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Consumer Loan Products and the Federal Regulation of Consumer Credit

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Consumer credit is a broad term that refers to credit granted primarily to individuals for personal, family, or household purposes. The most common forms of consumer credit are real estate secured loans (also known as "mortgage loans"), auto loans, credit cards, and personal loans. Personal loans typically are unsecured.[1]

This chapter provides a general overview on the types of loan products and financial services available to the American consumer, the federal laws applicable to those transactions, and the agencies that regulate those goods and services. In the brave new world of consumer financial services law after passage of major financial reforms,[2] the various types of consumer loan products are subject to greater supervision, not just by the Consumer Financial Protection Bureau,[3] but by newly empowered state agencies. This chapter also identifies the basic structures for consumer lending in the United States and examines the basic laws that apply to each type of transaction.

The discussion below is not intended to be exhaustive, and readers should review those sections of this publication that contain more detailed analyses.

The Basics of Consumer Finance

Q 1.1 What is a consumer loan?

A "consumer loan" refers to the extension of credit, that is, the right to defer payment on moneys received, to a natural person for personal, family, or household purposes. In some cases, consumer credit laws may apply to the right to defer any payment, even in cases where the consumer does not receive any funds. The consumer loan may be secured or unsecured,[4] and either open-end or closed-end credit.[5]

Q 1.1.1 What are the principal structures of consumer loan regulation?

The government regulates consumer lending in myriad ways at the federal and state levels, through numerous laws, regulations, staff commentary and opinions, and other guidance (both formal and informal). Broadly speaking, these regulations may be categorized into the following: (1) oversight of lending entities through the process of granting and renewing licenses, charters, or other forms of authority to engage in the business of lending; (2) protecting consumers by requiring specific disclosures intended to protect consumers through a better understanding of loan costs or terms or a business entity's legal duties; (3) substantive regulation of lending, including limitations on loan terms (for example, usury limits or restrictions on loan costs or terms, such as negative amortization) or the lending process (such as requiring waiting periods or full documentation underwriting); and (4) use by enforcement officials of broad concepts, such as unfairness or deception, that do not provide specific instruction to lenders as to what they must do to comply with the law.

Q 1.2 Who is a consumer?

In general, federal law limits the term "consumer" to natural persons to whom consumer credit is offered or extended, and covers only credit that is offered or extended primarily for personal, family, or household purposes.[6] With some exceptions, a corporate entity or trust that is owned and controlled by a natural person is not a consumer for purposes of consumer protection statutes.[7] With this background, it is important to remember that a business could procure a loan for personal, family, or household purposes, but that loan would not generally be considered consumer credit. Likewise, an individual who procures a loan primarily or entirely for business purposes (such as a business owner borrowing money that is secured by the owner's principal residence to pay for business expenses, or an investment or a business loan that the owner co-signs personally) is not obtaining consumer credit.

Q 1.3 What is a loan?

A loan is a form of debt memorialized in a written instrument called a promissory note. Under a promissory note, the lender typically advances funds in exchange for the borrower's repayment of the money over time. The amount of money borrowed is known as the "principal." The borrower agrees to pay back the principal under an agreed-upon schedule, typically (but by no means universally) in monthly installments of the same amount. In exchange for advancing the principal to the borrower, the lender will receive "interest" and, in many types of credit transactions, other fees and charges associated both with the underwriting and making of the loan, and costs or events that occur subsequent to the origination during the servicing or collection of the loan (such as late fees, insufficient funds fees, any cost of collection, and any cost or expense associated with protecting the lender's security interest associated with the loan).

Q 1.3.1 What is the difference between an unsecured and secured loan?

A loan may be either secured or unsecured. When the loan is secured, the lender takes a lien (or security interest) as collateral on the borrower's real or personal property. When the loan is unsecured, the lender does not accept collateral for the loan. For example, a borrower's home is the collateral for a mortgage loan, while an automobile is the collateral for an auto loan. Other types of loans are typically unsecured, such as student loans, credit card accounts, and smaller dollar personal loans.

Q 1.3.2 What is the difference between open-end and closed-end credit?

There are two basic forms of credit extension: open-end and closed-end. Open-end credit is a form of loan in which the lender, in making the credit available, contemplates repeated transactions (that is, the borrower may borrow funds, repay them, and re-borrow up to a certain credit limit). Credit card debt and home equity lines of credit are the two most common examples of open-end credit. In most cases, the lender assesses a finance charge from time to time on the outstanding unpaid balance. The amount of credit extended to the consumer during the term of the open-end plan, up to any limit set by the creditor, generally is made available again to the extent that any outstanding balance is repaid.[8]

Closed-end credit, in contrast, is just about everything else, and generally refers to loans with a fixed amount that is borrowed in a "lump sum," with no right to borrow again any principal that is repaid. The amount is typically disbursed to the borrower (or on the borrower's behalf) in one payment at closing. A typical first mortgage loan is closed-end credit because the loan is paid to or on behalf of the borrower at closing and must be repaid or refinanced within a pre-established number of months or the "loan term" (for example, 360 months for a thirty-year mortgage loan).

Q 1.3.3 What is the difference between a loan and a retail installment sales contract?

In a loan transaction, there is a lender and a borrower. In a retail installment sales contract (RISC), there is a buyer and a seller. A RISC is an agreement whereby the buyer agrees to pay an amount over time for the item purchased. Unlike a loan, in which the borrower promises to repay the lender for the borrowed funds, the buyer's promise in a RISC is made directly to the retailer. A RISC always discloses the "total sale price," which is a term nowhere disclosed on a loan.

Most motor vehicle purchases are in the form of a RISC.[9]

Q 1.4 What is a security interest?

A security interest is the interest in property (such as a lien) that secures performance of a consumer credit obligation, and that typically allows the lender to seize or repossess the property if the consumer does not timely make all loan payments or violates other provisions of the note or the security agreement.

Q 1.5 What interest rates may be charged on consumer loans?

Generally, the maximum rate of interest (or usury limit) that lawfully may be charged in connection with a consumer loan is established under state law. Often the permissible rates will vary by type of credit and type of lender; for example, different rates may be established for consumer loans, mortgage loans, and credit cards. Accordingly, lenders must determine the permissible rate that may be imposed in each state for the type of credit being extended.

A number of federal laws, however, override state usury laws as to certain entities and certain types of loans. See, generally, chapter 14. Under section 85 of the National Bank Act, a national bank may charge interest[10] at the rate allowed by the laws of the state in which it is "located."[11] Under that doctrine, a national bank located in a particular state may charge "interest" at the maximum rate permitted by any state-chartered or licensed lending institution by the law of that state, that is, the "most favored lender." Under section 85, a national bank may export the usury laws of its home state no matter where the borrower resides and despite the contacts that occur in another state.[12]

This "most favored lender" doctrine was expanded to all federally insured banks by Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA) in order to prevent discrimination against state-chartered insured banks, including insured savings banks and insured mutual savings banks, or insured branches of foreign banks.[13]

In addition, DIDA preempts the provisions of any state constitution or laws that expressly limit the rate or amount of interest that may be charged on any loan, mortgage, credit sale, or advance that is secured by a first lien on residential real property, a co-op, or a residential manufactured home.[14] States had the opportunity to opt out of this preemption, and thirteen states opted out.[15] A number of these states have since removed any usury limit in connection with first lien mortgage loans.

Q 1.6 May consumer contracts be in electronic or digital form?

For the most part, yes. The primary sources of law for using "electronic records" and "electronic signatures" in consumer financial services transactions are: (1) the Electronic Signatures in Global and National Commerce Act (E-SIGN);[16] and (2) the Uniform Electronic

Transactions Act (UETA), as approved and recommended by the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws) in July 1999.[17] While E-SIGN is a federal law, UETA is a uniform law recommended by the Uniform Law Commission that must be adopted by individual states. For a more detailed discussion of eCommerce laws, see chapter 5.

Q 1.6.1 What is an electronic record?

An "electronic record" is "a record created, generated, sent, communicated, received, or stored by electronic means."[18] The term covers any type of record that is generated or stored electronically.

Q 1.6.2 What is an electronic signature?

An electronic signature is an "electronic sound, symbol, or process attached to or logically associated with a contract or other record, and executed or adopted by a person with the intent to sign the record."[19] The parties may determine for themselves the technology that is most effective for the transaction at hand. The choices include a simple click-through process (for example, an "I Agree" button), a PIN number, a single string of numeric code that is encrypted, and electronic scanners that read thumbprints or eye patterns, or any combination of those things.

Q 1.6.3 Do UETA and E-SIGN supersede state laws that require that consumer contracts be in writing?

Yes, but only for covered "transactions"[20] and, with respect to UETA, solely in the forty-seven states (plus the District of Columbia) that have adopted UETA. The other three states each have their own eCommerce laws. E-SIGN, as a federal law, applies in all fifty states and the District of Columbia, except to the extent that it defers to each state's UETA or similar eCommerce law. See chapter 5 for more details. UETA and E-SIGN provide that any other rule of law that applies to the transaction and requires a writing or signature is automatically modified to permit the use of electronic records and signatures, unless the underlying law is excluded from coverage by the eCommerce laws themselves.

Consumer Loan Products

Q 1.7 What are the basic types of consumer loan products?

There are many types of consumer loan products on the market today. The most common products are credit card plans, home mortgage loans, home equity lines of credit, auto loans, personal loans, student loans, and payday advance loans.

Q 1.8 What is a personal loan?

A personal loan is a consumer loan, usually unsecured, and generally for smaller purchases such as home repairs, vacations, or unexpected expenses.

Q 1.9 What is a "payday" loan?

A payday (or "cash advance") loan is a short-term, small-dollar loan made to borrowers, usually to address temporary cash-flow shortages. In the typical payday loan, the borrower post-dates a personal check to the lender or preauthorizes an electronic funds transfer in the amount of the loan principal plus fees. On the loan maturity date, the borrower either repays the loan or the lender redeems the check or initiates the electronic debit transaction.

Q 1.10 What is a "mortgage loan"?

The loan may be a "purchase money mortgage" transaction, that is, a loan made to purchase the real estate, a refinance of an existing mortgage loan, or a "home equity" loan where the borrower obtains additional funds secured by real estate in a transaction that neither purchases nor refinances the real estate. There are two essential components of the common mortgage loan: (1) the mortgage (or, in some states, the "deed of trust"); and (2) the note.

Q 1.10.1 What is a mortgage?

A "mortgage" is the creditor's lien on real estate, which is used as collateral to secure an underlying debt. It is a security interest in the consumer's home or other real estate, effecting an encumbrance on or a transfer of an interest in land from the owner of the real estate to the mortgage lender on the condition that this interest will be returned or released to the owner when the terms of the underlying note have been satisfied. The borrower who enters into the mortgage is called the "mortgagor" because he or she is mortgaging real estate, and the lender is called the "mortgagee" because the lender is accepting the mortgage as security for repayment.

In some states, a "deed of trust" is used in lieu of a mortgage. Unlike a mortgage, a deed of trust is entered among three parties (the lender, the borrower, and a trustee). In consideration for the loan, the borrower grants legal title to the trustee who holds the property in trust for the lender's benefit, who is named as beneficiary. The borrower retains equitable title to and possession of the real property.

In addition to requiring the borrower to repay the promissory note, the mortgage or deed of trust typically contains numerous additional provisions that require the borrower, either directly or through an escrow account, to maintain and pay for hazard insurance, pay any real estate taxes, and preserve both the value of the real estate property and the lender's lien position (against, for example, potentially superior liens for property taxes, water, sewer, or mechanics or materialman's liens). The mortgage or deed of trust also typically requires the borrower to pay the lender's costs, including collection costs and attorney's fees, if the lender has to act to protect the value of the property or the lien, provides the borrower with a limited right to reinstate the loan after acceleration upon payments of all past due amounts, and effects a waiver of the property owners' homestead rights.

Q 1.10.2 Are there differences between residential and non-residential mortgage loans?

Yes. Residential mortgages are secured by residential real property, including improvements. These loans will likewise be used for consumer or household purposes and, as a result, are subject to consumer-specific laws and regulations. Non-residential loans commonly are mortgage loans secured by commercial or business-purpose real estate.

Q 1.10.3 What is a mortgage lien?

A "lien" is a claim against a mortgaged property that must generally be paid at the time the property is sold. A "first lien" is superior, that is, it takes precedence over all subsequent liens except for liens that receive priority by law (such as tax liens). In contrast, a "junior lien" is subordinate in that it has a lower priority status.

In contrast, under a deed of trust, if the borrower defaults, the trustee is entitled to sell the property (under a "power of sale") and pays the lender any resulting proceeds to satisfy the debt.

Q 1.10.4 What is a mortgage note?

The mortgage "note" or "promissory note" is the actual loan contract between the consumer and the creditor. The mortgage note is the borrower's actual promise to repay, and is prepared concurrently with, but separate from, the mortgage itself.

In contrast to the mortgage, which pledges title to real property as security for a loan, the mortgage note states the amount of debt and the rate of interest, and obligates the borrower, who signs the note, to repay the principal plus interest and other charges that have accrued. In foreclosure proceedings in certain jurisdictions, borrowers may require the foreclosing party to produce the note as evidence that they are the true owners of the debt.

Q 1.10.5 What is an adjustable rate mortgage?

An adjustable rate mortgage (ARM) is a form of mortgage loan that is repaid at an interest rate that increases or decreases over the life of the loan based on market conditions or other changes in an index used to calculate the rate change. The interest charged is recalculated on pre-determined dates by adding the current value of a specified financial index to a fixed amount or margin.

Q 1.10.6 What is a home equity line of credit?

A home equity line of credit (HELOC) is a form of mortgage loan established as revolving credit, traditionally in a second or junior lien position, for a specified maximum draw amount, rather than for a fixed dollar amount.[21] Under a HELOC, as with other mortgage loans, the borrower's home serves as collateral, and the borrower is approved for a specific amount of maximum credit that may be borrowed from the line. Because the line of credit revolves (that is, the consumer may borrow up to the credit limit, repay some or all of the funds, and re-borrow), a HELOC is deemed to be open-end credit.

Q 1.10.7 What is a reverse mortgage?

A reverse mortgage loan is a form of home equity loan designed for older borrowers (by law, sixty-two years old or older) in which the lender secures a first mortgage on the borrower's home, and the borrower receives either a lump sum or monthly payments, or draws under a line of credit based on the amount of equity available in the borrower's home. Unlike typical mortgage loans, interest accrues and is added to the loan balance, which does not become due until the borrower no longer uses the home as a principal residence or the borrower's death. The most common form of a reverse mortgage is the U.S. Department of Housing and Urban Development's (HUD) insured reverse mortgage product, the Home Equity Conversion Mortgage (HECM), a first mortgage loan "based on accumulated equity" in the borrower's home, and made by authorized housing creditors.[22]

Q 1.11 What is a credit card plan?

A credit card plan constitutes the terms and conditions of the open-end credit card agreement between the consumer and the credit card issuer. Credit card lending is a form of revolving (open-end) credit. See generally chapter 8 (Credit Cards).

Q 1.11.1 What is a credit card issuer?

The credit card issuer is the lender that offers payment cards directly to consumers. Most issuers are banks that offer one or more card association branded payment cards (credit cards, debit cards, gift cards, etc.) although some issuers are non-bank finance companies or affiliates of retailers.

Q 1.11.2 What is a credit card?

A credit card is the access device (most commonly a plastic card with a magnetic stripe) used from time to time to borrow money under the credit card plan of account. The term should be contrasted with "charge cards," which are a form of credit card for which no periodic rate is used to compute finance charges and typically requires payment in full at the end of each billing period.[23]

Q 1.11.3 What is a cardholder?

A cardholder is a natural person to whom a credit card is issued for consumer credit purposes, or who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person.

PRACTICE TIP

"Credit Card Issuers" versus "Credit Card Associations"

Don't confuse the credit card issuer with the credit card association whose branding you see on the card. "Credit card associations" are associations of card-issuing banks that issue branded cards such as Visa, MasterCard, Discover, and American Express. It is these entities that set the interchange fees charged by such card. (Bank of America established the first such national card association in 1966 when it offered to franchise its BankAmericard—today's Visa®—to other banks.)[24] An interchange fee is the amount paid by a merchant's bank (the "acquiring bank" in the transaction) to the customer's bank (known as the "issuing bank") when the merchant accepts the card using the applicable card network, such as American Express or Visa, to complete the purchase. Interchange fees have been subject to a great deal of antitrust-related litigation filed primarily by merchants. The recent Dodd-Frank Act grants the Federal Reserve authority to limit financial institutions having assets greater than $10 billion on their fees on debit card transactions.

Q 1.12 What is a student (or "educational") loan?

In the United States, a student loan (also known as an educational loan) is a specialized, unsecured closed-end loan product created for the express purpose of covering all or a portion of the expense of a student's college tuition, books, and housing expenses. Unlike a typical personal loan, student loan interest rates on loans made or guaranteed by the government are not underwritten; that is, neither the student nor the student's family's credit are reviewed in determining whether to make the loan or at what rate to make the loan). Other than the student's matriculation at a qualifying school, the loan rates are usually materially below market rates, and the borrower is not required to commence repayment until the student leaves school.

The federal government has stopped issuing new student loan guarantees and now provides its loan subsidies through its direct loan program, although hundreds of billions of dollars of pre-existing federally guaranteed loans remain on the books. In addition to the federal loan programs, some lenders offer private student loans that are not guaranteed by the federal or a state government. Unlike the federal loan programs, these private loans typically *are underwritten*, often require a co-signer, and have more varied terms, including in respect of rates and the timing of repayment.

Q 1.12.1 How do student loan repayments vary from conventional personal loans?

There are at least two significant differences between student loans and other personal loans: First, at least with respect to federally guaranteed or originated loans, the borrower typically may defer payment on both principal and interest until he or she leaves school, with repayment typically commencing six to twelve months thereafter, and whether or not the borrower graduates from the program. Second, unlike many other forms of personal unsecured debt, it is substantially more difficult to be relieved from a student loan debt through a personal bankruptcy. In most cases, student loan debt will survive bankruptcy proceedings absent a showing of undue hardship.[25]

Q 1.12.2 Is a student loan technically a "consumer loan"?

The answer depends on the type of loan. The Truth in Lending Act (TILA)[26] exempts "[l]oans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965"[27,28]—a description that exempts just the federal loan program. Private student loans are covered by TILA because they are made to a natural person, for "personal, family or household" purposes. There are special provisions governing private student loan disclosures.[29] These provisions are not to be confused with Regulation Z provisions governing credit cards offered to college students.[30]

Sources of Consumer Credit

Q 1.13 Who provides credit to consumers?

Consumers have access to credit from a wide variety of sources, both directly and indirectly. Potential sources include, among others, banks, savings and loan associations, credit unions, industrial loan companies, finance companies, mortgage banks, and retailers. Indirect sources include government-sponsored enterprises, such as federal and state agencies that are authorized to make, collateralize, or pool mortgage loans. State housing finance agencies fit into this latter category.

Q 1.14 What is a bank?

Although the term may appear obvious, a bank is typically (but not exclusively) a "depository institution," that is, a financial institution that accepts money deposits. A bank obtains its funds in part, and often primarily, through deposits from the public. Other depository institutions include savings & loan associations and credit unions.

Q 1.14.1 What is a bank holding company?

A bank holding company is any entity that controls one or more banks, and whose ownership of the bank meets the definition of "control" within the meaning of the federal Bank Holding Company Act (BHCA).[31]

Q 1.15 What is a credit card bank?

A credit card bank is a financial institution with a national or state banking charter that limits its activities to credit card operations. These entities are excluded from the definition of "bank" under the federal BHCA as long as they do not: (1) accept most forms of deposits, (2) allow customers to write checks, (3) maintain more than one bank branch, or (4) issue commercial credit cards.[32]

Q 1.16 What is a non-depository institution?

Financial institutions that do not accept deposits are known as non-depository institutions. Typically, these companies do not have a charter; instead, they are formed under a state corporate law as a corporation or an LLC. Because they cannot fund themselves with deposits, they either have corporate borrowings that fund their portfolio of loans or they fund loans with short-term borrowings (typically, warehouse lines of credit), and then they sell the loans either to portfolio lenders or into aggregators that pool loans into asset-backed security structures. Examples of non-depository institutions include finance companies, mortgage banks, insurance companies, and government-sponsored enterprises such as Fannie Mae and Freddie Mac.

Q 1.17 What is a credit union?

A credit union is a form of cooperative organization of stockholding consumer members who are joined by a common bond (for example, a common employer, association, or residence). By definition, the institution serves only its members, taking their deposits and extending mortgage loans and other financing solely to them.[33]

Q 1.18 What is a savings & loan association, and how does it differ from other depository institutions?

Historically, a savings and loan association (S&L or "thrift") has been a financial institution focused on the acceptance of savings deposits and the origination of mortgage and related loans. In more recent years, S&Ls essentially have operated like traditional banks. As a result, federally chartered S&Ls are now regulated and supervised the same way as commercial banks (for example, federal savings associations are today regulated primarily by the Office of the Comptroller of the Currency). While preexisting thrift charters remain in place, banking regulators no longer issue new charters.[34]

Q 1.19 What is an industrial loan company?

Industrial loan companies and industrial banks (collectively, ILCs) are financial institutions that are distinguished by their acceptable ownership by commercial firms that are not regulated by any federal banking agency. ILCs are state-chartered institutions (currently operating in California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah). ILCs are not "banks" for purposes of the BHCA; thus, an entity that owns or controls an ILC is not a bank holding company under the BHCA.[35] ILCs are regulated primarily by the Federal Deposit Insurance Corporation (FDIC).[36]

Q 1.19.1 Do any laws address the potential non-supervision of ILCs?

Under the Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010, which is Title VI, section 603, of the Dodd-Frank Act, Congress established a three-year moratorium on the chartering of additional ILCs that would be directly or indirectly owned or controlled by a commercial firm, pending further study. That moratorium expired in July 2013. The same statute likewise required the Comptroller General to study whether the industrial loan bank exception under the BHCA should be eliminated in order "to strengthen the safety and soundness of the institutions and the stability of the financial system." The study, released in January 2012, favored permanent removal of the exemption.[37]

Q 1.20 What is a mortgage banker?

Mortgage bankers (mortgage lenders) purchase and fund real estate secured loans, using either their own funds, borrowed funds, or funds obtained from secondary market investors. Mortgage bankers are responsible for loan underwriting and typically make representations and warranties to the entity that purchases the loan from the mortgage bank. Those representations and warranties regarding the quality of that underwriting create a financial stake in the loan's performance, as the purchaser may seek to require the mortgage bank to repurchase the loan if the loan defaults and the purchaser can show that the mortgage bank did not underwrite the loan properly. Mortgage bankers typically are state-licensed entities and subject to regulation by the banking or financial institution departments of each state in which they operate.

Q 1.20.1 Is a mortgage company also a bank?

Typically not. A mortgage company could be a division or operating subsidiary of a bank, or it could be either an independent mortgage banker or mortgage broker.

PRACTICE TIP

Mortgage Companies That Are Subsidiaries of Banks and Thrifts

Prior to the Dodd-Frank Act (discussed in chapter 2), national banks and federal S&Ls had a decided advantage over independent mortgage companies because the bank or thrift's mortgage company could function as a separate corporate entity and yet receive all the benefits of federal preemption available to the parent as stated in *Watters v. Wachovia Bank, N.A.*[38] In other words, the bank or thrift's operating subsidiary was exempt from state licensing and examination requirements, and from state laws that interfered with their operations. The Dodd-Frank Act expressly overrules the *Watters* decision, thereby making these operating subsidiaries subject to state licensing and regulation. Interestingly, some states exempt both banks and bank subsidiaries from licensing, meaning that the rollback of preemption has not affected the subsidiaries' licensing in certain states. While a bank or thrift may fix part of the problem by "rolling" the operating subsidiary back into the bank, doing so sacrifices the liability protections offered by separate corporate status. Moreover, terminating the separate corporate status makes it somewhat more difficult to package the mortgage operations for sale to third parties.

Q 1.20.2 What is a mortgage broker?

A mortgage broker is an intermediary that arranges mortgage loans funded by others.

Q 1.20.3 What is the difference between a mortgage banker and a mortgage broker?

A mortgage banker is the originator (or creditor) of a mortgage loan, while a mortgage broker arranges for the loan but does not make or fund it. Under the traditional model, mortgage brokers have access to multiple loan offerings. Their role usually is to inform borrowers of their options among these loan choices, to assist them in completing their mortgage loan applications, and to perform any of a number of other services leading up to the loan closing. In contrast, mortgage bankers not only fund loans arranged by brokers but also may service loans, thereby continuing to address customer needs throughout the life of the loan.

Q 1.20.4 How does the Dodd-Frank Act affect the mortgage broker industry?

Changes in regulation coupled with provisions in the Dodd-Frank Act have made it more difficult for mortgage brokers to compete in the market. Before these regulations and the Dodd-Frank Act, brokers effectively shopped for the best loans at wholesale rates and then received, in some instances, a yield spread premium (YSP), paid outside the closing process, as partial compensation for the services the mortgage broker rendered. The Federal Reserve Board and Congress effectively banned YSPs and any other broker compensation that is based on the terms of a consumer's loan, except for the amount borrowed.[39]

Q 1.21 What is a consumer finance company?

A consumer finance company (also known as a finance company) is a non-bank lender that is licensed by the consumer finance division of a state banking department. Unlike a depository institution, a consumer finance company does not receive deposits, but rather makes both real estate—secured and personal loans, sometimes including auto loans, to consumers for business or personal use. A consumer finance company profits from closing fees and the interest on its loans. Since the collapse of subprime lending, a large number of consumer finance companies have been shuttered but these companies continue to offer small-dollar loans to borrowers who may not qualify for "prime" credit from a bank.

Q 1.21.1 What is an auto finance company?

Auto finance companies are a form of consumer finance company that limits lending activities to the financing of vehicle sales and vehicle leases. An auto finance company may be an operating subsidiary or division of a bank, it may operate independently, or it may be owned by an automobile manufacturer (see captive auto finance company, below).

Q 1.21.2 What is a captive auto finance company?

A captive auto finance company is an auto finance company owned by an auto manufacturer to finance product sales of the manufacturer and, in some cases, of other manufacturers. Ford Motor Credit Corporation (Ford Credit) is an example of a captive auto finance company.

Q 1.22 What is a government-sponsored enterprise?

A government-sponsored enterprise (GSE) is an entity established by Congress that operates with private capital under a government-defined mission and charter. The two most commonly referenced housing-related GSEs are Freddie Mac and Fannie Mae, but the Federal Home Loan Banks also provide liquidity in the residential mortgage lending market.[40]

Q 1.22.1 What are Fannie Mae and Freddie Mac?

Fannie Mae is the nickname for the Federal National Mortgage Association, and Freddie Mac is the nickname for the Federal Home Loan Mortgage Corporation. Fannie Mae and Freddie Mac are GSEs created for the express purpose of adding liquidity to the marketplace by expanding the secondary mortgage market, which is the market for the purchase of loans originated by others by securitizing mortgages into mortgage-backed securities (MBS). In September 2008, the Federal Housing Finance Agency (FHFA) placed both GSEs under a conservatorship.

Q 1.22.2 Do Fannie Mae and Freddie Mac make loans directly to consumers?

No. Instead, approved mortgage lenders originate loans that comply with underwriting guidelines issued by these GSEs. In addition, these lenders employ uniform mortgage instruments that have been developed by Fannie Mae and Freddie Mac for this purpose.[41] Because of the significant involvement by these GSEs in the mortgage market, these uniform instruments likewise are widely used even when the loans are not sold to Fannie Mae or Freddie Mac.

Q 1.22.3 What is the role of the Federal Housing Finance Agency in the operations of Fannie Mae and Freddie Mac?

FHFA is an independent federal agency that acts as the conservator and regulator of both Fannie Mae and Freddie Mac.[42] It is the successor to three government entities: the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the HUD GSE mission team. The agency has expanded legal and regulatory authority over its predecessors, including the powers it exercised when placing Fannie Mae and Freddie Mac into conservatorships.

Q 1.22.4 Is there a government-sponsored entity for the Federal Housing Administration and Department of Veterans Affairs Home Loan Program for Veterans?

No. The Government National Mortgage Association (Ginnie Mae) is not a GSE, but rather a wholly owned government corporation within HUD. Established in 1968, Ginnie Mae guarantees the principal and interest payments on MBS that are collateralized by the cash flows from loans insured or guaranteed by the Federal Housing Administration (FHA), Department of Veterans Affairs Home Loan Program for Veterans (or "VA Loans"), Office of Public and Indian Housing (PIH), and the U.S. Department of Agriculture Rural Development Housing and Community Facilities Programs.[43]

Q 1.22.5 Is there a government-sponsored entity for student loans?

No. However, until 2004, an entity then known as the Student Loan Marketing Association ("Sallie Mae") was a GSE. Originally established in 1972, Sallie Mae became SLM Corporation, a publicly traded corporation with no ties to the federal government. More recently, on April 30, 2014, SLM Corporation spun off a new publicly traded company, Navient Corporation, which includes the historic servicing and asset management operations of SLM Corporation.

Q 1.23 What is a loan servicer?

In consumer finance parlance, a loan servicer is the entity that handles all administrative duties with respect to an originated consumer loan, including mailing of regular statements, collection and remitting of consumer payments, monitoring of collateral such as real estate, maintenance of and payment from property tax and insurance escrows, and foreclosure on defaulted loans. In many cases, the mortgage lender and loan servicer are one and the same entity. Servicers maintain ongoing responsibilities to secondary market investors.

Q 1.23.1 What is a sub-servicer?

A sub-servicer is an entity hired by a lender or investor to perform loan servicing. Today, a large number of mortgage loans are administered by sub-servicers.

Q 1.24 Are retailers covered by consumer finance laws?

Some retailers may be covered by consumer finance laws. For example, if a retailer regularly extends credit to its customers, it will be deemed a "creditor" within the meaning of a number of laws. Moreover, a retailer could be deemed a "financial institution" if the retailer takes on certain characteristics of traditional lenders, and therefore subject to a wide variety of laws. Under the Electronic Fund Transfer Act (EFTA),[44] any entity could be deemed a financial institution to the extent it "directly or indirectly holds an account belonging to a consumer."[45] The Dodd-Frank Act specifically subjects retailers engaged in offering consumer financial products or services to federal consumer protection laws, with limited exceptions for franchised automobile dealers.[46]

Federal Regulation of Consumer Lending

PRACTICE TIP

The Dodd-Frank Act's Impact on Consumer Finance

Among other provisions of the comprehensive financial services reform legislation, the Consumer Financial Protection Act of 2010 (CFPA), Title X of the Dodd-Frank Act,[47] fundamentally transformed the law of consumer financial services, not just on a federal level, but for statewide regulation as well. As discussed in chapter 2, the CFPA not only created a new independent bureau to regulate the providers of consumer financial products and services, but also altered federal preemption jurisprudence.[48] Congress in effect enhanced the role of the states in regulating the world of consumer credit. In addition, Title XIV, the Mortgage Reform and Anti-Predatory Lending Act, made significant changes to mortgage brokering, lending and servicing practices.[49] Much of the effectiveness of both Title X and Title XIV is tied to future enactment of regulations.

Federal Regulators

Q 1.25 What federal agencies regulate consumer lending?

Prior to the Dodd-Frank Act, federal bank regulators and the Federal Trade Commission (FTC) regulated most consumer lending at the federal level. Today, the primary federal regulator for consumer lending and financial products is the Consumer Financial Protection Bureau (CFPB). Other federal agencies still have a substantial role in consumer financial services regulation, and these agencies include the federal banking regulators (each of which has beefed up its consumer protection role in the wake of the financial crisis), the FTC, HUD, and the Department of the Treasury.

Q 1.26 What is the Consumer Financial Protection Bureau?

The Consumer Financial Protection Act of 2010 (CFPA)[50] established the Consumer Financial Protection Bureau (CFPB) as an independent bureau within the Federal Reserve System under the authority of a single director, appointed by the President to a five-year term. The CFPB regulates, supervises, and enforces the offering and provision of consumer financial products or services under federal consumer credit laws.

Q 1.26.1 What statutes does the CFPB administer?

Although previously regulated or enforced by others, the CFPB now has administrative authority over, among other statutes:

- the Electronic Fund Transfer Act,
- the Equal Credit Opportunity Act,
- the Fair Credit Reporting Act,
- the Fair Debt Collection Practices Act,
- the Home Mortgage Disclosure Act,
- the Real Estate Settlement Procedures Act,
- the Secure and Fair Enforcement for Mortgage Licensing Act, and
- the Truth in Lending Act.[51]

CFPB authority does not end with these statutes. Congress likewise granted the CFPB authority both to take *enforcement actions* against consumer financial service providers and their related persons to prevent those entities "from committing or engaging in an unfair, deceptive, or abusive act or practice [UDAAP] under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service." Moreover, the CFPA provides the CFPB authority to *issue rules* that identify and prevent UDAAP violations. For a more detailed discussion of the CFPB's UDAAP authority, see chapters 2 and 11.

Q 1.26.2 What is the scope of the CFPB's authority?

The CFPB's authority broadly extends to a wide number of "covered persons"[52] and "service providers" regarding both new and preexisting consumer financial protection laws and regulations.

For example, the CFPB has primary and exclusive enforcement authority with respect to what the Act describes as "very large" depository institutions, that is, those with $10 billion or more in total assets, but only in connection with their compliance with covered statutes. The CFPB likewise may require reporting from any other bank where necessary to support CFPB enforcement of consumer financial laws, and for assessing and detecting risks to both consumers and financial markets.

The CFPB website may be found at www.consumerfinance.gov.

Q 1.26.3 Do CFPB rules preempt state law?

In general, yes, but only if the state law conflicts with the applicable federal law.[53] This preemption standard is the same as the one applicable to TILA and similar statutes.

The End to Most Federal Preemption?

Not at all. The Dodd-Frank Act amended the National Bank Act and the federal Home Owners Loan Act, the principal federal banking statutes, to provide that a "state consumer financial law" is preempted if it: (1) discriminates against national banks; (2) "in accordance with the legal standard for preemption in . . . Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers"; or (3) is preempted by other federal law. The Dodd-Frank Act permits the OCC to issue regulations preempting state consumer financial laws only if it first determines, on a case-by-case basis, that the state law or an equivalent state law elsewhere meets the *Barnett* standard.[54] Although the *Barnett*-based provision initially created some uncertainty, both the OCC and courts interpreting the law substantially eased those concerns by concluding that the Dodd-Frank Act's "prevents or significantly interferes" provision merely clarifies the preexisting preemption standard. The OCC final rule, issued in July 2011, concludes that "the Dodd-Frank Act does not create a new, stand-alone 'prevents or significantly interferes' preemption standard, but rather incorporates the conflict preemption legal standard and the reasoning that supports it in the Supreme Court's *Barnett* decision." In short, the OCC and most courts thus far have found that bank preemption lives on. See also chapter 13.

Q 1.26.4 Does CFPB authority extend beyond depository institutions?

Yes. For example, any service provider that provides services to a substantial number of depository institutions is subject to CFPB authority to the same extent that the activities were performed by such institutions. Moreover, the CFPB is authorized to supervise a wide variety of enumerated nondepository institutions including any entity that offers origination or brokerage of most loans secured by real estate, any provider of loan modification or foreclosure relief services in connection with such loans, and entities such as payday lenders and student loan providers, among others.

The CFPB recognizes that the use of service providers is often an appropriate business decision.[55] Nonetheless, the CFPB expects supervised banks and nonbanks to: (1) "have an effective process for managing the risks of service provider relationships;"[56] and (2) "take steps to ensure that their business arrangements with service providers do no present unwarranted risks to consumers."[57]

Q 1.26.5 What consumer lending regulations are enforced by the CFPB?

The CFPB is responsible for rule-making with respect to at least the following regulations: These are the most commonly referenced statutes in consumer lending.[58] Among the regulations that have been renumbered and republished are the following:

- Regulation B (12 C.F.R. Part 1002), Equal Credit Opportunity Act;
- Regulation C (12 C.F.R. Part 1003), Home Mortgage Disclosure Act;
- Regulation E (12 C.F.R. Part 1005), Electronic Fund Transfer Act;
- Regulations G and H (12 C.F.R. Parts 1007 and 1008), Secure and Fair Enforcement for Mortgage Licensing Act;
- Regulation M (12 C.F.R. Part 1013), Consumer Leasing Act;
- Regulation P (12 C.F.R. Part 1016), Privacy of Consumer Financial Information;
- Regulation V (12 C.F.R. Part 1022), governing FCRA practices of covered banks;
- Regulation X (12 C.F.R. Part 1024), Real Estate Settlement Procedures Act;
- Regulation Z (12 C.F.R. Part 1026), TILA; and
- Regulation DD (12 C.F.R. Part 1030), Truth in Savings Act, requiring banks to provide meaningful disclosures in connection with deposit accounts.

As discussed below, this list is not exhaustive of the CFPB's total rule-making authority.

Q 1.27 What authority remains with other federal agencies?

Plenty. Outside of consumer financial products and related services, preexisting federal agencies have largely retained their regulatory authority over their various covered businesses and operations. The relevant banking regulators are:

(1) the Office of the Comptroller of the Currency;
(2) the Federal Reserve;
(3) the Federal Deposit Insurance Corporation; and
(4) the National Credit Union Administration.[59]

Each of these agencies continues to regulate bank or depository activities under other federal lending laws such as the Community Reinvestment Act (CRA) and section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts and practices.

Q 1.27.1 What is the Office of the Comptroller of the Currency?

Created in 1863 by the National Bank Act, the Office of the Comptroller of the Currency (OCC) is the agency of the Department of the Treasury that charters, regulates, and supervises all national banks. Although the CFPB has assumed numerous functions, the OCC continues to regulate other activities of national banks as well as those federal savings banks that were formerly regulated by the OTS (which was abolished by the Dodd-Frank Act). After the abolition of the OTS, the OCC also gained rule-making (but not regulatory) authority over state S&Ls.

Q 1.27.2 What is the Federal Reserve?

Created in 1913 in response to a nationwide bank panic, the Federal Reserve System (the “Fed” or “Federal Reserve”) is the central banking system. Among many other functions, the Board of Governors of the Fed (the “Federal Reserve Board”) regulates banks with state charters that are members of the Federal Reserve System and bank holding companies.

Q 1.27.3 What is the Federal Deposit Insurance Corporation?

In response to the bank failures of the Great Depression, Congress established the Federal Deposit Insurance Corporation (FDIC) in 1933. In conjunction with state banking departments, the FDIC regulates banks with state charters that are not members of the Federal Reserve System, and likewise regulates state S&Ls after the abolition of the OTS. The FDIC has three other important functions. First, the FDIC provides deposit insurance that guarantees the safety of deposits in member banks, currently up to $250,000 per depositor per bank. Second, the FDIC serves as the conservator or receiver of failed banks. Third, under the Dodd-Frank Act, the FDIC is likewise the primary consumer financial regulator of banks that are not "large banks" based on the $10 billion asset size. While the CFPB has jurisdiction to supervise consumer financial activities of large banks, the FDIC has jurisdiction over all other banks.

Q 1.27.4 What is the National Credit Union Administration?

The National Credit Union Administration (NCUA) is an independent federal agency tasked with chartering, supervising, and insuring federal credit unions. The NCUA manages the National Credit Union Share Insurance Fund, a federal fund similar to FDIC insurance that is backed by the full faith and credit of the U.S. government.

Bank Regulators—Coordinating Policy and Practices

Bank regulators attempt to coordinate policy and practices. Each of the regulators is a member of the Federal Financial Institutions Examinations Council (FFIEC), an inter-agency council whose primary purpose is to promote uniformity in the regulatory oversight of the country's banking institutions.[60] In addition to the federal banking regulators, the FFIEC also includes the State Liaison Committee, an organization that includes representatives from the major state regulators' trade associations, that is, the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS). A representative of the CFPB also serves on the FFIEC.

Q 1.27.5 What happened to the authority of those agencies from whom authority has been transferred to the CFPB?

The answer depends on the agency. In accordance with the CFPA, a number of federal agencies transferred substantial regulatory, rule-making, and enforcement authority to the CFPB. One of these agencies is the Federal Reserve Board, which technically "houses" the CFPB. Notwithstanding this fact, the Federal Reserve Board has no ability to impair or restrict the activities of this truly independent body. Other affected agencies include the OCC (which has lost substantial authority over consumer lending regulation of national banks), the now-abolished OTS, NCUA (which lost authority over consumer financial products offered by credit unions), FDIC, and HUD (which lost its RESPA and SAFE Act rule-making authority, among other things). With the exception of the abolished OTS, these agencies continue to exist and maintain numerous functions independent of the rights and duties granted to the CFPB. The OCC, the Federal Reserve, and the FDIC continue to have supervisory authority for consumer law over depository institutions with assets of $10 billion dollars or less. HUD retains authority of the Fair Housing Act.

Federal Laws Governing Consumer Lending

Q 1.28 What is the Consumer Credit Protection Act?

The federal Consumer Credit Protection Act is the umbrella name for the body of federal consumer financial protection laws codified at 15 U.S.C. §§ 1601–1693r. There are seven major laws within the CCPA:

(1) the Truth in Lending Act is subchapter I;
(2) the Restriction on Garnishment Act[61] is subchapter II;
(3) the Credit Repair Organizations Act is subchapter II-A;
(4) the Fair Credit Reporting Act is subchapter III;
(5) the Equal Credit Opportunity Act is subchapter IV;
(6) the Fair Debt Collection Practices Act is subchapter V; and
(7) the Electronic Fund Transfer Act is subchapter VI.

Although often treated as separate acts, the Fair and Accurate Credit Transactions Act (FACTA) is codified within FCRA, and the Home

Owners Equity Protection Act (HOEPA) and the Fair Credit Billing Act (FCBA) are part of TILA.

Q 1.29 What federal laws apply to lenders at the time the loan is underwritten and made?

Although there are many loan-specific statutes that govern specific types of consumer lending activity (such as real estate settlement practices), there are several core statutes that govern virtually all consumer lending in the United States, such as:

(1) the Truth in Lending Act, which addresses the form and timing of certain loan disclosures and creates certain substantive limitations on lending and servicing practices;

(2) the Equal Credit Opportunity Act, which prohibits discrimination in lending and requires certain disclosures to be made;

(3) the Fair Credit Reporting Act, which governs the use of information used to evaluate the consumer for credit and other purposes and the provision of consumer payment information to credit bureaus;

(4) the so-called "FTC Holder" Rule, which governs the preservation of certain defenses in favor of the borrower;

(5) the FTC Credit Practices rule, which prohibits certain practices with respect to credit agreements;

(6) the Gramm-Leach-Bliley Act, which provides certain data privacy and data security protections for consumers;

(7) the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices; and

(8) the Consumer Financial Protection Act, which effectively prohibits unfair, deceptive or abusive acts or practices.

Q 1.30 What is the Truth in Lending Act?

Enacted originally in 1968, the Truth in Lending Act (TILA)[62] is the federal law governing consumer lending disclosures. In enacting TILA, Congress sought to ensure the meaningful disclosure to consumers of significant credit terms. TILA requires creditors (sellers, lenders, and lessors) to disclose certain material credit terms using standardized terminology, with uniform meanings, and often in specified locations within the loan agreement.[63] In more recent years, Congress has modified TILA's focus from its roots as a disclosure statute toward providing substantive protections such as the ones contained in the CARD Act and the ability to repay requirements enacted as part of Title XIV of the Dodd-Frank Act. For a more detailed discussion of TILA, see chapter 3.

Q 1.30.1 What is the scope of TILA?

TILA's coverage generally extends to consumer credit transactions. A consumer credit transaction involves a consumer (a natural person) whose credit transaction is primarily for personal, family or household purposes.[64] TILA expressly excludes from coverage, among other things:

(1) credit transactions primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations;

(2) transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission;

(3) transactions other than with respect to real estate (or, similarly, of personal property used as the consumer's principal dwelling) in which the total amount financed exceeds $25,000; and

(4) federal student loan programs.[65]

Q 1.30.2 What federal regulations implement TILA?

The CFPB has regulatory authority to promulgate rules and regulations to implement and interpret TILA. The current regulations are known as Regulation Z (under the Federal Reserve Board's former regulatory framework). In conjunction with TILA, Regulation Z provides disclosure requirements for high-rate mortgages and reverse mortgages, and rescission provisions for various types of transactions in which a security interest is retained in a consumer's principal residence. There is also Official Staff Commentary to Regulation Z providing additional commentary. Creditors who rely upon these official interpretations are exempt from liability under the statute even if a court later finds the agency's interpretation to be incorrect.

Q 1.30.3 Are retail installment sales covered by TILA?

In general, yes, because RISCs are treated as consumer credit agreements. Like other retailers, auto dealers enter into retail installment sales contracts with purchasers under which the buyer agrees to purchase the vehicle in regular monthly installments. Most state retail installment sales acts impose disclosure obligations that are either based on or that refer directly to TILA disclosure requirements.

Q 1.30.4 Are there any state laws that supplement or supplant TILA?

Pursuant to express regulatory exemptions, Connecticut, Maine, Massachusetts, Oklahoma, and Wyoming have enacted laws that supplement or supplant TILA provisions in limited circumstances.[66] For the most part, the state laws are otherwise substantially similar to TILA. For example, the Massachusetts Consumer Credit Cost Disclosure Act is generally equivalent to TILA in most respects.[67]

Q 1.31 What is the Equal Credit Opportunity Act?[68]

Effective since 1977, the federal Equal Credit Opportunity Act (ECOA) prohibits discrimination in credit transactions on the basis of, among other things, race, color, religion, national origin, sex, marital status, and age.[69]

Q 1.31.1 What is the scope of the ECOA?

The ECOA applies to virtually every aspect of a credit transaction (whether for consumer or non-consumer purposes, whether to natural persons or to businesses) from the advertisement of credit availability, underwriting and servicing of the debt, to the collection and termination of existing credit. The ECOA prohibits lenders from discriminating against applicants, provides guidelines for gathering and evaluating credit information, and requires written notification when credit is denied (that is, the "adverse action notice").

Q 1.31.2 Who has regulatory authority over the ECOA?

Rule-making authority was originally granted to the Federal Reserve Board, but the Dodd-Frank Act transferred those duties to the CFPB, which has been granted the authority to enforce, interpret, and expand the ECOA through the federal regulations contained in Regulation B.[70]

Q 1.31.3 What is "fair lending"?

"Fair lending" refers to the concept of fair, equitable, and nondiscriminatory access to credit for consumers.[71] The ECOA and the Fair Housing Act are each considered fair lending statutes because they mandate nondiscriminatory lending. For a more detailed discussion of fair lending, see chapter 22.

Q 1.31.4 Does the ECOA address issues other than fair lending?

Yes. For example, Regulation B requires the disclosure and delivery to mortgage applicants of copies of all appraisals and other written valuations of the property, when prepared in connection with an application for a loan to be secured by a first lien on a dwelling, and likewise requires creditors to notify applicants in writing that copies of appraisals will be promptly provided.[72]

Q 1.32 What is the Fair Credit Reporting Act?

Congress passed the Fair Credit Reporting Act (FCRA)[73] in 1970 to protect individual consumers from false, misleading, or obsolete credit information. It did so by requiring credit bureaus, known officially as "consumer reporting agencies," to adopt reasonable procedures with respect to the accuracy, confidentiality, relevancy, and appropriate use of consumers' credit data. FCRA likewise obligates credit bureaus and users of covered information to provide certain enumerated disclosures to consumers whose information is being used. FCRA also requires furnishers of consumer information to the credit bureaus to provide accurate information. Until the Dodd-Frank Act transferred enforcement authority to the CFPB, the FTC had administrative enforcement authority for the FCRA, and the FTC promulgated various

Statements of General Policy regarding the various provisions of the FCRA. In addition, the Federal Reserve Board issued implementing regulations, known as Regulation V,[74] applicable to covered banks.[75] For a more detailed discussion of FCRA, see chapter 6.

Q 1.32.1 Who is covered by the FCRA?

FCRA applies to consumer reporting agencies, users of consumer reports (such as financial institutions), and persons or businesses (such as retailers) that report negative information to consumer reporting agencies.

Q 1.32.2 What is a consumer reporting agency?

A consumer reporting agency (or "credit bureau") is an entity that, for monetary consideration, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. The three largest credit bureaus are Trans Union, Equifax, and Experian.

The credit bureaus provide consumer credit history information (called "consumer reports") to creditors as part of loan underwriting and in turn creditors provide periodic payment history information to the bureaus for inclusion in consumer reports.

Q 1.32.3 Who has regulatory authority over the FCRA?

The Federal Reserve Board promulgated Regulation V,[76] which contains regulations implementing the FCRA. These regulations do not have general applicability, but rather apply principally to those banks that are members of the Federal Reserve System (other than national banks) and bank holding companies, and affiliates of such holding companies except for affiliates of bank holding companies that are depository institutions regulated by another federal banking agency or to consumer reporting agencies.[77] In any event, the CFPB now has authority to enforce Regulation V.

Q 1.32.4 What is the Fair and Accurate Credit Transactions Act (FACTA)?

More than twenty years after the enactment of FCRA, Congress passed the Fair and Accurate Credit Transactions Act of 2003 (FACTA).[78]

Among other things, FACTA allows consumers to request free credit reports, prohibits the printing of anything other than truncated versions of credit card numbers at point-of-sale transactions, and enhances identity theft protections under the so-called Red Flags Rule (see Q 1.58 below), including provisions that improve a consumer's ability to restore his or her credit history as a result of such identity theft. FACTA and the Red Flags Rule are discussed in more detail in chapter 6.

Q 1.33 What is the FTC Holder Rule?

Since 1976, the FTC Rule on Preservation of Consumers' Claims and Defenses, also known as the "FTC Holder Rule,"[79] requires sellers of goods and services to include a provision in certain credit contracts preserving all the sale-related claims and defenses (for example, breach of contract, breach of warranty, misrepresentation, or fraud) that the consumer may assert against the seller so that the consumer may likewise pursue such claims and defenses against any future holders of the consumer credit contract.

Q 1.33.1 Are there any exceptions to the FTC Holder Rule?

Yes. The rule is inapplicable to real estate transactions (and thus there is no assignee liability under the FTC Holder Rule for mortgage transactions). The Rule is likewise inapplicable to cash purchases of consumer goods and services, or to credit card transactions, which are instead covered by the Fair Credit Billing Act.[80]

Q 1.33.2 Is an assignee or purchaser liable for disclosure errors that are not apparent on the face of the loan?

Under TILA, an assignee is only liable for disclosure errors that are "apparent on the face of the disclosure statement."[81] Numerous courts have concluded that the assignee liability limitations within TILA apply to other assignee liability claims whether or not a TILA claim is asserted.[82]

Q 1.34 What is the FTC Credit Practices Rule?

The FTC Credit Practices Rule[83] and the substantially similar Regulation AA[84] prohibit banks, finance companies, retailers (such as auto dealers, furniture stores, and department stores), and credit unions from including certain provisions in their consumer credit contracts, and mandates the inclusion of others. The rule applies to consumer credit contracts offered for any personal purpose, except to buy real estate.

Q 1.34.1 What contract provisions are prohibited under the Credit Practices Rule?

Credit contracts may not include any provision whereby the consumer:

(1) waives his or her right to be notified of a court hearing, or to present his or her side of the case;

(2) waives any state-law protections to retain certain personal property even if the debt is not paid as agreed, except where the debt incurred is to purchase an item and that item is used as security for the debt;

(3) agrees to wage deduction plans, unless cancellable by the consumer at any time; and

(4) is required to use as collateral certain household and uniquely personal items that are of significant value to the consumer but are of little economic value to a creditor, such as appliances, linens, china, wedding rings, and family photographs, except where the debt was incurred to purchase any of these items.

Q 1.34.2 What restrictions apply to co-signers on credit contracts?

In connection with the extension of credit to consumers, the Credit Practices Rule prohibits creditors from: (1) misrepresenting the nature or extent of co-signer liability to any person; and (2) obligating a co-signer unless the co-signer is informed prior to becoming obligated of the nature of the co-signer's liability. When a co-signer is required, the Credit Practices Rule requires the creditor to disclose, in a clear and conspicuous manner, that the co-signer has been asked to "guarantee" the debt, and to think carefully before proceeding, among other disclosures. In the case of open-end credit, the disclosure statement must be provided to the co-signer prior to the time that the co-signer becomes obligated for fees or transactions on the account.[85]

Q 1.34.3 Does the Credit Practices Rule address late charges?

Yes. In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, the Rule makes it an unfair act or practice for a creditor, directly or indirectly, to levy or collect any delinquency charge when the only delinquency is attributable solely to late fees or delinquency charges assessed on earlier installments.[86]

Q 1.35 What is the Community Reinvestment Act?

The Community Reinvestment Act (CRA) is a 1977 federal law that requires depository institutions to serve the credit needs of the communities in which they do business, including low- and moderate-income communities. A banking regulator's approval of mergers and expansions will be determined partly by assessments of CRA compliance.

Federal Laws Governing Mortgage Lending

Q 1.36 What is the Servicemembers Civil Relief Act?

The Servicemembers Civil Relief Act (SCRA) is an act passed by Congress in 2003[87] to allow servicemembers to devote their entire energy to the defense of the nation while on active duty military service.[88] The SCRA applies to all forms of credit and—among its many provisions—temporarily suspends judicial and administrative proceedings, changes the terms of contracts to ease the burdens on servicemembers and their families, and requires additional actions from creditors prior to exercising certain remedies under contracts.[89] The U.S. Supreme Court has held that the SCRA should be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."[90] There are limits to this, however, and the SCRA is not a panacea for all of a servicemember's legal woes: "Although the act is to be liberally construed it is not to be used as a sword against persons with legitimate claims."[91] For a more detailed discussion of the SCRA, please see chapter 18.

Q 1.36.1 Who is eligible for SCRA protection?

To be eligible for SCRA protection, an individual must be a "servicemember" who is in "military service." A "servicemember" is defined by the SCRA as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (the "Military") on active duty (including a reservist or National Guard member called to active duty in the federal Military), and a commissioned officer of the National Oceanic and Atmospheric Administration (NOAA) or the Public Health Service (PHS) in active service.[92] It may also include, in specific and limited circumstances, a member of the National Guard serving in his or her capacity as a National Guard member. Finally, certain provisions of the SCRA may be applicable to a servicemember's spouse, dependent, co-obligor, surety, or guarantor.

Q 1.36.2 In the event of alleged violations of the SCRA, who is entitled to pursue claims?

Both individual borrowers and the Department of Justice may pursue a civil action against a creditor or servicer for a violation of the SCRA.[93] In recent years, the Department of Justice and banking regulators have used their authority to initiate civil actions in several instances. In addition to seeking equitable, declaratory, or monetary relief, the Department of Justice may also seek a civil money penalty of $55,000 for the first violation of the SCRA and $110,000 for any subsequent violation.[94] Although the most notable enforcement actions have been in the mortgage servicing area,[95] other SCRA-related actions have involved credit cards,[96] auto loans,[97] and student lending.[98] Finally, although state attorneys general have no authority over federal SCRA enforcement, they have nevertheless sought information related to SCRA compliance from banks and servicers alike.[99]

Q 1.37 What federal laws specifically apply just to mortgage lending?

There are several federal statutes directed to mortgage lending. In addition to and in conjunction with the broader TILA, the core federal mortgage lending statutes are:

(1) the Mortgage Reform and Anti-Predatory Lending Act, which is Title XIV of the Dodd-Frank Act (see chapter 2);

(2) the Home Mortgage Disclosure Act (see chapter 22);

(3) the Real Estate Settlement Procedures Act (see chapter 4);

(4) the SAFE Mortgage Licensing Act (see chapter 14);

(5) the Federal Housing Act (see chapter 22); and

(6) the Community Reinvestment Act (see chapter 22).

Q 1.38 What is the Mortgage Reform and Anti-Predatory Lending Act?

Enacted on July 21, 2010, the Mortgage Reform and Anti-Predatory Lending Act (the "Mortgage Reform Act")[100] is one of numerous separate acts passed in the consolidated Dodd-Frank Act. Among other provisions, the Mortgage Reform Act made several substantial changes to lawful mortgage origination practices by, for example:

(1) banning mortgage loan originators from receiving compensation that varies based on the terms of the loan other than the principal amount;

(2) requiring mortgage lenders to adopt certain minimum national underwriting standards that require documented verification of the consumer's ability to repay;

(3) banning the payment of yield spread premiums (YSPs) or other originator compensation that is based on the interest rate or other terms of the loans;

(4) banning prepayment penalties on certain loans; and

(5) banning mandatory arbitration on all residential loans.

The Mortgage Reform Act changes are largely accomplished as amendments to TILA and the Real Estate Settlement Practices Act (RESPA).[101]

Q 1.38.1 When did the Mortgage Reform Act provisions take effect?

The majority of Mortgage Reform Act provisions did not take effect until the CFPB had promulgated rules interpreting them. For many of the rules, the CFPB had until January 21, 2013, to prescribe rules addressing much of the prohibited conduct discussed above, and did so. Of course, the CFPB was free to issue regulations substantially in advance of this deadline, and did so in many instances.

Q 1.39 What is the Homeowners Protection Act?

The Homeowners Protection Act of 1998 (HPA)[102] was enacted to address perceived difficulties homeowners were experiencing in canceling private mortgage insurance (PMI) coverage. The HPA establishes provisions for the cancellation and termination of PMI, sets forth disclosure and notification requirements, and requires the return of unearned premiums.

Q 1.39.1 What is private mortgage insurance?

Private mortgage insurance (PMI) refers to insurance, including any mortgage guaranty insurance, against the nonpayment of or default on an individual mortgage or loan involved in a residential mortgage transaction, and that is made available by an entity other than the forms of insurance made available under the National Housing Act.[103] Typically, the borrower is required to pay for PMI on a purchase-money mortgage when the down payment is less than twenty percent or a refinancing when the borrower's equity is less than twenty percent.

Q 1.40 What is the Home Mortgage Disclosure Act?

Enacted by Congress in 1975 and substantially amended since then, the Home Mortgage Disclosure Act (HMDA)[104] requires lending institutions to gather and report to the Federal Financial Institutions Examination Council (FFIEC) a Loan Application Register (LAR) that provides a substantial amount of data on the mortgage applications that the institution takes and the mortgage loans that the institution either originates or purchases. The data is used to determine whether financial institutions are serving the housing needs of their communities and to identify possible discriminatory lending patterns. The FFIEC, the joint council of banking supervisors, facilitates public access to HMDA by creating both aggregate tables for each metropolitan statistical area and disclosure reports for each individual financial institution and providing much of the data to the public. For a more detailed discussion, see chapter 22.

Q 1.40.1 What federal regulations implement HMDA?

Regulation C[105] contains the federal regulations implementing the HMDA. The Federal Reserve Board has likewise issued Official Staff Commentary to Regulation C. In accordance with the Dodd-Frank Act, HMDA regulation has been transferred to the CFPB.

Q 1.41 What is the Real Estate Settlement Procedures Act?

Enacted in 1974 and modified substantially since that time (including by 2010's Mortgage Reform Act), the Real Estate Settlement Procedures Act (RESPA)[106] was passed into law to perform four primary functions:

(1) to provide disclosures to loan applications regarding the costs of the real estate settlement services for their loan;

(2) to eliminate kickbacks and referral fees made in connection with settlement services;

(3) to regulate certain aspects of servicing and escrow accounts; and

(4) to provide a mechanism, the qualified written request (QWR), for borrowers to resolve loan servicing issues after commencement of the loan.[107]

Q 1.41.1 What federal regulations implement RESPA?

Regulation X contains the federal regulations implementing RESPA.[108] Until the passage of the Dodd-Frank Act, HUD was the agency authorized to prescribe these rules and regulations, to make interpretations and grant exemptions as necessary to enforce RESPA. Now, the CFPB has these powers.

Q 1.41.2 What is the Good Faith Estimate?

RESPA requires that the lender deliver to the borrower, prior to closing and within three days after receipt of a written loan application, a good faith estimate (GFE) of settlement costs the applicant is likely to incur.[109] Regulation X identifies the items that must be included in the GFE.[110] The GFE will be replaced by a Loan Estimate disclosure on August 1, 2015. See Q 1.41.5 below.

Q 1.41.3 What is a HUD Settlement Statement (or HUD-1)?

RESPA likewise mandates that borrowers receive, at closing, a standard form statement of settlement costs that clearly and conspicuously (1) itemizes all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement; and (2) indicates whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both.[111] This settlement statement has become known as the HUD-1 because it was developed and issued by HUD.[112] With few exceptions, the required form must be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement. The HUD-1 will be replaced by an integrated Closing Disclosure on August 1, 2015. See Q 1.41.5 below.

Q 1.41.4 Does RESPA regulate appraisals?

No, but the CFPB and other agencies[113] have jointly promulgated changes to Regulation Z, effective January 18, 2014, that, as a protection against fraud, require appraisals in connection with so-called "higher-priced mortgage loans."[114] These regulations, necessitated by the Dodd-Frank Act that added similar provisions to TILA, impose an affirmative obligation to: (1) obtain a proper written appraisal by a certified or license appraiser that includes a physical visit to the property; and (2) obtain *two* such written appraisals on the same property when the property is re-sold within either 90 or 180 days at a price substantially above the seller's acquisition price, depending on the differential.[115] Exempted from coverage are transactions involving newly constructed homes, those involving qualified mortgages, certain bridge loans, reverse mortgage transactions and transactions secured by new manufactured homes, mobile homes, boats or trailers.[116]

Q 1.41.5 What is "Know Before You Owe"?

In November 2013, the CFPB issued rules that effectively merged the sometimes conflicting disclosure requirements of TILA and RESPA into an integrated set of mortgage disclosures.[117] When finally implemented on August 1, 2015, the new "Know Before You Owe" (KBYO) mortgage forms will largely replace preexisting mortgage disclosure forms. There will be two KBYO forms: (1) the Loan Estimate, provided within three business days after the loan application; and (2) the Closing Disclosure, provided to consumers at least three days before closing of the mortgage loan. The Loan Estimate replaces the Truth in Lending statement and the GFE, while the Closing Disclosure replaces the HUD-1.

Q 1.42 What are the Mortgage Servicing Rules?

As a result of amendments to TILA and RESPA, the CFPB promulgated final rules effective January 10, 2014, that impose a wide variety of new mortgage servicing standards. With respect to TILA, the rules contain new provisions concerning initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, require prompt crediting of mortgage payments, and impose expedited deadlines for responses to requests for payoff amounts. The final rule likewise amends prior rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

With respect to RESPA, the final rules address servicers' obligations to: (1) correct errors asserted by mortgage loan borrowers; (2) provide certain information requested by such borrowers; (3) provide protections to such borrowers in connection with force-placed insurance; (4) establish reasonable policies and procedures to achieve certain delineated objectives; (5) provide information about mortgage loss mitigation options to delinquent borrowers; (6) establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and (7) evaluate borrowers' applications for available loss mitigation options. Further, the rule modifies certain prior servicing-related provisions including, for example, provisions requiring servicing transfer disclosures, escrow accounts, force-placed insurance, and requirements to return escrow funds upon payment of a mortgage loan.

Q 1.43 What is the SAFE Act?

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act")[118] (1) requires all states to provide for the licensing and registration of mortgage loan originators (MLOs) who are not employed by agency-regulated institutions; and (2) obligates federal banking regulators to jointly develop and maintain a federal registration system for individual employees of regulated institutions who engage in residential mortgage loan origination. Under the SAFE Act, individual MLOs must be registered with the Nationwide Mortgage Licensing System and Registry ("Registry"), a database established by the CSBS and the American Association of Residential Mortgage Regulators (AARMR) to support the licensing by states of mortgage loan originators. Prior to creation of the CFPB, HUD was granted the power to oversee implementation of the SAFE Act and to act as "backup" regulator. HUD issued the final SAFE Act Rule in 201, and authority for the SAFE Act was transferred to the CFPB. For a more detailed discussion of SAFE Act, see chapter 14.

Q 1.44 What is the Fair Housing Act?

Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"),[119] as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.[120]

Q 1.44.1 Does the CFPB have regulatory authority with respect to the Fair Housing Act?

No. To the surprise of many, Congress expressly chose not to grant the CFPB any regulatory authority over the Fair Housing Act. Going one step further, Congress even directed that nothing in the CFPA "shall be construed as affecting any authority arising under the Fair Housing Act,"[121] and that HUD retains administrative enforcement authority of the FHA at the federal level. The Department of Justice handles federal court enforcement of the FHA.

Q 1.44.2 Which regulators investigate claims of mortgage discrimination?

Both the CFPB and HUD likely would investigate any instances of discrimination in mortgage lending because such allegations would likely support parallel claims under both the Equal Credit Opportunity Act and the Fair Housing Act. The CFPB has such authority under the ECOA while HUD retains its authority under the Fair Housing Act. In addition, the federal banking regulators handle fair lending complaints from consumers relating to depository institutions with less than $10 billion in assets.

Q 1.45 What is the Alternative Mortgage Transactions Parity Act?

Largely repealed by the Dodd-Frank Act, the Alternative Mortgage Transactions Parity Act (AMTPA)[122] survives to the extent that the AMTPA preempts any state law that outlaws the use of adjustable-rate mortgages. All other provisions are repeated.

Federal Laws Governing the Purchase or Lease of Motor Vehicles

Q 1.46 Does TILA apply to consumers that buy or lease a car or truck?

Yes, if the consumer is purchasing rather than leasing the vehicle, and the purchase price is $50,000 or less ($25,000 prior to the Dodd-Frank Act).[123]

Q 1.47 What is the scope of the Consumer Leasing Act?

The Consumer Leasing Act (CLA),[124] effective in 1976, requires certain disclosures about consumer leases, whether or not such lease relates to a motor vehicle. Among other provisions, the CLA mandates that lessors:

(1) provide a brief description of the leased property and any security interest;

(2) disclose the terms and conditions of the transaction, including the total amount of the initial payment required, number of payments, amount of each payment, due dates, total amount of payments, required insurance, and any end-of-term liabilities;

(3) disclose the total amount of payments under the lease, including, the amount of the security deposit (if required), monthly payments, and additional charges;

(4) disclose the total amount of fees and other charges, including penalties for late payments;

(5) identify any express warranty and the party responsible for the product's maintenance and service;

(6) state whether the customer has the option to purchase the leased property;

(7) disclose any early termination rights;

(8) disclose the customer's liability for the difference between the estimated value of the property and its realized value to the lessor at early termination or the end of the lease (plus customer appraisal and other rights); and

(9) limit penalties or other charges for delinquency, default, or early termination to amounts that are reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination.

For a more detailed discussion of auto finance law, see chapter 7.

Q 1.47.1 What entities are covered by the Consumer Leasing Act?

The CLA applies to all persons that are lessors of personal property under consumer leases as that term is defined in the statute, and generally includes a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or more than five times in the current calendar year is subject to the CLA and this part.[125] This definition expressly excludes real estate leases.

Q 1.47.2 What federal regulations implement the Consumer Leasing Act?

Regulation M[126] contains the rules and regulations promulgated under the Consumer Leasing Act.[127] The CFPB has exclusive rule-making authority.

Federal Laws Governing the Electronic Transfer of Funds

Q 1.48 What is the Electronic Fund Transfer Act?

Enacted in August 1989, the Electronic Fund Transfer Act (EFTA)[128] is the basic law governing the interaction between and among consumers, retailers, and financial institutions with respect to automated teller machine (ATM) transfers, telephone bill–payment services, point-of-sale (POS) terminal transfers in stores, remittance transfers, and pre-authorized transfers from or to a consumer's account (such as direct deposit and Social Security payments).[129] An "electronic fund transfer" (EFT) is the transaction initiated through an electronic terminal, telephone, computer, or magnetic tape that instructs a financial institution either to credit or to debit a consumer's asset account. Among other things, the EFTA and corresponding Regulation E (discussed below) limits the liability of consumers for unauthorized use of a consumer's debit card or ATM card. It likewise requires federal institutions to provide certain disclosures to consumers prior to issuing an access device, and sets out procedures for the investigation of the unauthorized use of an access device.[130] For a more detailed discussion of the EFTA, see chapter 10.

Q 1.49 What federal regulations implement the EFTA?

The Federal Reserve Board adopted Regulation E[131] to effect, interpret, and expand upon the EFTA. Regulation E establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. Regulatory and enforcement authority for the EFTA has been transferred to the CFPB.

Q 1.49.1 Does the CFPB also regulate money transfers to foreign countries?

Yes. The CFPB has promulgated rules that are designed to protect consumers who send remittance transfers, that is, money sent electronically to foreign countries.[132] The term "remittance transfer" includes consumer-to-consumer transfers of lesser monetary values that are often made by any of a number of non-depository money transmitters (such as MoneyGram and Western Union). Until the CFPB issued these rules, federal consumer protection laws were not applicable to these transactions. Under the new Remittance Transfer Rule (published as an amendment to Regulation E), money transmitters are required to provide enhanced disclosures and required to have procedures for resolving errors, among other protections.[133]

Federal Laws Governing Credit Card Use

Q 1.50 Do TILA and Regulation Z apply to credit cards?

Yes. Both TILA and Regulation Z include provisions regarding the issuance of credit cards, liability for unauthorized credit card use, credit card billing error resolution procedures, and disclosure requirements for credit card solicitations, among other covered topics.[134]

Q 1.51 What is the Credit Card Accountability, Responsibility and Disclosure Act of 2009?

The Credit Card Accountability, Responsibility and Disclosure Act (the "CARD Act")[135] is a 2009 amendment to TILA and other statutes that imposes a number of substantive changes on credit card plans and the disclosures relating to such plans. Among many other provisions, the CARD Act:

(1) generally bars rate increases on existing balances unless the current rate is a temporary (promotional) rate or the borrower is more than sixty days late on payments;

(2) imposes a minimum forty-five-day notice for material changes in most contract terms except credit limit changes;

(3) eliminates overlimit fees unless the consumer elects to allow overlimit transactions;

(4) guarantees a minimum "grace period" of twenty-one days (that is, twenty-one days before interest is charged on the new credit card balance, assuming a prior zero balance); and

(5) ends so-called "double-cycle" billing, under which the credit card provider uses two monthly cycles to calculate the average daily balance.

For a more detailed discussion of the CARD Act, see chapter 8.

Q 1.52 What is the Fair Credit Billing Act?

Enacted in 1974, the Fair Credit Billing Act (FCBA)[136] is a component of TILA that was enacted to protect consumers from unfair billing practices and to provide a written dispute procedure to address credit card or charge card billing errors. Until the passage of the CFPA, the FTC was the agency authorized to enforce the FCBA. That role has now been transferred to the CFPB.

Q 1.53 What are PCI Standards?

Often confused with legal standards, payment card industry (PCI) standards are not part of federal law. PCI standards refer instead to the data and security standards (DSS) of the PCI, published by the PCI Security Standards Council. Founded by the major credit card associations, the PCI Security Standards Council describes itself as an "open global forum for the ongoing development, enhancement, storage, dissemination, and implementation of security standards for account data protection."[137]

State Regulation of Consumer Lending

Q 1.54 What state laws apply to consumer finance transactions?

Although state regulation is beyond the scope of this chapter, at least the following state statutes may apply to one or more forms of credit transactions (not all of these statutes will exist in every jurisdiction):

(1) the Uniform Consumer Credit Code or UCCC (adopted in just a small number of states);[138]

(2) state consumer, mortgage lending, secondary loan and credit card statutes;

(3) state-law equivalents to the federal TILA (applicable only in a small minority of states, such as Massachusetts);

(4) home improvement, home solicitation, rental purchase, and retail installment sales acts;

(5) mortgage banking and mortgage broker acts;

(6) state usury laws; and

(7) state deceptive acts and practices statutes.

Privacy of Consumer Financial Information

Q 1.55 What laws govern the privacy of a consumer's financial information?

A number of federal laws address financial privacy. These include the Gramm-Leach-Bliley Act (GLBA), the Right to Financial Privacy Act (RFPA), the Red Flag Rules, and other laws protecting consumer financial information.[139] The Bank Secrecy Act requires banks and certain other financial services providers to provide consumer information to the government in certain circumstances.

Q 1.56 What is the Gramm-Leach-Bliley Act?

Since its enactment in 1999, Title V of the Gramm-Leach-Bliley Act (GLBA)[140] has broadly limited the rights of financial institutions to disseminate "personally identifiable, nonpublic financial information" that might otherwise be disclosed to nonaffiliated third parties, and generally prohibits the disclosure of information such as account numbers for credit, deposit or transaction accounts to a nonaffiliated party for marketing purposes. The GLBA likewise imposes liability on those nonaffiliated third parties to whom such information has been transferred. The GLBA further mandates electronic or written disclosure requirements with respect to a variety of collected nonpublic personal information, creates consumer opt-out rights, and requires covered institutions to develop confidentiality and security policies. With respect to the consumer opt-out rights, the consumer may (with numerous exceptions) opt out of permitting disclosures to nonaffiliated parties before the disclosure ever occurs.

Q 1.56.1 What agency enforces the GLBA?

The CFPB enforces the GLBA. Prior to the Dodd-Frank Act, the GLBA was enforced by the FTC for non-banks, while the bank regulators enforced the privacy restrictions for the banks that they regulated.[141] The FTC and the various banking regulators jointly promulgated financial privacy rules that more broadly implement the provisions of GLBA Title V.[142] After the Dodd-Frank Act, such authority was broadly transferred to the CFPB.

Q 1.57 What is the Right to Financial Privacy Act?

Enacted in 1978 in the wake of the Watergate scandal and amidst concerns about government intrusion into personal privacy, the Right to Financial Privacy Act (RFPA)[143] generally limits the right of federal agencies to obtain consumer financial records from consumers or financial institutions, and imposes liability on financial institutions that violate these provisions. Consumers may pre-authorize such disclosures, but such authority is statutorily limited. Likewise, a consumer must be provided advance notice of any agency subpoena so that there is opportunity to modify or quash the subpoena. In the event that a financial institution discloses records or information in violation of the RFPA, the financial institution may be liable to the consumer for actual damages, $100 in statutory damages, punitive damages for willful or intentional violations, court costs, and attorneys' fees.

Q 1.58 What is the Red Flags Rule?

The Red Flags Rule refers to the requirements that financial institutions and creditors must follow to implement the necessary controls to prevent, detect, and respond to identity theft in connection with consumer accounts. The Red Flags Rule was promulgated as a result of the passage of the FACTA amendments to the FCRA.[144] These rules seek to ensure that financial institutions and creditors identify signs or indicators that an identity thief is actively misusing another individual's sensitive data, and require financial institutions and creditors that offer or maintain covered accounts to maintain policies and procedures to identify indicia of identity theft, to detect whether identity theft may be occurring in connection with the opening of a covered account or an existing covered account, and to respond appropriately.

Q 1.59 What other federal statutes directly address financial privacy issues?

Numerous statutes impose restrictions on the use of consumer data. For example, FCRA strictly limits the disclosure of consumer credit reporting data without a proper purpose, such as for a firm offer of credit or insurance.[145] The Fair Housing Act restricts the collection and use of information that would result in housing discrimination on the basis of race, sex, religion, national origin, and a variety of other factors.

Loan Obligation Delinquency

Q 1.60 At what point is a consumer in "default" on his or her loan obligation?

A consumer is in "default" when he or she breaches a condition of the loan documents. Of course, the most common form of default is monetary in nature; that is, the consumer fails to make a required payment in a timely fashion. That said, borrowers may also be in default if they attempt, for example, to transfer an interest in property secured by the loan without first paying off the loan obligation in full, or fail to protect the property securing a loan such as by failing to pay taxes or obtain hazard insurance coverage.[146]

Q 1.60.1 What is acceleration?

In the event of a default, most credit agreements provide for "acceleration" of the debt obligation. An acceleration is the right to immediate payment of the full amount due under the loan. In most mortgage transactions, the lender will send notice of the acceleration and offer the borrower an opportunity to cure the default within a specified time period.

Q 1.60.2 At what point may the lender foreclose on a mortgage or deed of trust?

The right to foreclose usually matures when the borrower fails to cure his or her default after notice of the default. Even after foreclosure, however, the borrower generally maintains a right for a set period of time to reinstate the mortgage loan upon payment of the amounts due, including allowable fees and costs incurred by the lender in pursuing collection. This reinstatement process is generally known as the right of redemption, and it may occur during (or, in some states, after) the foreclosure sale process.

Q 1.61 What federal laws apply to consumers who are delinquent or in default on their loan obligations?

The Fair Debt Collection Practices Act provides certain protections to debtors from "debt collectors," as defined in the FDCPA. With a few exceptions, the FDCPA does not regulate the actions of creditors who engage in debt collection efforts against loans originated by such entities or purchased by such creditors when the loan was performing. In the past, creditors have been regulated solely by state and federal "unfair and deceptive acts and practices" statutes, as well as, in some states, debt collection laws. For those entities that engage in so-called "credit repair" services, the federal Credit Repair Organization Act likewise applies.

Q 1.62 What is the Fair Debt Collection Practices Act?

Effective since 1978, the Fair Debt Collection Practices Act (FDCPA)[147] governs the practices of debt collectors who collect debts on behalf of third parties, and is generally inapplicable to the collection efforts of original creditors or their assignees. Attorneys who engage in consumer debt collection activities are covered by the statute. The FDCPA identifies a long list of prohibited debt collection activities.[148] For a more detailed discussion of the FDCPA, see chapter 12.

Q 1.62.1 Was the FDCPA enacted strictly to benefit consumers?

Not entirely. Congress identified three purposes in enacting the statute:

(1) to eliminate abusive debt collection practices by debt collectors;

(2) to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged; and

(3) to promote consistent state action to protect consumers against debt collection abuses.[149]

Practitioners representing debt collectors should be aware that Congress intended to end abusive debt collection practices without interfering with legitimate efforts to collect on delinquent debts, and to prevent ethical collectors from being competitively disadvantaged.

Q 1.62.2 Is a loan servicer considered a third-party debt collector?

In most cases, loan servicers will not be deemed debt collectors for purposes of the FDCPA. However, in certain cases where the loan servicer acquired servicing rights after the loan went into default, or if the current creditor likewise acquired the specific debt after the borrower went into default, then the servicer may be treated as a debt collector under the FDCPA.[150] Some have argued there is absence of legal clarity on when a loan is "in default" for purposes of the FDCPA, and thus, which acquired loans a servicer may be servicing that are subject to the FDCPA. As a result, some servicers have begun to treat all acquired loans as if the servicer is a "debt collector" with respect to that loan.

Q 1.62.3 Are there any regulations that supplement the FDCPA?

At the time of publication, the answer remains "no." The FTC, which had sole enforcement authority prior to the CFPA (but has now shared that authority with the CFPB since July 21, 2011), previously issued official staff commentary that has served as official interpretations of the FDCPA.[151] On January 2, 2013, the CFPB began oversight over the largest debt collectors—that is, those with more than $10 million in annual receipts from collections. In July 2013, the CFPB issued Bulletins 2013-07 and 2013-8, both of which address collection issues. Bulletin 2013-07 raises concerns that the CFPB would assert the ability to apply various FDCPA prohibitions to creditor actions on the basis that such actions violate unfair or deceptive acts and practices requirements.

Under the Dodd-Frank Act, the CFPB has rule-making authority with respect to the FDCPA, and on November 5, 2013, the CFPB issued an Advanced Notice of Proposed Rulemaking seeking public input on fair debt collection practices issues. Moreover, practitioners should likewise note that there are numerous state laws governing debt collection that may impose additional obligations on those seeking to collect on a debt.

Q 1.63 What is the Credit Repair Organizations Act?

The Credit Repair Organizations Act (CROA)[152] is Subchapter II-A of the Consumer Credit Protection Act, and was enacted by Congress on September 30, 1996. The CROA regulates the actions of so-called "credit repair organizations," that is, entities that provide services to consumer debtors. Among other things, the CROA imposes certain mandatory disclosure obligations, broadly prohibits certain enumerated forms of deceptive practices, and permits the customer three business days from contract execution to rescind the agreement.

Q 1.63.1 Who enforces the CROA?

The FTC is the federal agency that regulates the conduct of credit repair organizations. An entity that violates any provision of the CROA is deemed to have violated the FTC Act, thereby making all enforcement powers of the FTC available to such conduct.[153]

Notes

1. In the United States, the term "consumer finance" was often used to refer to companies that made so-called "personal loans," that is, unsecured loans that were often made to borrowers with tarnished credit.

2. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) [hereinafter Dodd-Frank Act].

3. *See infra* Q 1.26.

4. *See infra* Q 1.3.1.

5. *See infra* Q 1.3.2.

6. "Consumer" and "consumer credit" is defined, for Truth in Lending Act purposes, at 12 C.F.R. § 1026.2(a)(11) and (a)(12). *See generally* chapter 3.

7. *See, e.g.*, Official Staff Commentary to 12 C.F.R. § 1026.3(a) (detailing examples of transactions that may be covered by TILA (for example, business purpose credit that is refinanced for consumer purposes)).

8. "Open-end credit" is defined, for Truth in Lending Act purposes, at 12 C.F.R. § 1026.2(a)(20).

9. *See* chapter 7.

10. "Interest" as used in 12 U.S.C. § 85 "includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended."

11. A national bank has the option of charging interest at a rate equal to the higher of the rate allowed by the state in which the bank is located or "1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve district where the bank is located." The Dodd-Frank Act, though it modified certain doctrines of federal preemption, did not change the basic section 85 "most favored lender" doctrine under section 85.

It has long been held that a national bank is located in the state of its main office. *See, e.g.*, Marquette Nat'l Bank v. First Omaha Serv. Corp., 439 U.S. 299 (1978).

12. *See, e.g., Marquette Nat'l Bank*, 439 U.S. 299.

13. Section 521, tit. V; Pub. L. No. 96-221; 94 Stat. 132.

14. Section 501, tit. V; Pub. L. No. 96-221; 94 Stat. 161–163, codified at 12 U.S.C. § 1735f-7.

15. The thirteen states were Colorado, Georgia, Hawaii, Idaho, Kansas, Maine, Massachusetts, Minnesota, Nebraska, North Carolina, South Carolina, South Dakota, and Wisconsin.

16. 15 U.SC. §§ 7001 *et seq.*

17. Uniform Electronic Transactions Act (July 1999) (final draft made available by the National Conference of Commissioners on Uniform State Laws),

available at www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf (last visited on May 20, 2014).

18. 15 U.S.C. § 7006(4); UETA § 2(7).

19. 15 U.S.C. § 7006(5).

20. UETA has been adopted in 47 states plus the District of Columbia. The three states that have not adopted UETA are Illinois, New York, and Washington.

21. The disclosure requirements for HELOCs are set forth in TILA, 15 U.S.C. § 1637a, and in Regulation Z, 12 C.F.R. § 1026.40.

22. 12 U.S.C. § 1715z-20.

23. 12 C.F.R. § 1026.2(a)(15).

24. *See* DAVID S. EVANS & RICHARD SCHMALENSEE, PAYING WITH PLASTIC: THE DIGITAL REVOLUTION IN BUYING AND BORROWING 61 (MIT Press 2005).

25. *See* 11 U.S.C. § 523(a)(8).

26. *See infra* Q 1.30.

27. Higher Education Act of 1965, 20 U.S.C. §§ 1070 *et seq.*

28. 12 C.F.R. § 1026.3(f).

29. 12 C.F.R. §§ 1026.46–.48.

30. 12 C.F.R. § 1026.57.

31. *See* Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.* [hereinafter BHCA]. Similarly, a S&L holding company must satisfy the same or similar features under the Savings and Loan Holding Company Act, 12 U.S.C. § 1467a.

32. *See* 12 U.S.C. § 1841(c)(2)(F).

33. *See* Freddie Mac, Glossary of Finance and Economic Terms (A–F) Page (2011) [hereinafter Freddie Mac Glossary], *available at* www.freddiemac.com/smm/a_f.htm#C.

34. Under Title III of the Dodd-Frank Act, Congress abolished the role of the Office of Thrift Supervision (OTS), and distributed its regulatory and enforcement power over thrifts to other banking agencies.

35. Even with passage of the Dodd-Frank Act, a company controlling an institution that is not a BHCA bank is not required to register as a bank holding company with the Federal Reserve Board and, therefore, is not subject to regulation and supervision by the Federal Reserve Board. Generally, an ILC is not deemed to be a BHCA bank as long as it satisfies certain enumerated conditions, including that the institution does not accept demand deposits, and that the institution's total assets are less than $100 million.

36. Utah Bankers Ass'n, Industrial Bank Summary Page, *available at* www.uba.org/displaycommon.cfm?an=24.

37. *See* GAO Report 12-160, "Bank Holding Company Act, Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions," published by U.S. Government Accountability Office (Jan. 2012), *available at* www.knowledgemosaic.com/resourcecenter/Dodd-Frank%20 Tracker/GAOBankHoldingCompanyAct.pdf.

38. *See* Watters v. Wachovia Bank, N.A., 550 U.S. 1 (2007). Dykema Gossett PLLC represented Wachovia in this action.

39. 12 C.F.R. § 1026.36 (amendment to Regulation Z); Dodd-Frank Act § 1403, to be codified at 15 U.S.C. § 1639B.

40. Freddie Mac Glossary, *supra* note 33.

41. *See* Freddie Mac, Single-Family Uniform Instruments Page, *available at* www.freddiemac.com/uniform/.

42. *See* FHFA, Home Page, *available at* www.fhfa.gov.

43. *See* Ginnie Mae, Frequently Asked Questions Page, *available at* www.ginniemae.gov/media/ginnieFAQ.asp?Section=Media.

44. *See infra* Q 1.48 and chapter 10.

45. 12 C.F.R. § 205.2(i).

46. Dodd-Frank Act § 1029(a).

47. Consumer Financial Protection Act of 2010, H.R. 4173, 111th Cong. (2010).

48. The new preemption standards took effect on July 21, 2011. *See* Designated Transfer Date, 81 Fed. Reg. 57,253 (Sept. 20, 2010), *available at* www.gpo.gov/fdsys/pkg/FR-2010-09-20/pdf/2010-23487.pdf.

49. For a more detailed discussion, see chapter 2.

50. Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010).

51. Other statutes include the Alternative Mortgage Transactions Parity Act, the Consumer Leasing Act, the Fair Credit Billing Act, portions of the Fair Credit Reporting Act, portions of the Federal Deposit Insurance Act, portions of the Gramm-Leach-Bliley Act, the Home Mortgage Disclosure Act, the Home Ownership and Equity Protection Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, and the Interstate Land Sales Full Disclosure Act.

52. A covered person is "any person that engages in offering or providing a consumer financial product or service," and any affiliate service providers of such persons.

53. Dodd-Frank Act § 1041(a).

54. Dodd-Frank Act §§ 1044, 1046, to be codified at 12 U.S.C. § 1465. State laws are preempted if they have a discriminatory effect on national banks or thrifts when compared to state-chartered banks, or in the event another federal law preempts the challenged state law.

55. CFPB Bulletin 2012-03, Service Providers (Apr. 12, 2012), at 1, *available at* http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

56. *Id.* at 2.

57. *Id.*

58. Many of the listed regulations were originally implemented by the Federal Reserve Board, HUD, or the FTC.

59. The federal OTS has been abolished, and its authority has been transferred to other banking regulators.

60. *See* Federal Financial Institutions Examination Council Home Page, *available at* www.ffiec.gov.

61. Garnishment and other post-judgment collection activities are largely beyond the scope of this publication. The Restriction on Garnishment Act,

effective July 1, 1970, limits the level wage garnishment for any judgment debtor and makes it unlawful for an employer to terminate any employee solely because that employee's wages have been garnished.

62. Truth in Lending Act, 15 U.S.C. §§ 1601–65b [hereinafter TILA].

63. *See generally* chapter 3.

64. 15 U.S.C. § 1602(h).

65. 15 U.S.C. § 1603.

66. The Federal Reserve Board granted limited exemptions to TILA in Connecticut, Maine, Massachusetts, Oklahoma, and Wyoming. 12 C.F.R. pt. 1026, supp. I, 12 C.F.R. § 1026.29(a) ¶ 4. In these states, as to certain TILA requirements only, certain federal provisions have no force and creditors are subject to state requirements that are generally similar to the federal requirements. *See* Belini v. Wash. Mut. Bank, FA, 412 F.3d 17, 20 (1st Cir. 2005) (citing Ives v. W.T. Grant Co., 522 F.2d 749, 755 (2d Cir. 1975)).

67. *See* MASS. GEN. LAWS ch. 140D, §§ 1–35.

68. Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–91f [hereinafter ECOA].

69. *See* chapter 22.

70. 12 C.F.R. pt. 1002.

71. Pub. L. No. 111-203, § 1002(13).

72. 12 C.F.R. § 1002.14.

73. Fair Credit Reporting Act, 15 U.S.C. §§ 1681–81y [hereinafter FCRA].

74. *See infra* Q 1.32.3.

75. *See* chapter 6.

76. 12 C.F.R. pt. 1022.

77. 12 C.F.R. § 1022.1(b)(2).

78. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-59 (2003).

79. 16 C.F.R. § 433.2.

80. 16 C.F.R. § 433.1.

81. 15 U.S.C. § 1641(a).

82. *See, e.g.*, Psensky v. Am. Honda Fin. Corp., 875 A.2d 290 (N.J. Super. App. Div. 2005); Vickers v. Interstate Dodge, 882 A.2d 1236, 1243 (La. App. 2004).

83. 16 C.F.R. pt. 444.

84. 12 C.F.R. pt. 1027 (Regulation AA). OTS similarly adopted the same provisions at 12 C.F.R. pt. 535, and the NCUA did so at 12 C.F.R. pt. 706.

85. 12 C.F.R. § 227.14, 16 C.F.R. § 444.3.

86. 12 C.F.R. § 227.15, 16 C.F.R. § 444.4.

87. Servicemembers Civil Relief Act of 2003, Pub. L. No. 108-189, 117 Stat. 2835 (subsequently amended). The SCRA was originally passed in 1918, and reenacted in 1940, as the Soldiers' and Sailors' Civil Relief Act, ch. 888 § 1(a), Pub. L. No. 861, 54 Stat. 1178.

88. Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501–97b.

89. *See generally* chapter 18.

90. Boone v. Lightner, 319 U.S. 561, 575 (1943).

91. Engstrom v. First Nat'l Bank of Eagle Lake, 47 F.3d 1459, 1462 (5th Cir. 1995) (citing Slove v. Strohm, 236 N.E.2d 326, 328 (Ill. App. Ct. 1968)); *see also* George P. v. Superior Court, 127 Cal. App. 4th 216, 225 (Cal. Ct. App. 2005) ("[T]he SCRA is a shield, not a sword. The goal of preventing a servicemember from being disadvantaged by his or her service to the country is not furthered by giving servicemembers an unwarranted advantage over civilian litigants."); Luckes v. Luckes, 245 Minn. 141, 145–46 (1955) ("The relief act of 1940 (and likewise the similar act of 1918) was enacted to give the soldier-litigant a shield for defense and not a sword for attack. It was to enable him to serve his country secure in the knowledge that his bona fide civil rights would not be jeopardized in any legal proceeding by reason of his military service. It was not intended to vest him with juridical weapons of offense which he would not have possessed had he remained a civilian. It was likewise not intended that the statutory shield should be used as a screen behind which to engage in legal maneuvers born of policy or of bad faith. In short, it was intended that the serviceman who applies to the court for a stay of legal proceedings under the act must assert bona fide rights and exercise good faith.").

92. 50 U.S.C. app. § 511(1) (citing 10 U.S.C. § 101(a)(4–5)).

93. *Id.* §§ 597–97a.

94. *Id.* § 597(b).

95. *See, e.g.*, Press Release, Dep't of Justice, $25 Billion Mortgage Servicing Agreement Filed in Fed. Court (Mar. 12, 2012), *available at* https://d9klfgibkcquc.cloudfront.net/Settlement-USDOJ-FILING-news-release.pdf; Press Release, Board of Governors of the Fed. Reserve Sys., Amendments to Consent Orders Memorialize $9.3 Billion Foreclosure Agreement (Feb. 28, 2013), *available at* www.federalreserve.gov/newsevents/press/enforcement/20130228a.htm.

96. *In re:* Capital One Bank (USA), N.A., No. AA-EC-2012-101 (Dep't of the Treasury, Comptroller of the Currency 2012).

97. David Palmer, *Cullman Used Car Dealer Indicted in Federal Court*, CULLMAN TIMES, Mar. 29, 2013.

98. *See Preserving the Rights of Servicemembers, Veterans, and their Families in the Financial Marketplace: Hearing Before the S. Comm. on Veterans' Affairs*, 113th Cong. (2013) (statement of Eric Halperin, Special Counsel for Fair Lending, Dep't of Justice); Kirk Jensen & Sasha Leonhardt, *Students, Loan Servicers and the Servicemembers Civil Relief Act*, 19 WESTLAW JOURNAL: BANKER & LENDER LIABILITY 10 (2013).

99. Letter from Gregory C. Strong, Director, Consumer Protection Unit, Delaware Dep't of Justice, to servicers and lenders (Sept. 26, 2013) (on file with authors). In addition, the National Mortgage Settlement of 2012 was signed by the attorneys general of forty-nine states. Press Release, Department of Justice, $25 Billion Mortgage Servicing Agreement Filed in Federal Court (Mar. 12, 2012).

100. Mortgage Reform and Anti-Predatory Lending Act, Pub. L. No. 111-203, tit. XIV, §§ 1401–32 [hereinafter Mortgage Reform Act].

101. *See* chapter 2.

102. Homeowners Protection Act of 1998, 12 U.S.C. §§ 4901–10 [hereinafter HPA].

103. National Housing Act, 12 U.S.C. § 4901(13).

104. Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801–10 [hereinafter HMDA].

105. 12 C.F.R. pt. 203.

106. 12 U.S.C. §§ 2601–17.

107. *See* chapter 4.

108. 12 C.F.R. pt. 3500.

109. 12 U.S.C. § 2604.

110. 12 C.F.R. § 3500.7.

111. 12 U.S.C. § 2603.

112. *See* HUD, Settlement Statement (HUD-1), *available at* www.hud.gov/offices/adm/hudclips/forms/files/1.pdf.

113. The other agencies are the Federal Reserve Board, FDIC, FHFA, NCUA and the OCC. *See* 12 C.F.R. pt. 1026.

114. 12 C.F.R. § 1026.35(a)(1).

115. 12 C.F.R. § 1026.35(c)(4).

116. 12 C.F.R. § 1026.35(c)(2).

117. 78 Fed. Reg. 79,730 (Nov. 2013).

118. The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110–289, div. A, tit. V, §§ 1501–17, 122 Stat. 2654, 2810–24 (July 30, 2008), and codified at 12 U.S.C. §§ 5101–16.

119. Fair Housing Act, 42 U.S.C. §§ 3601–31.

120. *See* chapter 6.

121. 12 U.S.C. § 5517(s).

122. Alternative Mortgage Transactions Parity Act, 12 U.S.C. § 3802 [hereinafter AMTPA].

123. *See* chapter 7.

124. Consumer Leasing Act, 15 U.S.C. §§ 1667–67f [hereinafter CLA].

125. 12 C.F.R. § 1013(h).

126. 12 C.F.R. pt. 1013.

127. Consumer Leasing Act, 15 U.S.C. § 1667f(a)(1).

128. Electronic Fund Transfer Act, 12 U.S.C. §§ 1693–93r [hereinafter EFTA].

129. *See* 12 C.F.R. pt. 1005.

130. *See* chapter 10.

131. *Id.*

132. On January 22, 2013, the CFPB issued a rule temporarily delaying the effective date of the Remittance Transfer Rule. As this edition went to press, no final rule was yet in place.

133. *See* 12 C.F.R. §§ 1005.30–1005.36.

134. *See, e.g.*, 12 C.F.R. § 1026.60. For a more detailed discussion of TILA, see chapter 3.

135. Credit Card Accountability, Responsibility and Disclosure Act, Pub. L. No. 111-24, 123 Stat. 1734 (2009) [hereinafter Credit CARD Act].

136. 15 U.S.C. § 1666.

137. *See* PCI Security Standards Council Home Page, *available at* www.pcisecuritystandards.org/index.shtml.

138. As of the writing of this chapter, only the following states have adopted all or a portion of the Uniform Consumer Credit Code: Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Oklahoma, South Carolina, Utah, Wisconsin, and Wyoming.

139. *See* chapter 23.

140. Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801–09, 6821–27 [hereinafter GLBA].

141. *See, e.g.*, 16 C.F.R. pt. 314.

142. *See* Final Model Privacy Form Under the Gramm-Leach-Bliley Act, 74 Fed. Reg. 62,890 (Dec. 1, 2009), *available at* www.ftc.gov/privacy/privacyinitiatives/PrivacyModelForm_FR.pdf. The regulations may be found at, for example, 16 C.F.R. pt. 313, and 12 C.F.R. pts. 40, 216, 332, 573 and 716.

143. Right to Financial Privacy Act, 12 U.S.C. § 3401 [hereinafter RFPA].

144. *See* section 114 of FACTA, codified at 12 U.S.C. § 1681m(e).

145. 15 U.S.C. § 1681a(*l*) (definition of firm offer of credit or insurance).

146. *See* chapter 12.

147. Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(6) [hereinafter FDCPA].

148. *See* chapter 12.

149. 15 U.S.C. § 1692(e).

150. 15 U.S.C. § 1692a(6)(F).

151. *See* Federal Trade Commission, Staff Commentary on the Fair Debt Collection Practices Act (published originally at 53 Fed. Reg. 50,097–50,110 (Dec. 13, 1988), *available at* www.ftc.gov/os/statutes/fdcpa/commentary.htm.

152. Credit Repair Organizations Act, 15 U.S.C. §§ 1679–79j.

153. 15 U.S.C. § 1679h(b).