep Their Homes Act of 2010. The nine-month extended period will revert to 90 days after December 31, 2012. *Outlook* discussed this change in the First Quarter 2011 issue: http://bit.ly/q1-2011.

Did You Miss the Loan Originator Compensation Webinar?

On March 17, 2011, the Federal Reserve System conducted an *Outlook Live* webinar on the Board's new loan originator compensation rules, which apply to closed-end loans secured by a consumer's dwelling. Senior attorneys Paul Mondor and Nikita Pastor, both of the Board of Governors, reviewed the new regulatory requirements under Regulation Z. If you missed the webinar, it can be accessed on the *Outlook Live* website: http://tinyurl.com/loc-webinar.

The Board's rules are designed to protect mortgage borrowers from unfair or abusive lending practices that can arise from certain loan originator compensation practices. The new rules apply to compensation paid to mortgage brokers and the companies that employ them, as well as to mortgage loan officers employed by depository institutions and other lenders. The rules also cover companies that originate and close loans in their own name using table funding.

The rules were originally scheduled to become effective on April 1, 2011. However, the effective date was delayed until April 6, 2011 because of litigation.

in the continental United States to a location outside the continental United States, or

- from a location in a state outside the continental United States to any location outside that state, or
- for deployment with a military unit or in support of a military operation for a period of at least 180 days.

The lessee must return the vehicle within 15 days of the notice to report to duty.[6] In addition, the lessee must provide written notice to the lessor and include a copy of the military orders. The lease is terminated on the date these requirements are satisfied. The lessor can collect any unpaid payments owed for the period preceding the termination but cannot impose an early termination fee.

CIVIL LIABILITY FOR SCRA VIOLATIONS

In October 2010, the Veterans' Benefits Act of 2010 (VBA) was signed into law.[7] The VBA provides a private cause of action for service members for SCRA violations. The relief available includes damages, injunctions, and attorney's fees. The Fourth Circuit recently held that the right to a private cause of action under the VBA could be applied retroactively in Virginia. The case, *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 637 F.3d 454 (4th Cir. 2011), is summarized in "On the Docket" on page 10 of this issue.

STAYING CURRENT ON CHANGES TO THE SCRA

In recent years, Congress has made many amendments to the SCRA. Financial institutions should ensure that they have a system in place to monitor legislative changes. The Justice Department maintains a website that focuses on issues concerning service members, including the SCRA: http://servicemembers.gov.

CONCLUSION

Financial institutions should review their systems to ensure that they are complying with the SCRA's requirements to avoid the financial, legal, and reputational harm that may result from noncompliance. Specific issues and questions about consumer compliance matters should be raised with the appropriate contact at your Reserve Bank or with your primary regulator.

[6] See 50 U.S.C. App. §535(b).

[7] Public Law 111-275, 124 Stat. 2864 (2010)

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Home Mortgage Disclosure Act (HMDA) and Community Reinvestment Act (CRA) Data Reporting: Questions and Answers

this application as withdrawn, approved not accepted, or incomplete?

The answer depends on whether the bank has made a credit decision. If the institution requires the appraisal before making its credit decision, the application should be reported as withdrawn. Based on the HMDA instructions, the institution reports an application as "approved not accepted" if the institution has made a credit decision before the borrower withdraws the application. In addition, an institution would report an application as incomplete if it had sent a notice of incompleteness under §202.9(c)(2) of Regulation B and the applicant did not respond to the request within the specified time period.

Property Location

17. *What property location do we report when a home purchase loan is secured by multiple single-family residential properties and the properties are located in different census tracts?*

As discussed in comment 203.4(a)(9)-2, an institution reports the property taken as security for a home purchase loan. If the institution takes more than one property as security, it should report the property location being purchased if the applicant is purchasing only one property. If the applicant is purchasing multiple dwellings that will secure the loan, the institution has two reporting options:

- Report the property location for one of the properties, or
- Report the loan using multiple entries on the LAR and allocate the loan amount among the properties.

Applicant Information

18. *Should an income amount be reported if the borrower is a corporation but the co-borrower is an individual?*

The HMDA instructions state that if the applicant or co-applicant is not a natural person, the institution should report "NA" when reporting the income amount for the HMDA application. In this example, the bank should report "NA" because the borrower is not a natural person.

19. *On a denied application, what income amount should be reported if the borrower's tax return shows negative income?*

The HMDA instructions state that an institution should report the *gross* annual income relied on in making the credit decision (not the net income). If the institution did not rely on the income or did not request income, it should report the income as "NA."

Type of Purchaser

20. *On the FFIEC LAR coding sheet, it states the following should be coded as a 0: "Loan was not originated or was not sold in calendar year covered by the register." So what purchaser code should be used for portfolio mortgages that are originated but not sold to another entity?*

For those loans, the bank would report the code as "0" to reflect that the loan was not sold during the current year, even though it will eventually be sold. The language for a loan's sale, which is also included in the HMDA instructions for reporting the type of purchaser code, reflects two concepts. First, if a loan is never sold, the institution should use code "0" to reflect this. Second, this code is used if a bank intends to sell a loan but did not do so during the current reporting year.

21. *How do we determine the appropriate purchaser type code when the contract does not specify the company's type and the bank's contact at the company cannot help determine the purchaser type?*

The institution has an obligation to ensure that it reports the purchaser type correctly on its HMDA LAR. Therefore, the institution should conduct the research necessary to determine the appropriate purchaser code to report.

22. *During the* Outlook Live *webinar, the presenters mentioned that institutions should monitor their loan purchase contracts to ensure that they report the appropriate loan purchaser type code. Would you please elaborate further on how merger and acquisition activity may affect such reporting?*

    As discussed during the webinar, it is a good practice to review newly signed or renewed loan purchase contracts to ensure the bank has identified the actual purchaser and reports the purchaser type correctly. Occasionally, upon renewal of the contract, the purchaser may change, which could affect the purchaser type for HMDA reporting purposes. In some cases, even though the bank's purchase relationship has not changed, the actual purchaser type may be different because of two entities merging or one entity acquiring another entity.

Lien Status

23. *We often originate unsecured loans to purchase dwellings. The HMDA-reporting software will not allow us to report lien status as code 3 (not secured by a dwelling). What lien status should be reported for these loans?*

    The bank should not report unsecured home purchase loans under HMDA because such loans are not secured by a dwelling. The definition of home purchase loan in §203.2(h) is a loan secured by and made for the purpose of purchasing a dwelling. Similarly, a refinancing, as defined in §203.2(k), must be a dwelling-secured loan. The FFIEC HMDA-reporting software contains a number of edits intended to identify potential errors in an institution's reported HMDA data. One edit in the software notes that the reported lien status cannot be 3 (not secured by a lien) if the loan purpose is 1 (home purchase) or 3 (refinancing). This edit helps ensure that the bank reports only dwelling-secured home purchase and refinance loans as required by HMDA. Additional information about HMDA edits is available at: http://bit.ly/ffiec-edit.

CRA DATA REPORTING QUESTIONS AND ANSWERS

Reportable Loans

1. *What types of loans to nonprofits are not reportable?*

   This issue is addressed in question ___.12(v)-1 of the March 11, 2010 Interagency Questions and Answers Regarding CRA (Q&A), which are available at http://bit.ly/CRA-qa. (Question __.12(v)-1 appears on page 11653 of the *Federal Register* notice.) In general, a loan to a nonprofit organization secured by nonfarm, nonresidential property for business or farm purposes is:

   - A small business loan if it is a business loan with an original loan amount of $1 million or less, or
   - A small farm loan if it is a farm loan with an original amount of $500,000 or less.

   In addition, as explained in the Consolidated Reports of Condition and Income (Call Report) Instructions for Schedule RC-C, a loan to a nonprofit organization that is collateralized by an oil or mining production payment would be considered a small business loan; however, all other loans to nonprofit organizations would generally be classified under Item 9 (Other Loans) and, therefore, would not be reportable as small business or small farm loans. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and Thrift Financial Report (TFR) purposes may be considered as community development loans if they meet the regulatory definition of community development.

2. *Are small business loans secured by business assets and a personal residence taken as an abundance of caution reportable?*

   This issue is addressed in Q&A ___.12(v)-3 (page 11653 of the *Federal Register* notice). For Call Report filers, loans secured by nonfarm residential real estate that are used to finance small businesses are generally not included as "small business" loans unless the security interest in the nonfarm residential real estate is taken only out of an abundance of caution. (See Call Report glossary definition of Loans Secured by Real Estate.) The Q&A also highlights the potential consideration of these transactions as community development loans if they promote community development.

   Similarly, institutions that file TFRs may report certain nonfarm residential real estate depending on how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage commercial loans. (See TFR Q&A No. 62.)

Mergers

3. *For banks that acquired failed institutions during 2010, does the purchasing bank report all the loans acquired through the acquisition, or does the purchasing bank ensure that only the 2010 loans and applications from the acquired institution are reported?*

   Institutions should treat acquisitions of failed institutions as they would a typical merger or acquisition. Q&A ___.42-5 (page 11667 of the *Federal Register* notice) provides specific data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities. Institutions should not report data for loan activity that occurred prior to the year of acquisition. In a situation where neither a merger nor an acquisition of a branch is involved, and the institution purchases CRA-related loans in bulk from another entity (for example, from a failing institution), the purchasing institution must report those loans as purchased loans.

   Conversely, acquisitions of loan portfolios would be treated differently. In those circumstances, the acquired loans would be reported as purchased loans, as outlined in §228.42 of Regulation BB.

4. *For purchased CRA loans (Action "6"), do we report revenue as "NA"?*

   The data collection and reporting requirements outlined in §228.42 of Regulation BB require an indicator of whether the loan was to a business or farm with gross annual revenues of $1 million or less. The "NA" response should be used only when the gross annual revenue information is not available or was not used in making the credit decision.

Income

5. *When reporting revenue for CRA data, are the terms co-borrower, guarantor, and co-signer used interchangeably when determining whether to include revenue?*

   Q&A ___.42(a)(4)-1 (page 11669 of the *Federal Register* notice) discusses the revenue to be included in determining whether a small business borrower had gross annual revenues of $1 million or less. Generally, an institution should rely on the revenues that it considered in making its credit decision. The Q&A provides specific examples with affiliated business relationships. The Q&A further clarifies that revenue or income relied on from co-signers or guarantors that are not affiliates of the borrower should not be factored into the revenue determination.

6. *If the loan is to a start-up business but no actual revenue information has been provided, should revenue be recorded as "1"?*

   Q&A ___.42(a)(4)-3 (page 11670 of the *Federal Register* notice) clearly states that institutions should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross annual revenue and therefore should not be used.

7. *If a business is being purchased, may the acquiring bank rely on the purchaser's revenues when reporting data? How would the acquired entity's revenue be considered? Similarly, if an established business is starting a business, what revenue figures would be used?*

   A number of scenarios may arise relating to start-ups and business acquisitions. Consistent with previous answers and Q&A _.42(a)(4)-3, an institution would generally use gross annual revenue for existing business entities and actual revenue for a start-up business that were relied on in making the credit decision. Because the Q&As do not address all possible scenarios, institutions should consult their primary regulator regarding the treatment of specific transactions.

8. *If cash flow analysis is performed using gross income, may an institution use "NA" in reporting gross annual revenue?*

   Q&A ___.42(a)(4)-2 (page 11670 of the *Federal*

Register notice) discusses the reporting requirements for gross annual revenue for small business or small farm loans. If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting these data.

9. *When is it acceptable to use "unknown" for gross annual revenues when reporting CRA data?*

   Q&A __.42(a)(4)-2 addresses circumstances in which no revenue information is requested or considered in making the credit decision. In these instances, institutions should enter the code indicating "revenues not known." Examples of these transactions include loans secured by certificates of deposit or savings, which often do not require revenue information in the credit decision.

Loan Location

10. *What is the most appropriate way to establish the loan location, for example, if the loan is secured by real estate and there is an alternative business location? Can we report the location of the collateral as the reported loan location?*

    Q&A ___.42(a)(3)-1 (page 11669 of the *Federal Register* notice) addresses the loan location to be recorded. Specifically, an institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower. A loan location based solely on the collateral location would be inappropriate.

Dodd-Frank Act

11. *Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is effective on the transfer date for the Consumer Financial Protection Bureau (CFPB), which is July 21, 2011. Does this mean that the small business data requirements in §1071 of the act are effective on this date as well? In what reporting year will the new regulations take effect?*

    Although §1071 is effective on the designated transfer date of July 21, 2011, this section of the act also explains that the CFPB has responsibility for prescribing rules and issuing guidance for implementing the small business data collection requirements. Therefore, the act's new small business data collection requirements will not begin until the CFPB publishes final implementing regulations, which will identify an effective date. The CFPB published a letter discussing this issue, which is available at: http://1.usa.gov/cfpb-letter.

CONCLUSION

As referenced in this article, institutions should rely on existing HMDA and CRA data reporting rules and guidance for ensuring compliance with reporting requirements. Specific issues and questions about consumer compliance matters should be raised with the appropriate contact at your Reserve Bank or with your primary regulator.

RESOURCES

Additional resources for CRA and HMDA data reporting are available on the *Outlook* website at: http://bit.ly/cco-resources.

Compliance Alert

The Dodd-Frank Act increases from $100 to $200 the minimum amount of funds deposited by check or checks on a given business day that a bank must make available by opening of business on the next business day. That change is expected to take effect on July 21, 2011, regardless of whether the Board and the CFPB have amended Regulation CC.

Compliance Alert

The Board announced two final rules on March 25, 2011 under Regulations Z and M to expand consumer protection regulations to credit transactions and leases of higher dollar amounts. Effective July 21, 2011, the Dodd-Frank Act requires that the protections of the Truth in Lending Act (TILA) and the Consumer Leasing Act (CLA) apply to consumer credit transactions and consumer leases up to $50,000, compared with $25,000 currently, and the amount will be adjusted annually to reflect any increase in the consumer price index. Currently, consumer loans and leases of more than $25,000 are generally exempt from TILA and the CLA. However, private education loans and loans secured by real property (such as mortgages) are subject to TILA regardless of the amount of the loan. The Board's announcement and the *Federal Register* notice are available at: http://1.usa.gov/frb_tila.

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Compliance Requirements for Young Consumers

regulations in sub-part F of Regulation Z, §§226.46-48. These requirements apply to a private education loan.

Private Education Loan Defined

Section 226.46(b)(5) defines a private education loan as an extension of credit that:

- is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1070 et seq.;
- is extended to a consumer expressly, in whole or in part, for post-secondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
- does not include open-end credit or any loan secured by real property or a dwelling; and
- does not include an extension of credit in which the educational institution is the creditor if the loan term is 90 days or less or an interest rate will not be applied to the credit balance and the loan term is one year or less, even if the credit is payable in more than four installments.

Under this definition, if a personal loan will be used in whole or in part to pay post-secondary educational expenses[7] at a covered financial institution,[8] the loan is considered a private education loan and is subject to heightened disclosure requirements. The Commentary indicates that even banks that offer personal loans not specifically marketed as student loans may be covered by the new disclosure requirement. Under comment 226.46(b)(5)-2, multi-purpose loans that are used in part to cover educational expenses are deemed private student loans if the customer expressly states that part of the proceeds of the loan will be used for paying post-secondary educational expenses. However, the regulation does not place a high burden on financial institutions to determine the purpose of the loan. They can rely solely on a purpose line or a check box to determine how the loan proceeds will be used.

[7] As defined by §226.46(b)(3) and §472 of the HEA, 20 U.S.C. 1087ll, as a "cost of attendance."

[8] As defined by §§101 and 102 of the HEA, 20 U.S.C. §§1001-1002. For-profit career training schools are not subject to the disclosures in §226.46.

Disclosure Requirements for Private Education Loans
If your institution is a creditor offering private education loans, several disclosures must be provided to borrowers at each of the three stages of the loan process.

Application/Solicitation Disclosures
Section 226.47(a) requires creditors to disclose on or with a solicitation or an application for a private education loan the following information:

- loan rates;
- itemization of any applicable fees, including late fees and adjustments to the rate and principal if the borrower defaults;
- repayment terms;
- cost estimates;
- age or school eligibility requirements; and
- federal loan alternatives, including a listing of the rates for the alternative loans

For telephone applications, the information may be provided orally or may be mailed no later than three business days after the consumer applies.

Approval Disclosures
The approval disclosure must be provided before consummation on or with any notice of approval. The disclosure requirements appear in §226.47(b) and repeat the types of information in the application/solicitation disclosures but are transaction specific. The approval disclosures also emphasize the consumer's substantive right to accept the loan on the terms disclosed within 30 business days of receipt of the disclosures.

Final Disclosures
The final disclosures are governed by §226.47(c), which requires creditors to disclose, after the consumer accepts the loan, the identical transaction-specific information in the approval disclosures, except that creditors must also disclose the right-to-cancel clause and exclude the federal loan alternatives information provided in the two previous disclosures. The right-to-cancel clause informs borrowers that they have three business days after receiving the final disclosures to cancel the loan without penalty. Because of this right, which appears in §226.48(d), the loan proceeds cannot be disbursed until the cancellation period expires.

To facilitate compliance, the Board has provided model forms H-18 (application and solicitation disclosure), H-19 (approval disclosure), and H-20 (final disclosure). The forms are available in Appendix H to Regulation Z and reflect extensive consumer testing. Use of the model forms provides a safe harbor for the disclosure requirements.

Co-Branding Restrictions
In 2007, an investigation by New York's attorney general revealed conflicts of interest between some student lenders and institutions of higher education, with some lenders making payments to the institutions in exchange for receiving preferred treatment when the institutions recommend loan providers.[9] Congress included provisions in the HEOA to address this issue, which the Board implemented in §226.48. This section prohibits the use of co-branding arrangements between creditors and institutions of higher education unless certain disclosures are made. In particular, §226.48 requires creditors to disclose if the institution of higher education agrees to endorse a creditor's private education loan products. The marketing for the loans must clearly and conspicuously state, in equal prominence and close proximity to the reference to the educational institution, that the creditor's loans are not offered or made by the educational institution but by the creditor.

CONCLUSION
While young consumers can be a profitable consumer segment, financial institutions must be mindful of the additional protections Congress has provided to this group. Understanding these protections will help institutions avoid the financial and legal harm that can result from noncompliance. Specific issues and questions about consumer compliance matters should be raised with the appropriate contact at your Reserve Bank or with your primary regulator.

[9] Information about the investigation is available on the New York attorney general's website: http://bit.ly/ny-loans.

Consumer Compliance Outlook®

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Calendar of Events

July 31- August 3, 2011	Consumer Lending Institute Independent Community Bankers of America (ICBA) Embassy Suites Hotel Minneapolis, MN
September 25-27, 2011	Regulatory Compliance Conference Mortgage Bankers Association Renaissance Hotel Washington, D.C.
September 27, 2011	Compliance Risk Workshop: What Directors Need to Know Office of the Comptroller of the Currency Sheraton Sioux Falls Sioux Falls, SD