

Table of Contents

About the Editors	v
About the Contributors	xi
Table of Chapters	xxiii
Table of Contents	xxv
Preface	cix

Chapter 1 Consumer Loan Products and the Federal Regulation of Consumer Credit

Richard E. Gottlieb and A. Paul Heeringa

The Basics of Consumer Finance	1-3
Q 1.1 What is a consumer loan?	1-3
Q 1.1.1 What are the principal structures of consumer loan regulation?	1-3
Q 1.2 Who is a consumer?	1-3
Q 1.3 What is a loan?	1-4
Q 1.3.1 What is the difference between an unsecured and secured loan?	1-4
Q 1.3.2 What is the difference between open-end and closed-end credit?	1-5
Q 1.3.3 What is the difference between a loan and a retail installment contract?	1-5
Q 1.4 What is a security interest?	1-6
Q 1.5 What interest rates may be charged on consumer loans?	1-6
Q 1.6 May consumer contracts be in electronic or digital form?	1-7
Q 1.6.1 What is an electronic record?	1-7
Q 1.6.2 What is an electronic signature?	1-7
Q 1.6.3 Do UETA and ESIGN supersede state laws that require that consumer contracts be in writing?	1-8
Q 1.6.4 May electronic signatures be notarized remotely?	1-8
Q 1.6.5 Is there a difference between remote online notarization and eNotarization?	1-8

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Consumer Loan Products	1-9
Q 1.7 What are the basic types of consumer loan products?	1-9
Q 1.8 What is a personal loan?	1-9
Q 1.9 What is a payday loan?	1-9
Q 1.10 What is a mortgage loan?	1-10
Q 1.10.1 What is a mortgage?.....	1-10
Q 1.10.2 What is a deed of trust?.....	1-10
Q 1.10.3 On a mortgage loan, is the only obligation to repay the loan?	1-11
Q 1.10.4 Are there differences between residential and non-residential mortgage loans?	1-11
Q 1.10.5 What is a mortgage lien?	1-11
Q 1.10.6 What is a mortgage note?.....	1-12
Q 1.10.7 What is an adjustable-rate mortgage?	1-12
Q 1.10.8 What is a home equity line of credit?	1-12
Q 1.10.9 What is a reverse mortgage loan?.....	1-12
Q 1.11 What is a credit card plan?.....	1-13
Q 1.11.1 What is a credit card issuer?	1-13
Q 1.11.2 What is a credit card?	1-13
Q 1.11.3 What is a cardholder?.....	1-14
Q 1.12 What is a student (or “educational”) loan?.....	1-15
Q 1.12.1 How do student loan repayments vary from conventional personal loans?	1-15
Q 1.12.2 Is a student loan technically a “consumer loan”?	1-16
Q 1.12.3 How does a student loan differ from an educational income share agreement?	1-16
Bankruptcy	1-17
Q 1.13 What protections are afforded lenders and consumers under federal bankruptcy laws?	1-17
Q 1.13.1 What is a Chapter 7 bankruptcy?	1-17
Q 1.13.2 What is a Chapter 13 bankruptcy?	1-17
Q 1.13.3 May a consumer file for Chapter 11 bankruptcy?	1-18
Sources of Consumer Credit	1-18
Q 1.14 Who provides credit to consumers?.....	1-18
Q 1.15 What is a bank?.....	1-19
Q 1.15.1 What is a bank holding company?	1-19
Q 1.16 What is a credit card bank?.....	1-19
Q 1.17 What is a non-depository institution?	1-19
Q 1.18 What is a special purpose national bank?.....	1-20
Q 1.18.1 Is there an SNPB charter for fintech companies?	1-20

Table of Contents

Q 1.19	What is a credit union?	1-20
Q 1.20	What is a savings & loan association, and how does it differ from other depository institutions?	1-21
Q 1.21	What is an industrial loan company?.....	1-21
Q 1.22	What is a mortgage banker?.....	1-22
Q 1.22.1	Is a mortgage company also a bank?	1-22
Q 1.22.2	What is a mortgage broker?	1-23
Q 1.22.3	What is the difference between a mortgage banker and a mortgage broker?.....	1-23
Q 1.23	What is a consumer finance company?	1-24
Q 1.23.1	What is an auto finance company?	1-24
Q 1.23.2	What is a captive auto finance company?.....	1-24
Q 1.24	Are fintechs considered consumer lenders?	1-25
Q 1.24.1	What is P2P lending?.....	1-25
Q 1.24.2	What is cryptocurrency?.....	1-25
Q 1.24.3	What is blockchain?	1-25
Q 1.25	What is a government-sponsored enterprise?.....	1-26
Q 1.25.1	What are Fannie Mae and Freddie Mac?.....	1-26
Q 1.25.2	Do Fannie Mae and Freddie Mac make loans directly to consumers?	1-26
Q 1.25.3	What is the role of the Federal Housing Finance Agency in the operations of Fannie Mae and Freddie Mac?	1-26
Q 1.25.4	Is there a GSE for the Federal Housing Administration and Department of Veterans Affairs Home Loan Program for Veterans?	1-27
Q 1.25.5	Is there a GSE for student loans?.....	1-27
Q 1.26	What is a loan servicer?	1-27
Q 1.26.1	What is a master servicer?.....	1-28
Q 1.26.2	What is a sub-servicer?	1-28
Q 1.27	Are retailers covered by consumer finance laws?	1-28
Federal Regulators		1-29
Q 1.28	What federal agencies regulate consumer lending?	1-29
Q 1.29	What is the CFPB?	1-29
Q 1.30	What role do other federal regulators play?.....	1-29
Q 1.30.1	What is the Office of the Comptroller of the Currency?	1-30
Q 1.30.2	What is the Federal Reserve?	1-30
Q 1.30.3	What is the Federal Deposit Insurance Corporation?	1-30
Q 1.30.4	What is the Farm Credit Administration?.....	1-31
Q 1.30.5	What is the National Credit Union Administration?	1-31
Q 1.30.6	Is there formal coordination among the federal agencies?	1-32

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

<i>The Consumer Financial Protection Bureau</i>	1-32
Q 1.31 What is the scope of the CFPB's authority?	1-32
Q 1.31.1 Does the Federal Reserve exercise any authority over the CFPB?	1-33
Q 1.32 How is the CFPB funded?	1-33
Q 1.33 Who leads the CFPB?	1-34
Q 1.34 How is the CFPB organized?	1-34
Q 1.35 What is the scope of the CFPB's supervision authority?	1-35
Q 1.35.1 What is the CFPB's authority with respect to service providers?	1-36
Q 1.35.2 Which entities are excluded from rulemaking, supervision, or enforcement?	1-36
Q 1.35.3 What statutes does the CFPB administer?	1-37
Q 1.35.4 In connection with the above laws, what regulations have been promulgated by the CFPB?	1-38
Q 1.35.5 In addition to the statutes it regulates, are there any statutes that the CFPB may likewise enforce?	1-39
Q 1.36 Before engaging in rulemaking, what must the CFPB consider?	1-40
Q 1.36.1 Do CFPB rules preempt state law?	1-40
Q 1.37 What action has the CFPB taken in regard to its supervisory responsibilities?	1-41
Q 1.37.1 May a supervised entity appeal a supervisory finding?	1-42
Q 1.38 Who is exempt from CFPB authority?	1-42
Q 1.39 What is the CFPB's rulemaking authority regarding unfair, deceptive, or abusive acts or practices?	1-43
Q 1.39.1 Is the CFPB restricted in regard to activities it deems to be unfair?	1-44
Q 1.39.2 What limitations are placed on the CFPB in determining that an act or practice is abusive?	1-44
Q 1.39.3 Has the CFPB issued any rulemaking or guidance on what constitutes "abusive" conduct?	1-44
Q 1.40 What is the scope of the CFPB's enforcement authority?	1-45
Federal Laws Governing Consumer Lending	1-46
Q 1.41 What is the Consumer Credit Protection Act?	1-46
Q 1.42 What federal laws apply to lenders at the time the loan is underwritten and made?	1-46
Q 1.43 What is the Truth in Lending Act?	1-47
Q 1.43.1 What is the scope of TILA?	1-47

Table of Contents

Q 1.43.2	What is Regulation Z?	1-48
Q 1.43.3	Are retail installment sales covered by TILA?	1-48
Q 1.43.4	Are there any state laws that supplement or supplant TILA?	1-49
Q 1.43.5	Is there a private right of action under TILA?	1-49
Q 1.44	What is “fair lending”?	1-49
Q 1.45	What is the Fair Housing Act?	1-50
Q 1.45.1	Does the CFPB have regulatory authority with respect to the Fair Housing Act?	1-50
Q 1.46	What is the Equal Credit Opportunity Act?	1-50
Q 1.46.1	What is the scope of ECOA?	1-50
Q 1.46.2	What is Regulation B?	1-50
Q 1.46.3	Does ECOA address issues other than fair lending?	1-51
Q 1.46.4	Which regulators investigate claims of mortgage discrimination?	1-51
Q 1.46.5	Is there a private right of action under the FHA and the ECOA?	1-51
Q 1.47	What is the Community Reinvestment Act?	1-52
Q 1.48	What is the Fair Credit Reporting Act?	1-52
Q 1.48.1	Who is covered by the FCRA?	1-52
Q 1.48.2	What is a consumer reporting agency?	1-53
Q 1.48.3	Who has regulatory and enforcement authority over FCRA?	1-53
Q 1.48.4	Is there a private right of action under FCRA?	1-53
Q 1.48.5	What is the Fair and Accurate Credit Transactions Act (FACTA)?	1-54
Q 1.49	What is the FTC Holder Rule?	1-54
Q 1.49.1	Are there any exceptions to the FTC Holder Rule?	1-54
Q 1.49.2	Is an assignee or purchaser liable for disclosure errors that are not apparent on the face of the loan?	1-55
Q 1.50	What is the FTC Credit Practices Rule?	1-55
Q 1.50.1	What contract provisions are prohibited under the Credit Practices Rule?	1-55
Q 1.50.2	What restrictions apply to co-signers on credit contracts?	1-56
Q 1.50.3	Does the Credit Practices Rule address late charges?	1-56
	<i>Federal Laws Specific to Mortgage Lending and Servicing</i>	1-56
Q 1.51	What federal laws specifically apply just to mortgage lending?	1-56
Q 1.52	What is the Mortgage Reform and Anti-Predatory Lending Act?	1-57

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 1.53	What is the Homeowners Protection Act?	1-57
Q 1.53.1	What is private mortgage insurance?	1-58
Q 1.54	What is the Home Mortgage Disclosure Act?	1-58
Q 1.54.1	What federal regulations implement HMDA?.....	1-58
Q 1.54.2	What is the Real Estate Settlement Procedures Act of 1974?	1-59
Q 1.54.3	What federal regulations implement RESPA?.....	1-59
Q 1.54.4	Does RESPA require special disclosures for consumer credit transactions secured by real property?.....	1-59
Q 1.54.5	Does RESPA regulate appraisals?	1-60
Q 1.55	What are the Mortgage Servicing Rules?.....	1-60
Q 1.56	What is the SAFE Act?.....	1-61
Q 1.57	What is the Alternative Mortgage Transactions Parity Act?.....	1-61
<i>Federal Laws Governing the Purchase or Lease of Motor Vehicles.....</i>		<i>1-61</i>
Q 1.58	Does TILA apply to consumers that buy or lease a car or truck?	1-61
Q 1.59	What is the scope of the Consumer Leasing Act?	1-62
Q 1.59.1	What entities are covered by the Consumer Leasing Act?	1-63
Q 1.59.2	What federal regulations implement the Consumer Leasing Act?	1-63
<i>Consumer Financial Laws Governing the Military and Their Dependents.....</i>		<i>1-63</i>
Q 1.60	Are there any special protections for the military and their dependents?	1-63
Q 1.61	What is the Military Lending Act and how does it differ from the SCRA?	1-63
Q 1.61.1	Who is a covered borrower under the MLA?.....	1-64
Q 1.61.2	Is there a private right of action under the MLA?	1-64
Q 1.62	What is the Servicemembers Civil Relief Act?	1-64
Q 1.62.1	Who is eligible for SCRA protection?.....	1-65
Q 1.62.2	Does the SCRA provide relief against foreclosures?	1-65
Q 1.62.3	In the event of alleged violations of the SCRA, who is entitled to pursue claims?	1-66
<i>Federal Laws Governing the Electronic Transfer of Funds.....</i>		<i>1-66</i>
Q 1.63	What is the Electronic Fund Transfer Act?	1-66
Q 1.64	What federal regulations implement the EFTA?	1-67
Q 1.64.1	Does the CFPB also regulate money transfers to foreign countries?.....	1-67

Table of Contents

<i>Federal Laws Governing Credit Card Use</i>	1-67
Q 1.65 Do TILA and Regulation Z apply to credit cards?.....	1-67
Q 1.66 What is the Credit Card Accountability, Responsibility and Disclosure Act of 2009?.....	1-67
Q 1.67 What is the Fair Credit Billing Act?	1-68
Q 1.68 What are PCI Standards?	1-68
<i>State Regulation of Consumer Lending</i>	1-69
Q 1.69 What state laws apply to consumer finance transactions?	1-69
<i>Privacy Laws</i>	1-69
Q 1.70 What federal laws govern the privacy of a consumer’s financial information?	1-69
Q 1.71 What is the Gramm-Leach-Bliley Act?.....	1-70
Q 1.71.1 What agency enforces the GLBA?	1-70
Q 1.72 What is the Right to Financial Privacy Act?.....	1-70
Q 1.73 What is the Red Flags Rule?	1-71
Q 1.74 What other federal or state statutes directly address consumer privacy issues?	1-71
Q 1.74.1 What is the TCPA?	1-72
Q 1.74.2 What is the scope of the automated dialer definition?.....	1-72
Q 1.74.3 How and when is proper consent required?.....	1-73
Q 1.74.4 Given its heavy regulation of commercial speech, is the TCPA constitutional?.....	1-73
Q 1.75 What is the TSR?.....	1-74
Q 1.76 What does “DNC” mean?	1-74
Q 1.77 What is the CAN-SPAM Act and Rule?.....	1-74
Q 1.78 What is the CFAA?	1-75
Q 1.79 What is the GDPR?.....	1-75
Q 1.80 What is the California Consumer Privacy Act?.....	1-76
Q 1.80.1 Is there a private right of action under the CCPA?.....	1-77
Q 1.81 What is the California Privacy Rights Act?.....	1-77
Q 1.82 Have any other states passed laws that mirror the CCPA?.....	1-77
Q 1.83 Do any states protect biometric information?	1-78
Q 1.84 What is Nevada’s “do not sell” law?.....	1-79
Q 1.84.1 What about consumer privacy statutes in other states?	1-79

<i>Loan Obligation Delinquency</i>	1-80
Q 1.85 At what point are consumers in “default” on their loan obligation?.....	1-80
Q 1.85.1 What is acceleration?.....	1-80
Q 1.85.2 At what point may the lender foreclose on a mortgage or deed of trust?	1-80
Q 1.86 What federal laws apply to consumers who are delinquent or in default on their loan obligations?	1-81
Q 1.87 What is the Fair Debt Collection Practices Act?.....	1-81
Q 1.87.1 Was the FDCPA enacted strictly to benefit consumers?	1-81
Q 1.87.2 Is a loan servicer considered a third-party debt collector?.....	1-82
Q 1.87.3 Is a debt buyer considered a debt collector under the FDCPA?	1-82
Q 1.87.4 Are there any regulations that supplement the FDCPA?	1-82
Q 1.88 What is the Credit Repair Organizations Act?	1-83
Q 1.88.1 Who enforces the CROA?	1-83

Chapter 2 Truth in Lending Act

Charles E. Washburn, Jr. and John A. Kimble

The Basics of the Truth in Lending Act	2-3
Q 2.1 What is the Truth in Lending Act?.....	2-3
Q 2.2 What was the original purpose of TILA?	2-3
Q 2.3 What kinds of transactions are subject to TILA requirements?	2-5
Disclosures	2-7
Q 2.4 What disclosure requirements are mandated by TILA?	2-7
<i>Closed-End Credit Transactions</i>	2-8
Q 2.5 What is a “closed-end” credit transaction?.....	2-8
Q 2.6 What are the required disclosures for closed-end transactions?.....	2-8
Q 2.7 Must these disclosures be made in a specific manner?	2-12
Q 2.8 When are these disclosures required?	2-12

Table of Contents

Q 2.9	What are the material disclosures?.....	2-13
Q 2.9.1	What are the finance charge disclosure requirements?.....	2-14
Q 2.10	Are there any post-consummation requirements under TILA?.....	2-15
Q 2.11	Does TILA require periodic statements for closed-end credit transactions?.....	2-16
Q 2.11.1	What must the periodic statements contain?.....	2-16
Q 2.11.2	Are there any exceptions to the periodic statement requirement?.....	2-17
Q 2.12	What post-consummation notices must be provided for adjustable rate mortgages?.....	2-18
Q 2.12.1	What notice must be provided as a result of an interest rate change?.....	2-18
Q 2.12.2	Are there any exceptions to the interest rate change notice?.....	2-19
Q 2.12.3	What notice is required if an interest rate change results in a payment change?.....	2-19
Q 2.12.4	Are there any exceptions to the payment change notice?.....	2-20
Q 2.13	What information must be provided when an escrow account is canceled?.....	2-20
Q 2.13.1	When must the Escrow Closing Notice be provided?.....	2-21
Q 2.14	Does TILA impose any requirements on how payments are processed?.....	2-21
<i>Open-End Credit Transactions</i>		2-22
Q 2.15	What must be disclosed for open-end credit transactions?.....	2-22
Q 2.16	What disclosures are required before opening an open-end account?.....	2-22
Q 2.17	What disclosures must be made at the end of each billing cycle?.....	2-25
Q 2.18	Must the disclosures be made in a certain manner?.....	2-27
Q 2.19	Are there special disclosures required for home-equity plans?.....	2-27
Home Ownership and Equity Protection Act		2-28
Q 2.20	What is the Home Ownership and Equity Protection Act?.....	2-28
Q 2.21	What is a high-cost home loan?.....	2-28
Q 2.22	What are the disclosure obligations for HOEPA loans?.....	2-29
Q 2.23	What restrictions does HOEPA impose on its loan terms?.....	2-30

Higher-Priced Mortgage Loans	2-32
Q 2.24 What is a “higher-priced mortgage loan”?	2-32
Q 2.25 What restrictions and requirements are imposed on higher-priced mortgage loans?.....	2-32
Appraiser Independence	2-33
Q 2.26 What is the scope of the valuation independence rule?	2-33
Q 2.27 What conduct is prohibited under the valuation independence rule?.....	2-34
Q 2.28 How must fee appraisers be compensated?	2-35
Q 2.28.1 What are “customary and reasonable” fees?.....	2-35
Loan Originator Qualifications, Compensation, and Restrictions	2-36
Q 2.29 What is a “loan originator”?	2-36
Q 2.30 What transactions are covered by the loan originator compensation rule?.....	2-37
Q 2.31 May loan originator compensation be based on loan terms?	2-37
Q 2.31.1 What is compensation under the rule?	2-38
Q 2.31.2 Are there exceptions to the prohibition against compensating loan originators based on loan terms?	2-38
Q 2.32 May a loan originator receive compensation from the creditor and the consumer on the same transaction?	2-39
Q 2.33 May a loan originator direct a consumer to a particular transaction that will result in greater compensation to the loan originator?	2-40
Q 2.33.1 Is there a safe harbor for the anti-steering rule?.....	2-40
Q 2.34 What are the loan originator qualification requirements under Regulation Z?	2-40
Q 2.34.1 Are there any identification requirements for loan originators?	2-41
Q 2.35 What restrictions apply to arbitration clauses, waivers, and the financing of credit insurance under Regulation Z?.....	2-41
Ability to Repay Rule and Qualified Mortgages	2-41
Q 2.36 What is the “ability to repay rule”?	2-41
Q 2.37 How may a creditor comply with ATR?	2-42
Q 2.38 What is the general ability-to-repay standard?.....	2-42
Q 2.38.1 Is the creditor’s acknowledgment of a successor-in-interest as obligor subject to the ATR rule?.....	2-43

Table of Contents

Q 2.39	What protections does “qualified mortgage” status provide?	2-43
Q 2.39.1	What are the different types of “qualified mortgage”?	2-44
Q 2.40	How does ATR apply to refinancings?	2-46
Rescission		2-46
Q 2.41	What is rescission and when is it available?	2-46
Q 2.42	What loans may be rescinded?	2-47
Q 2.43	What type of disclosures are required for the right of rescission?	2-47
Q 2.44	When may a borrower rescind?	2-48
Q 2.45	How does a borrower rescind a transaction?	2-50
Q 2.46	What are the effects of rescission?	2-50
Enforcement		2-51
Q 2.47	How is TILA enforced?	2-51
Q 2.48	What are a borrower’s remedies for TILA violations?	2-53
Q 2.48.1	What are the statutory damages?	2-53
Q 2.48.2	May actual damages also be collected?	2-54
Q 2.48.3	May a borrower use TILA as a defense on a collection action?	2-55
Q 2.49	What is the statute of limitations for TILA claims?	2-55
Q 2.50	What are a lender’s other defenses?	2-56

Chapter 3 Real Estate Settlement Procedures Act, Mortgage Servicing Rules, and TRID

Thomas M. Hanson and Brett J. Natarelli

Overview of the Law		3-3
Q 3.1	Why was RESPA originally enacted?	3-3
Q 3.2	Does the CFPB have oversight over RESPA?	3-4
Q 3.3	Does RESPA preempt state laws?	3-4
Q 3.4	Does RESPA cover all real estate mortgage transactions?	3-5
Q 3.5	What loans are not subject to RESPA?	3-6

Disclosures	3-7
<i>Generally</i>	3-7
Q 3.6 What disclosures are required?.....	3-7
<i>TILA/RESPA Integrated Disclosures</i>	3-8
Q 3.7 What disclosure changes became effective on October 3, 2015 as TRID?	3-8
Q 3.7.1 Does TRID apply to all mortgage loans?.....	3-8
Q 3.7.2 What triggers the requirement to provide a Loan Estimate?	3-9
Q 3.7.3 What information must be provided in a Loan Estimate?	3-10
Q 3.7.4 May any fees be imposed prior to providing a Loan Estimate?	3-10
Q 3.7.5 Is a creditor bound by the estimated closing costs disclosed in the Loan Estimate?.....	3-10
Q 3.7.6 What information must be provided in a Closing Disclosure?.....	3-11
Q 3.7.7 When must an amended Closing Disclosure be provided?.....	3-11
Q 3.7.8 Does use of the CFPB's model forms provide a safe harbor?	3-12
Q 3.7.9 Does use of the TRID model forms satisfy disclosure requirements for loans not covered by the TRID Rule?	3-12
Q 3.7.10 In what circumstances are TRID disclosures required with loan assumptions?.....	3-12
<i>Initial Disclosures for Loans Not Subject to the TRID Rule</i>	3-13
Q 3.8 What initial disclosures are required?.....	3-13
Q 3.9 What is the Special Information Booklet and when must it be provided?.....	3-13
Q 3.10 What is a Good Faith Estimate and when must it be provided?.....	3-14
Q 3.10.1 What fees may be charged prior to providing a GFE?	3-15
Q 3.10.2 To what extent is an originator bound by the charges listed in the GFE?	3-15
Q 3.10.3 May a lender cure a GFE violation?.....	3-17
Q 3.10.4 Does the GFE commit the loan originator to make the loan?	3-17
Q 3.11 What is an affiliated business arrangement disclosure and when is it provided?.....	3-17

Table of Contents

Q 3.12	What is a homeownership counseling organization list and when must it be provided?.....	3-18
Q 3.12.1	What exemptions are available from the homeownership counseling organization list requirement?.....	3-20
Q 3.12.2	What particular information must be disclosed with the homeownership counseling organization list?	3-20
	<i>Settlement Disclosures for Non-TRID Loans</i>	3-21
Q 3.13	What disclosures must be made in connection with settlement?.....	3-21
Q 3.14	What is the Uniform Settlement Statement?	3-21
Q 3.14.1	What are the settlement agent’s responsibilities?	3-22
Q 3.14.2	What are the lender’s record-keeping responsibilities?	3-22
Q 3.15	What is the Initial Escrow Account Statement?.....	3-23
	<i>Post-Closing Disclosures</i>	3-23
Q 3.16	What disclosures must be made post-closing?	3-23
	<i>Prohibition on Fees</i>	3-24
Q 3.17	What fees may be charged for preparing federal disclosures?	3-24
	Prohibitions on Kickbacks and Unearned Fees	3-24
Q 3.18	What does section 8 of RESPA prohibit?	3-24
Q 3.18.1	What is a “settlement service”?.....	3-26
Q 3.18.2	What is a “referral”?	3-27
Q 3.18.3	What is a “thing of value”?	3-27
Q 3.18.4	What is an “unearned fee”?	3-28
Q 3.19	What is the RESPA section 8 “safe harbor”?	3-29
Q 3.20	Does RESPA permit any referral fees?.....	3-31
Q 3.20.1	Have courts addressed co-marketing RESPA claims?.....	3-34
	Title Companies	3-35
Q 3.21	What limitations are placed on the seller’s selection of a title company?	3-35
	Escrow Accounts	3-35
	<i>Generally</i>	3-35
Q 3.22	What does RESPA generally require with regard to escrow accounts?.....	3-35

<i>Annual Escrow Account Statement</i>	3-37
Q 3.23 What is an Annual Escrow Account Statement?.....	3-37
Q 3.24 What specific contents must be included in an Annual Escrow Account Disclosure Statement?.....	3-39
Q 3.25 Must an Annual Escrow Account Disclosure Statement be provided when the loan is in default, foreclosure, or bankruptcy?.....	3-40
Q 3.26 May the Annual Escrow Account Disclosure Statement be delivered with other materials?.....	3-40
Q 3.27 How may a servicer change the escrow account computation year?.....	3-40
<i>Servicing Accounts</i>	3-41
Q 3.28 What requirements apply to servicers' payment of escrow account items?.....	3-41
Q 3.29 What treatment must be afforded to borrowers' discretionary payments?.....	3-42
Q 3.30 What requirements apply to escrow accounts when servicing is transferred?.....	3-43
Mortgage Servicing Rules	3-43
<i>Applicability</i>	3-43
Q 3.31 To which loans do the requirements and limitations of the Mortgage Servicing Rules apply?.....	3-43
Q 3.32 What exemptions from the Mortgage Servicing Rules are given to small servicers?.....	3-44
Q 3.32.1 Who qualifies as a small servicer?.....	3-45
Q 3.32.2 When may a servicer determine its qualification for a small servicer exemption?.....	3-45
Q 3.32.3 Does a servicer lose its small servicer status if it employs a subservicer?.....	3-46
<i>General Disclosure and Payment Requirements</i>	3-46
Q 3.33 What general requirements apply to disclosures required by the Mortgage Servicing Rules?.....	3-46
Q 3.33.1 Do the Mortgage Servicing Rules require periodic billing statements?.....	3-46
Q 3.33.2 Are there exemptions to the periodic statement requirement?.....	3-47
Q 3.33.3 What are the interest-rate adjustment notice requirements for ARMs?.....	3-47

Table of Contents

Q 3.33.4	Do the rules require prompt payment crediting and payoff statements?.....	3-48
Q 3.33.5	What obligations apply to crediting payments for open-end credit?.....	3-48
Q 3.33.6	What are “reasonable requirements for payments”?.....	3-48
Q 3.34	What are a servicer’s disclosure obligations to a successor in interest?.....	3-49
<i>Servicing Transfers</i>		3-50
Q 3.35	What requirements apply to mortgage servicing transfers under the Mortgage Servicing Rules?.....	3-50
Q 3.36	What requirements apply to payments received after a mortgage servicing transfer?.....	3-50
Q 3.37	What disclosure requirements apply to transfers of mortgage servicing?.....	3-51
Q 3.37.1	What is a Servicing Disclosure Statement and when is it provided?.....	3-51
Q 3.37.2	What are notices of transfer of loan servicing and when are they required?.....	3-51
<i>Escrow Accounts</i>		3-53
Q 3.38	What requirements under the Mortgage Servicing Rules apply to escrow accounts?.....	3-53
Q 3.39	What requirements apply to a servicer’s payment of escrow items?.....	3-53
Q 3.40	What requirements apply to a servicer’s treatment of escrow balances after a mortgage loan is paid in full?.....	3-53
<i>Error Resolution and Information Requests</i>		3-54
Q 3.41	What error resolution and information request procedures are prescribed by the Mortgage Servicing Rules?.....	3-54
Q 3.42	What is a notice of error?.....	3-54
Q 3.43	What is an information request and what format and substance limitations apply?.....	3-55
Q 3.44	Is a servicer always required to respond?.....	3-56
Q 3.45	What must a servicer do in response to a valid notice of error?.....	3-58
Q 3.46	What if an error is found?.....	3-58
Q 3.47	Are there any exceptions to the notice of error requirements?.....	3-59
Q 3.48	Is there a time limit to conclude an investigation in connection with a notice of error?.....	3-59

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 3.49	What if no error is found?	3-60
Q 3.50	What must a servicer do in response to a valid information request?	3-61
Q 3.51	What if the servicer does not maintain the information sought?	3-61
Q 3.52	Can a servicer charge a fee for a notice of error investigation or information request?	3-62
<i>Force-Placed Insurance</i>		3-62
Q 3.53	What general requirements apply with respect to force-placed insurance?.....	3-62
Q 3.54	What limitations apply to the amount of force-placed insurance charges that may be assessed to a borrower?	3-63
Q 3.55	What disclosure requirements are imposed in connection with the initial placement of force-placed insurance?.....	3-63
Q 3.56	What actions must a servicer take if it receives evidence of adequate borrower-purchased hazard insurance coverage when force-placed coverage is in place?.....	3-66
Q 3.57	What is required for a servicer to charge a borrower for renewing or replacing existing force-placed insurance?.....	3-66
<i>Policies and Procedures</i>		3-68
Q 3.58	What servicing policies and procedures must servicers develop?	3-68
<i>Early Intervention and Continuity of Contact</i>		3-69
Q 3.59	What is the early intervention requirement?.....	3-69
Q 3.59.1	Are there any COVID-19-specific rules regarding the early intervention requirement?	3-71
Q 3.60	What is the continuity of contact requirement?.....	3-71
Q 3.60.1	What is required under continuity of contact?	3-71
Q 3.60.2	What must servicer personnel provide to a delinquent borrower under the continuity of contact requirement?.....	3-72
<i>Loss Mitigation</i>		3-72
Q 3.61	What do the loss mitigation rules generally require?.....	3-72
Q 3.62	What are a servicer's obligations to review loss mitigation applications for completeness?.....	3-73
Q 3.63	What if the loss mitigation application is incomplete?	3-73
Q 3.64	May a servicer evaluate an incomplete loss mitigation application to discharge its obligation to evaluate a complete loss mitigation application?.....	3-74

Table of Contents

Q 3.65	What if the borrower submits a complete loss mitigation application?.....	3-75
Q 3.66	What if a servicer discovers additional information is needed to complete a loss mitigation application when the application previously was considered facially complete?	3-76
Q 3.67	How may a borrower appeal denial of a loss mitigation option?	3-77
Q 3.68	How do these rules impact the foreclosure process?	3-78
Q 3.69	Can a borrower privately enforce the loss mitigation procedures?.....	3-80
Q 3.70	Do these rules require a servicer to offer specific loss mitigation options?	3-81
Q 3.71	How does a servicing transfer affect a pending loss mitigation application?	3-81
Enforcement and Remedies		3-83
Q 3.72	How is RESPA enforced?	3-83
Q 3.73	What are the remedies available for violations of RESPA?.....	3-83
Q 3.74	Might the originating lender ever be vicariously liable for a mortgage <i>servicer's</i> RESPA violation?.....	3-87
Q 3.75	What are the statute of limitations periods for claims under RESPA?	3-87

Chapter 4 Fair Credit Reporting Act

Gregg D. Stevens and Joseph A. Apatov

The Basics of the Fair Credit Reporting Act		4-4
<i>Regulatory and Enforcement Authority</i>		<i>4-4</i>
Q 4.1	Which agencies have regulatory and enforcement authority for FCRA?	4-4
<i>Affected Parties</i>		<i>4-5</i>
Q 4.2	Who is subject to FCRA?.....	4-5
Q 4.3	Who is a “consumer” under FCRA?	4-6
Q 4.4	Who is a “user” under FCRA?.....	4-6
Q 4.4.1	What are the obligations of “users” of consumer reports under FCRA?.....	4-6

Q 4.5	Who are “furnishers” under Regulation V?	4-7
Q 4.5.1	Are some entities that otherwise “furnish” information excluded from the Regulation V definition?	4-7
Q 4.5.2	What are the obligations of companies that furnish information to CRAs under FCRA?	4-7
Q 4.5.3	What requirements does FCRA impose for a furnisher to establish policies and procedures related to the information that it provides to CRAs?	4-9
Q 4.6	What is a “consumer reporting agency”?	4-10
	<i>Consumer Reports</i>	4-10
Q 4.7	What is a “consumer report”?	4-10
Q 4.8	What is an “investigative consumer report”?	4-11
	Permissible Purposes to Obtain and Use Consumer Reports	4-12
Q 4.9	What are the “permissible purposes” for a CRA to furnish, and a user to obtain or use, a consumer report?	4-12
Q 4.10	What certifications must a user make to the CRA before it may obtain a consumer report?	4-13
	<i>Prescreened Offers of Credit</i>	4-14
Q 4.11	What is a prescreened offer of credit or insurance?	4-14
Q 4.12	What are the conditions for making prescreened offers of credit?	4-14
Q 4.12.1	What consumer information is contained in a CRA’s report provided as a result of a “prescreening”?	4-15
Q 4.13	What disclosures must be made in prescreened offers of credit?	4-15
Q 4.13.1	May consumers opt out of receiving firm offers of credit or insurance?	4-16
	<i>Medical Information</i>	4-18
Q 4.14	May creditors obtain medical information for credit purposes?	4-18
Q 4.15	How does FCRA restrict a person who receives medical information from a CRA from using or sharing the information?	4-18
	<i>Investigative Consumer Reports</i>	4-19
Q 4.16	What are a user’s obligations with respect to investigative consumer reports?	4-19

Table of Contents

Q 4.17	Must a person who obtains a consumer report on an individual provide a copy of the report to the individual?	4-20
	<i>Information Sharing and Marketing</i>	4-20
Q 4.18	May a company share financial information about consumers with affiliated and nonaffiliated companies?	4-20
Q 4.19	May a company use financial information about a customer of an affiliate in marketing?	4-21
Q 4.19.1	What is “eligibility information”?	4-21
	<i>Employers and Their Employees’ Credit Information</i>	4-22
Q 4.20	Is an employer permitted to access its employees’ credit information?	4-22
Q 4.20.1	What special conditions apply for a person to procure a consumer report for employment purposes?	4-22
Q 4.20.2	What conditions must be met before a CRA may furnish a consumer report for employment purposes?	4-22
Q 4.20.3	What are an employer’s obligations to a job applicant or employee before it takes “adverse action”?	4-23
	Identity Theft	4-23
Q 4.21	How does FCRA address identity theft issues?	4-23
Q 4.21.1	What are a fraud alert, an active duty alert, and an extended alert?	4-24
Q 4.21.2	What are the user’s responsibilities if a consumer’s consumer report contains an alert?	4-24
Q 4.21.3	What is a security freeze?	4-25
Q 4.21.4	What requirements apply to CRAs and third parties when a security freeze is in effect?	4-25
Q 4.21.5	What requirements apply to any business entity that has dealt with an alleged identity thief?	4-25
Q 4.21.6	What must a debit or credit card issuer do to address the risk of identity theft arising from a change of address notice?	4-26
Q 4.21.7	What requirements apply to information printed on debit or credit card receipts?	4-27
Q 4.21.8	What is an Identity Theft Prevention (“Red Flags”) program?	4-28
Q 4.21.9	What are the responsibilities of financial services companies with regard to <i>disposal</i> of consumer information?	4-29

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Disclosures to Consumers	4-30
<i>Adverse Action</i>	4-30
Q 4.22 What is “adverse action”?	4-30
Q 4.23 What information must be provided to a consumer if adverse action is taken in connection with a consumer report?	4-32
Q 4.23.1 Is there a different rule for adverse action based on information obtained from third parties that are not CRAs?	4-33
<i>Credit Score and Risk-Based Pricing Notices</i>	4-34
Q 4.24 What are the disclosure obligations of a person who makes or arranges mortgage loans and uses a consumer credit score in connection with a request for credit by a consumer?	4-34
Q 4.25 Who must comply with the risk-based pricing notice requirement?.....	4-34
Q 4.26 Is there a particular form that must be used to provide risk-based pricing notices and exception notices?.....	4-35
Q 4.27 What content must be included in a risk-based pricing notice?.....	4-35
Q 4.28 When are risk-based pricing notices required?.....	4-36
Q 4.28.1 What is the Direct Comparison Method?	4-37
Q 4.28.2 What is the Credit Score Proxy Method?	4-37
Q 4.28.3 What is the Tiered Pricing Method?	4-37
Q 4.29 Are there any circumstances where a risk-based pricing notice is not required?.....	4-38
Q 4.30 What are “exception notices”?	4-38
Q 4.31 What are a person’s responsibilities under the risk-based pricing notice requirements when a credit score is not available?.....	4-40
Consumer Disputes	4-41
Q 4.32 How does a consumer dispute information in his or her consumer report?.....	4-41
Q 4.33 What are a CRA’s responsibilities if a consumer disputes information in that consumer’s file?	4-41
Q 4.33.1 What are the CRA’s responsibilities if it determines that the consumer dispute is lacking in merit?	4-42

Table of Contents

Q 4.34	What are a furnisher’s responsibilities if a CRA notifies it that the consumer has disputed information reported by the furnisher to the CRA?	4-43
Q 4.35	What are a furnisher’s responsibilities if a consumer directly disputes (to such furnisher) any information reported by the furnisher to a CRA?	4-46
Q 4.35.1	Are there any circumstances where a reasonable investigation is not required?	4-47
Responsibilities of CRAs		4-47
Q 4.36	What obligations does FCRA impose on CRAs to maintain reasonable procedures to ensure compliance?	4-47
Q 4.37	How does FCRA limit the information that a CRA may report?	4-48
Credit Reporting Under the CARES Act		4-49
Q 4.38	What changes did the CARES Act have on the FCRA?	4-49
Q 4.39	What constitutes an “accommodation”?	4-49
Q 4.40	What is the “covered period”?	4-50
Q 4.41	How is a furnisher required to report the account of a consumer that received an accommodation and is performing under its terms?	4-50
Penalties; Civil Remedies		4-51
Q 4.42	Is there a private right of action?	4-51
Q 4.42.1	Do consumers have a cause of action for violation of all requirements of FCRA?	4-53
Q 4.43	What are the statutory penalties for violating FCRA?	4-53

Chapter 5 Data Privacy and Security

Donna L. Wilson, Brandon Reilly, and Matthew M.K. Stein

Overview of Privacy and Security Laws		5-3
Q 5.1	What federal laws govern the privacy and security of financial information?	5-3
Q 5.2	What other laws govern data privacy?	5-4

Federal Regulatory Authority for Privacy and Security	5-5
Q 5.3 How is Regulatory Authority over the Primary Privacy and Security Laws Allocated?.....	5-5
<i>Gramm-Leach-Bliley Act</i>	5-6
Q 5.4 What is the Gramm-Leach-Bliley Act?.....	5-6
Q 5.4.1 What is Regulation P?	5-6
Q 5.4.2 What privacy interest does GLBA protect?.....	5-7
Q 5.5 What is NPI?	5-7
Q 5.6 What is a “financial institution” under GLBA?	5-8
Q 5.6.1 What does “significantly engaged in financial activities” mean, and why does it matter?	5-8
Q 5.7 What activities are restricted under GLBA privacy provisions?	5-10
Q 5.7.1 What is the consumer “opt out”?	5-10
Q 5.7.2 Are there instances when a financial institution may share NPI without notice and a chance to opt-out?.....	5-10
<i>GLBA Notices and Disclosures</i>	5-12
Q 5.8 What notices or disclosures are required under GLBA?	5-12
Q 5.8.1 Do the disclosure requirements differ for “customers” versus “consumers”?.....	5-13
Q 5.8.2 What is the legal distinction between a customer and a consumer?	5-14
Q 5.8.3 What privacy notices are required for customers?	5-14
Q 5.8.4 Are there lesser privacy notice requirements for consumers?	5-15
Q 5.9 What information must be included in a privacy notice?	5-15
Q 5.10 How may an institution comply with the notice and opt-out requirements?	5-16
Q 5.11 Are there requirements for the delivery of privacy notices?.....	5-17
<i>Safeguards Rule</i>	5-18
Q 5.12 What steps must a financial institution take under GLBA to safeguard customer information?	5-18
Q 5.13 Are there restrictions on the manner in which an institution disposes of consumer information?	5-19
<i>Responding to Unauthorized Access Incidents</i>	5-19
Q 5.14 Are there requirements for financial institutions in addressing incidents of unauthorized access to customer information?	5-19

Table of Contents

Q 5.15	Are there content requirements for customer notice of incidents of unauthorized access to personal information?.....	5-21
Q 5.16	Is notice required for other security incidents?.....	5-22
Q 5.16.1	What is a “computer-security incident”?	5-23
Federal Enforcement		5-23
Q 5.17	How are privacy and security laws enforced?	5-23
Q 5.18	What types of privacy and security enforcement actions have regulators taken under GLBA and outside of GLBA?.....	5-24
Q 5.19	Is there a private right of action under GLBA?	5-27
Federal Preemption		5-27
Q 5.20	Does GLBA supersede state laws?	5-27
Right to Financial Privacy Act		5-28
Q 5.21	What is the Right to Financial Privacy Act?	5-28
Q 5.21.1	Who must comply with the RFPA, and how?	5-29
Q 5.21.2	Who is protected by the RFPA?	5-29
Q 5.22	What are the restrictions on a financial institution’s release of a customer’s financial information and records?	5-29
Q 5.22.1	Under what circumstances may financial information be released to government agencies?	5-30
Q 5.22.2	How should a financial institution provide financial information when it is appropriate to do so?	5-30
Q 5.23	What penalties does a financial institution risk for violation of the RFPA?	5-30
Other Federal Statutes		5-31
Q 5.24	Does FCRA impose privacy requirements beyond those on consumer reports?.....	5-31
Q 5.25	What is the FTC Consumer Information Disposal Rule?	5-32
<i>Identity Theft and the Red Flags Rule</i>		5-33
Q 5.26	Are there any special rules governing identity theft?.....	5-33
Q 5.27	What is the “Red Flags Rule”?	5-33
Q 5.28	What is a “red flag”?	5-34
Q 5.29	What does the Red Flags Rule generally require?	5-34
Q 5.29.1	Who is a “creditor” under the Red Flags Rule?	5-34
Q 5.29.2	Who is a covered “financial institution”?	5-36
Q 5.29.3	Who is a covered “creditor”?	5-36
Q 5.29.4	What types of “accounts” are covered?	5-36

Q 5.30	Are there Red Flags Rule requirements regarding the administration of the Identity Theft Prevention Program?	5-37
Q 5.30.1	What are the elements of an effective identity theft prevention program under the Red Flags Rule?	5-38
Q 5.30.2	How are Red Flags identified?	5-38
Q 5.30.3	What categories of Red Flags does the program need to address?	5-39
Q 5.30.4	Should the program address methods for detecting Red Flags?	5-39
Q 5.30.5	How should identity theft be mitigated?	5-39
Q 5.30.6	How often does the program need to be updated?	5-40
<i>Red Flags Rule Enforcement</i>		5-40
Q 5.31	What are the penalties for non-compliance with the Red Flags Rule?	5-40
General Data Protection Regulation (GDPR)		5-41
Q 5.32	What is the General Data Protection Regulation?	5-41
Q 5.33	Why should a U.S.-based entity bother to comply with the GDPR?	5-41
Q 5.34	In light of Brexit, does the GDPR govern in the United Kingdom?	5-42
Q 5.35	Who is regulated by the GDPR?	5-42
Q 5.35.1	Who are “controllers” and “processors”?	5-42
Q 5.35.2	What is the “right to be forgotten”?	5-43
Q 5.35.3	What is consent?	5-43
Q 5.35.4	What is necessity for a contract?	5-43
Q 5.35.5	What is a “legitimate interest”?	5-43
Q 5.35.6	What is compliance with a legal obligation?	5-44
Q 5.35.7	Does the GDPR impose breach notification obligations?	5-44
Q 5.35.8	What are the penalties for violating the GDPR?	5-44
Notable State Privacy Statutes and Regulations		5-45
<i>California Privacy Laws</i>		5-45
Q 5.36	How does California law protect privacy?	5-45
Q 5.37	What is the CCPA?	5-45
Q 5.37.1	What is the CPRA?	5-46
Q 5.37.2	Are financial institutions exempt from the CCPA?	5-47
Q 5.37.3	Are there other exemptions from the CCPA that may apply to financial institutions?	5-47

Table of Contents

<i>Other Notable State Privacy Law and Regulations</i>	5-48
Q 5.38 What are the New York DFS Cybersecurity Requirements for Financial Services Companies?	5-48
Q 5.39 What is the Illinois BIPA?	5-49
Q 5.40 What is the Colorado Privacy Act?	5-50
Q 5.41 What is Virginia’s Consumer Data Privacy Act?	5-50

Chapter 6 Electronic Signatures and Records

*Arthur Rotatori, Emily J. Honsa Hicks, Jeremy J. Rzepka
and Douglas Charnas*

Introduction to the eCommerce Laws	6-2
Q 6.1 What is eCommerce?	6-2
Q 6.2 What are the primary laws that authorize the use of electronic records and signatures in consumer financial services transactions?	6-2
Q 6.2.1 What is an “electronic record”?	6-3
Q 6.2.2 What is an “electronic signature”?	6-3
Q 6.3 What states have enacted UETA?	6-6
Q 6.4 Do eCommerce Laws supersede laws that require contracts be in writing?	6-7
Q 6.4.1 What is a covered “transaction” for UETA purposes?	6-7
Q 6.4.2 What is a covered “transaction” for ESIGN purposes?	6-7
Q 6.5 How do the eCommerce Laws work together?	6-9
Q 6.6 Do the eCommerce Laws change existing laws and regulations that require written documents and traditional, handwritten signatures?	6-9
Q 6.7 Does the federal ESIGN preempt a state’s adopted version of UETA?	6-10
Q 6.8 Do either ESIGN or UETA create a private right of action?	6-11
Q 6.9 Does a violation of ESIGN support federal question jurisdiction?	6-12
Exceptions to the eCommerce Laws	6-13
Q 6.10 What are the important exceptions to the eCommerce Laws?	6-13
Q 6.10.1 Even if a transaction is excluded by UETA, does UETA cover any aspect of an excluded transaction?	6-14
Q 6.10.2 How do ESIGN’s exclusions differ from UETA?	6-14

Guidance from Industry and Government Agencies	6-15
Q 6.11 Are there industry standards, or guidance from government agencies, that also affect the use of electronic records and signatures?	6-15
Q 6.11.1 What is SPeRS?	6-16
Q 6.11.2 Do the government-sponsored enterprises address eCommerce?.....	6-16
Q 6.11.3 Does HUD accept electronic signatures?	6-17
Q 6.11.4 Has the Consumer Financial Protection Bureau weighed in on eCommerce?	6-18
Q 6.11.5 Has the CFPB provided any guidance on making disclosures on a mobile device?	6-19
Q 6.11.6 Do IRS rules allow electronic records and signatures?	6-20
Q 6.11.7 Are there rules or regulations affecting retirement plans?.....	6-22
Q 6.11.8 Are there issues surrounding odometer disclosures?.....	6-23
Q 6.11.9 May the Annual Privacy Notice required by Regulation P be delivered electronically?	6-24
Consent to Use Electronic Signatures and Records	6-25
Q 6.12 Must parties first agree to use electronic records and signatures instead of written documents and traditional signatures?	6-25
Q 6.12.1 May a party be forced to consent to the use of electronic records as a condition for doing business?.....	6-26
Q 6.12.2 Are there circumstances where no express consent is required?	6-26
Q 6.12.3 Are there any special rules for obtaining consent from consumers?.....	6-27
Q 6.12.4 What pre-consent disclosures must be made to consumers?	6-27
Delivering Electronic Records	6-28
Q 6.13 Are there specific rules governing the presentation of electronic records?.....	6-28
Q 6.13.1 Have courts provided any guidance on how webpage design can impact the enforceability of a contract?	6-28
Q 6.14 Are there specific rules governing retention of electronic records?	6-33
Q 6.14.1 Is there a retention rule that applies generally to all electronic records?	6-34

Table of Contents

Q 6.14.2	Must the “original” of an electronic document be maintained?.....	6-35
Q 6.14.3	Must the electronic record be capable of being printed and/or stored?	6-35
Q 6.15	May a properly retained document be used as evidence in court proceedings?	6-35
Q 6.16	Are there any rules governing sending and receipt of electronic records?.....	6-37
Q 6.16.1	When is an electronic record deemed to be “sent”?	6-37
Q 6.16.2	How does one determine when there is “receipt” of an electronic record?	6-38
Q 6.16.3	Given that a party may access documents in any geographic location, how is it determined at which location an electronic record is deemed to have been sent or received?	6-38
Q 6.16.4	What happens if one of the parties is aware that the electronic record was not actually sent and/or received?	6-39
Q 6.16.5	If a state law specifically requires that a document be delivered in a different method than permitted by the eCommerce Laws, do the eCommerce Laws override such provision?	6-39
Electronic Notarization and Filing in Public Records.....		6-41
Q 6.17	May an electronic record be notarized?.....	6-41
Q 6.18	Must public agencies, such as county recorders, accept electronic records for filing and other purposes?.....	6-41
Q 6.19	What is the difference between electronic notarization and remote online notarization, and what states allow it?	6-42
Special Rules for Specific Types of Electronic Records.....		6-43
Q 6.20	Are there special rules that permit an electronic record to serve as a negotiable promissory note?.....	6-43
Q 6.20.1	What are the conditions under which an electronic record may serve as a negotiable promissory note?.....	6-44
Q 6.20.2	What is a “transferable record”?	6-44
Q 6.20.3	How does a party establish that it is “in control” of an electronic transferable record?.....	6-44
Q 6.20.4	What rights does the holder of a transferable record possess?	6-45

Q 6.21	Are there special rules that permit an electronic record to serve as a security agreement covering personal property, and as the functional equivalent of chattel paper?.....	6-46
Q 6.21.1	What is an “authenticated electronic security agreement”?	6-46
Q 6.22	May a party “perfect” a security agreement that is in the form of a mere electronic record?.....	6-47
Q 6.22.1	Does the law recognize “electronic” chattel paper?	6-47
Q 6.22.2	How does a party assert “control” over electronic chattel paper?	6-47

Chapter 7 Preemption

Jeffrey Jamison and Joseph J. Reilly

Basics of Federal Preemption	7-2	
Q 7.1	What is federal preemption?.....	7-2
Q 7.2	What are the different types of preemption?.....	7-2
Q 7.3	Has the doctrine of federal preemption been applied to banking and consumer financial services laws?	7-3
Q 7.4	What financial institutions are covered by federal preemption?	7-3
Q 7.4.1	What is preempted by section 501 of DIDMCA?.....	7-4
Q 7.4.2	What is preempted by AMTPA?	7-4
Federal Preemption After the Dodd-Frank Act	7-5	
Q 7.5	Does the Dodd-Frank Act affect federal preemption of national banking laws and regulations on state consumer financial laws?.....	7-5
Q 7.6	How did the Dodd-Frank Act affect preemption under AMTPA?.....	7-6
<i>Field Preemption After the Dodd-Frank Act</i>	7-7	
Q 7.7	Does the field preemption standard apply to national banks and federal savings associations following the Dodd-Frank Act?	7-7
<i>Conflict Preemption After the Dodd-Frank Act</i>	7-7	
Q 7.8	Are operating subsidiaries of national banks and federal savings associations entitled to federal preemption protections under the NBA or HOLA following the Dodd-Frank Act?	7-7

Table of Contents

Q 7.9	Did the Dodd-Frank Act change the conflict preemption standard for national banks (and now federal savings associations)?	7-9
Q 7.9.1	What is the conflict preemption standard for national banks and federal savings associations established by <i>Barnett</i> ?	7-10
Q 7.10	Does the Dodd-Frank preemption standard apply retroactively to conduct that occurred prior to the effectiveness of that standard?.....	7-12
	<i>Express Preemption After the Dodd-Frank Act</i>	7-12
	<i>Express Preemption by Act of Congress</i>	7-12
Q 7.11	What federal consumer financial laws provide a basis for the preemption of state law?	7-12
Q 7.11.1	May a request be directed to the CFPB to determine whether a state law is preempted by TILA, RESPA, and other federal consumer financial laws?	7-14
Q 7.12	Are state laws governing interest rates preempted?	7-15
Q 7.13	What constitutes an “interest rate” under the Most Favored Lender/Interest Rate Exportation doctrines?	7-15
Q 7.14	How does the Dodd-Frank Act affect the Most Favored Lender/Interest Rate Exportation doctrines?	7-16
	<i>Administrative Determinations That Federal Laws Preempt State Laws</i>	7-18
Q 7.15	What steps must the OCC take with respect to preemption determination after the Dodd-Frank Act?.....	7-18
Q 7.16	What is the standard for judicial review of OCC’s preemption determinations under the Dodd-Frank Act?	7-19
Q 7.17	What state laws had the OCC identified as preempted before the Dodd-Frank Act?	7-20
Q 7.18	What is the impact of the Dodd-Frank Act on the 2004 Preemption Rule?	7-21
Q 7.19	What did the OCC mean when it deemed preempted those laws that <i>obstruct, impair, or condition</i> a national bank’s ability to fully exercise its real estate lending powers?	7-22
Q 7.20	What state laws have the OCC declared to be preempted after the Dodd-Frank Act?	7-23
Q 7.20.1	What state laws have the OCC concluded are <i>not</i> preempted under the new Dodd-Frank standard?	7-26

Q 7.21	Have courts reversed any of the OCC's preemption determinations?.....	7-26
Q 7.21.1	Are state consumer protection or Unfair and Deceptive Acts and Practices laws preempted under Dodd-Frank?.....	7-27
Preemption Under the Federal Arbitration Act		7-29
Q 7.22	What is the Federal Arbitration Act and how does it relate to preemption and consumer financial services?.....	7-29
Q 7.23	Does the FAA preempt state laws prohibiting class action waivers in arbitration provisions?.....	7-29

Chapter 8 Electronic Fund Transfer Act and Regulation E

Arthur B. Axelson

Basics of the Electronic Fund Transfer Act		8-2
Q 8.1	What is the Electronic Fund Transfer Act and what is its purpose?.....	8-2
Q 8.2	Which financial institutions are covered by the EFTA?.....	8-2
Q 8.3	What is an electronic fund transfer?.....	8-3
Q 8.4	What is an account for purposes of the EFTA?.....	8-3
Q 8.5	What is an access device?.....	8-4
Q 8.5.1	Under what circumstances may an access device be issued?.....	8-4
Q 8.6	Are financial institutions and others subject to administrative enforcement under the EFTA?.....	8-5
Preauthorized Electronic Fund Transfers		8-5
Q 8.7	What is a preauthorized electronic fund transfer and are they regulated by the EFTA?.....	8-5
Q 8.8	How may a consumer initiate preauthorized EFTs?.....	8-5
Q 8.9	What notices are required by the financial institution in connection with a preauthorized EFT?.....	8-7
Q 8.10	May a consumer stop payment of a preauthorized EFT?.....	8-8
Q 8.11	When must a preauthorized EFT be credited?.....	8-9
Q 8.12	May a lender require that loan payments be made using preauthorized EFTs?.....	8-9

Table of Contents

Unauthorized EFTs	8-9
Q 8.13 To what degree are the consumer and the financial institution liable for unauthorized EFTs?	8-9
Q 8.14 What is an unauthorized EFT?	8-9
Q 8.15 What is a consumer's liability for an unauthorized EFT?.....	8-10
Q 8.15.1 What is a consumer's liability upon loss or theft of an access device?.....	8-10
Q 8.15.2 What is a consumer's liability for unauthorized EFTs appearing on a periodic statement?	8-11
Q 8.15.3 How must a consumer notify the financial institution?	8-12
Errors	8-12
Q 8.16 Are there procedures that a financial institution must follow to resolve errors?.....	8-12
Q 8.17 What is an error for purposes of the EFTA and Regulation E?.....	8-12
Q 8.18 What must a consumer's notice contain in order to trigger the error resolution procedures?	8-13
Q 8.19 What are the financial institution's responsibilities regarding notice of an error?	8-14
Disclosures	8-16
Q 8.20 Does the EFTA require any disclosures to consumers?	8-16
Q 8.21 What are the initial disclosure requirements?.....	8-17
Q 8.22 What are the periodic statement requirements under the EFTA?.....	8-18
Q 8.23 What is an error resolution notice and when must it be provided?.....	8-19
Q 8.24 What is required if a financial institution changes any of the terms disclosed in the initial disclosure?.....	8-20
Q 8.25 What does the EFTA require in connection with EFTs at electronic terminals?	8-20
Q 8.26 Are disclosure requirements imposed on operators of ATMs?	8-21
Overdraft Services	8-22
Q 8.27 Does the EFTA impose restrictions on overdraft services?.....	8-22
Q 8.28 What is an overdraft service?	8-22
Q 8.29 When may a financial institution impose a fee in connection with an overdraft service?	8-23

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 8.30	Are there additional rules regarding the consumer's right to opt in to an overdraft service?.....	8-24
Gift Cards, Gift Certificates, and Similar Prepaid Devices		8-25
Q 8.31	Are gift cards, gift certificates, or similar prepaid devices regulated by the EFTA?.....	8-25
Q 8.32	What types of gift or prepaid devices are regulated under the EFTA?.....	8-25
Q 8.32.1	What is a gift certificate?.....	8-25
Q 8.32.2	What is a gift card?.....	8-25
Q 8.32.3	What is a general-use prepaid card?.....	8-26
Q 8.32.4	What is a loyalty, award, or promotional gift card?.....	8-26
Q 8.33	Are disclosures required in connection with these devices?	8-27
Q 8.33.1	What disclosures must be made prior to purchase?.....	8-27
Q 8.33.2	What disclosures must be made on the certificate or card?.....	8-28
Q 8.34	What are the restrictions on the imposition of fees in connection with these devices?	8-29
Q 8.35	May a gift certificate or card have an expiration date?.....	8-30
Prepaid Accounts		8-31
Q 8.36	What is a prepaid account?.....	8-31
Q 8.37	What disclosures must be provided before a consumer acquires a prepaid account?.....	8-31
Q 8.38	What disclosures must be provided regarding a consumer's prepaid account information?	8-32
Q 8.39	Are there form requirements for the disclosures?.....	8-34
Q 8.40	Are the liability provisions for prepaid accounts the same as for other EFTs?.....	8-35
Q 8.41	Have the error resolution procedures been modified for prepaid accounts?	8-35
Q 8.42	Are there any separate requirements pertaining to hybrid prepaid credit cards?.....	8-36
Q 8.43	Are there any requirements to submit prepaid account agreements to the Bureau and to post copies of the prepaid account agreements online?	8-37
Remittance Transfers.....		8-37
Q 8.44	What is a remittance transfer?.....	8-38
Q 8.45	What must be disclosed in connection with a remittance transfer?.....	8-38

Table of Contents

Q 8.45.1	What must a pre-payment disclosure contain?	8-38
Q 8.45.2	What must be contained in the receipt?	8-39
Q 8.45.3	May the pre-payment disclosure and receipt be combined?	8-41
Q 8.45.4	What information must the error resolution and cancellation notice contain?	8-41
Q 8.46	Are there procedures that a remittance transfer provider must follow to resolve errors?	8-42
Q 8.46.1	What is an error in regard to remittance transfers?	8-42
Q 8.46.2	What type of notice triggers the error resolution procedures?	8-44
Q 8.46.3	What actions must a remittance transfer provider take upon receiving a notice of an error?	8-45
Q 8.47	May a sender cancel a remittance transfer and obtain a refund?	8-46
Q 8.48	May a sender schedule a remittance transfer in advance of the date of transfer?	8-47
Q 8.48.1	What initial disclosures are required for transfers scheduled in advance?	8-48
Q 8.48.2	What disclosures are required in regard to each subsequent preauthorized remittance transfer?	8-48
Civil Liability/Enforcement		8-49
Q 8.49	Is there a private right of action for EFTA violations?	8-49
Q 8.49.1	May the financial institution recover its attorneys' fees if it prevails?.....	8-49
Q 8.50	What defenses are available to financial institutions?	8-49
Q 8.50.1	Are financial institutions liable for "acts of God" or technical malfunctions?.....	8-51
Q 8.50.2	Is there a bona fide error defense under EFTA?	8-52
Q 8.50.3	Is a financial institution liable for violations where it relies on CFPB or Federal Reserve Board formal interpretations or rules?	8-52
Q 8.51	May the EFTA be enforced by regulatory agencies?	8-52

Chapter 9 Fair Lending/Non-Discrimination

John L. Ropiequet

The Basics	9-3
Q 9.1 What is fair lending?.....	9-3
Q 9.1.1 What are the principal federal statutes that address fair lending and non-discrimination in connection with consumer financial products?.....	9-3
Q 9.1.2 How does fair lending differ from responsible lending?.....	9-4
Q 9.1.3 How do the concepts of fair lending and responsible lending intersect?.....	9-4
Fair Housing Act	9-5
<i>Basics of the Fair Housing Act</i>	9-5
Q 9.2 What is the Fair Housing Act?.....	9-5
Q 9.2.1 What is prohibited by the FHA?	9-5
Q 9.2.2 Are disparate impact claims available under the FHA?	9-10
Q 9.2.3 What is the HUD disparate impact rule?	9-16
Q 9.2.4 What legal challenges were made to HUD’s disparate impact rule?	9-17
<i>Self-Testing</i>	9-18
Q 9.3 What is “self-testing” under the FHA?.....	9-18
FHA Enforcement	9-19
Q 9.4 What remedies are available under the FHA?.....	9-19
Q 9.5 What is the statute of limitations for FHA claims?.....	9-20
Equal Credit Opportunity Act	9-20
<i>Basics of the Equal Credit Opportunity Act</i>	9-20
Q 9.6 What transactions are subject to the Equal Credit Opportunity Act?.....	9-20
Q 9.7 What types of discrimination are prohibited by the ECOA?.....	9-21
Q 9.8 What types of discrimination claims may be made under ECOA?	9-22
Q 9.8.1 What must a plaintiff establish under the overt discrimination theory?	9-22
Q 9.8.2 What must a plaintiff establish under the disparate treatment theory?	9-22

Table of Contents

Q 9.8.3	Has there been a final determination in the courts on whether disparate impact is a recognized theory of discrimination under ECOA?	9-23
Stages of a Loan Transaction		9-24
<i>Advertising/Assistance to Prospective Applicants</i>		9-24
Q 9.9	What are the ECOA rules regarding marketing and loan applications?	9-24
<i>Taking Applications/Information Requests</i>		9-25
Q 9.10	Are creditors prohibited from requesting certain types of information?	9-25
Q 9.11	Are there limitations on requesting information about a borrower's spouse?	9-25
Q 9.12	What are the other limitations on requesting applicant information?	9-26
<i>Evaluating Applications</i>		9-27
Q 9.13	What are the ECOA limitations on evaluating applications?	9-27
<i>Extending Credit</i>		9-28
Q 9.14	What are the ECOA restrictions on extending credit?	9-28
Q 9.15	What is an adverse action?	9-28
Q 9.15.1	What disclosures pertaining to action taken on an application are required under the ECOA?	9-29
Q 9.16	What are the ECOA's appraisal requirements?	9-29
Q 9.17	What government monitoring information must be requested of applicants for credit for the purchase or refinancing of a dwelling?	9-30
Q 9.18	When may a creditor collect protected information about an applicant?	9-32
Q 9.19	What are the ECOA's record retention requirements?	9-32
Enforcement		9-33
Q 9.20	What remedies are available under the ECOA?	9-33
Q 9.20.1	Have there been any changes in CFPB enforcement of the fair lending laws under the Trump and Biden Administrations?	9-34
Q 9.21	What is the statute of limitations for ECOA claims?	9-35

Community Reinvestment Act	9-36
Q 9.22 What is the Community Reinvestment Act?	9-36
Q 9.23 How do CRA evaluation standards differ by asset size and business strategy?.....	9-37
Q 9.24 What are the CRA rating system and the criteria for rating?.....	9-38
Q 9.25 How is the assessment area determined under the CRA?	9-39
Q 9.26 What lending activities are eligible for CRA consideration?.....	9-41
Q 9.27 What investment activities are eligible for CRA consideration?	9-42
Q 9.28 What service activities are eligible for CRA consideration?.....	9-42
Q 9.29 What are the technical requirements under the CRA?	9-42
Q 9.30 Are there any penalties or rights of action under the CRA?	9-43
Home Mortgage Disclosure Act	9-43
Q 9.31 What is the Home Mortgage Disclosure Act?	9-43
Q 9.32 Who is covered under the HMDA?	9-44
Q 9.32.1 Are there any partial exemptions from reporting obligations?	9-45
Q 9.33 What are the reporting obligations under the HMDA?.....	9-46
Q 9.34 What are the HMDA's disclosure obligations?	9-48
Q 9.35 Are there any penalties or rights of action under HMDA?	9-49
Q 9.36 Are there any consequences from an HMDA report that contains discriminatory lending patterns?.....	9-49

Chapter 10 Federal Telemarketing Laws and Regulations

Richard E. Gottlieb and Kristin Haule

Overview of Federal Telemarketing Laws	10-2
Q 10.1 What is telemarketing?	10-2
Q 10.2 What federal laws and rules govern telemarketing?.....	10-2
Q 10.3 Who regulates telemarketing?	10-3
Q 10.4 Do states likewise regulate telemarketing?.....	10-3
Q 10.5 What are some of the similarities between the TCPA and the TSR?.....	10-3
Q 10.6 What are some of the basic differences between the TCPA and the TSR?	10-4

Table of Contents

TCPA Scope and Core Definitions	10-5
Q 10.7 What is the TCPA?	10-5
Q 10.7.1 What constitutes advertising for TCPA purposes?	10-5
Q 10.7.2 What is telemarketing?	10-6
<i>Application of TCPA</i>	10-6
Q 10.8 What conduct does the TCPA prohibit?	10-6
Q 10.8.1 What constitutes “prior express written consent”?	10-7
Q 10.9 Who is deemed a called party?	10-7
Q 10.9.1 What is the Reassigned Numbers Database?	10-8
Q 10.10 What is an established business relationship?	10-9
Q 10.10.1 Are short message service (SMS) text messages to cell phones considered “calls” under the TCPA?	10-9
Q 10.11 Does the TCPA apply to debt collection calls?	10-9
Q 10.12 What is an autodialed call?	10-10
Q 10.13 Are any types of telephone solicitation exempted?	10-10
Q 10.13.1 Are any other calls or messages exempt from the TCPA?	10-10
Q 10.13.2 What constitutes “emergency purposes” under the TCPA?	10-10
<i>ATDS and Prerecorded Call Prohibitions</i>	10-11
Q 10.14 What prohibitions apply specifically to calls using an automated telephone dialing system and prerecorded messages?	10-11
Q 10.14.1 What is an “automatic telephone dialing system”?	10-11
Q 10.14.2 Are predictive dialers included in the definition of “automatic telephone dialing system”?	10-11
Q 10.14.3 What specific restrictions apply to permitted auto-dialed calls with artificial or prerecorded messages?	10-12
Q 10.15 Is there an “established business relationship” (EBR) exemption for prerecorded telemarketing calls to residential landlines?	10-13
Q 10.16 Are telemarketers liable if a prior landline number has been ported to a wireless number without the caller’s knowledge?	10-13
Q 10.16.1 May persons or entities ever contact a landline using a prerecorded voice for a commercial purposes?	10-13

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

<i>Other TCPA Restrictions</i>	10-14
Q 10.17 May a telemarketer conceal the source of the call?	10-14
Q 10.18 Does the TCPA address abandoned telephone calls?	10-14
Q 10.19 Is it permissible to send an unsolicited fax?	10-15
Q 10.19.1 Who is a “sender” of a facsimile under the TCPA?	10-15
Q 10.20 What is a compliant fax opt-out notice?	10-15
<i>Consent and Revocation</i>	10-15
Q 10.21 What type of consent is required to place an autodialed call or text to consumers on their mobile phones with a telemarketing offer?	10-15
Q 10.21.1 May consent be provided electronically?	10-16
Q 10.21.2 Does providing a telephone number at which the called party may be reached satisfy the express written consent requirement?	10-16
Q 10.21.3 What if the consent to receive a call is attached to a cellular phone number that is reassigned to a third party?	10-17
Q 10.21.4 Are there any recordkeeping requirements for consents?	10-17
Q 10.22 Who bears the burden of establishing consent?	10-17
Q 10.23 Are there any exceptions for one-time text messages sent in response to a consumer’s request?	10-18
Q 10.24 Are consumers permitted to revoke consent?	10-19
<i>TCPA Enforcement and Remedies</i>	10-20
Q 10.25 What regulators may enforce the TCPA?	10-20
Q 10.26 Is there a private right of action under the TCPA?	10-20
Q 10.27 What are the penalties for failing to comply with the TCPA?	10-20
Q 10.27.1 What constitutes a “knowing and willful” violation of the TCPA?	10-20
Q 10.28 May an entity’s employee or officer placing the prohibited call be held personally liable under the TCPA?	10-21
Q 10.29 May a defendant be held vicariously liable under the TCPA?	10-21
Q 10.30 Are there any defenses to a violation?	10-21
Q 10.31 Does general liability insurance provide coverage for TCPA claims?	10-21
Q 10.32 Are TCPA claims arbitrable?	10-22
Q 10.33 What is the statute of limitations for TCPA claims?	10-22

Table of Contents

Q 10.34	Are class actions permitted?	10-22
Q 10.35	Have there been any significant class action settlements?	10-23
Q 10.36	Does the TCPA preempt state law?	10-23
Q 10.37	Given its extraordinarily broad reach, is the TCPA constitutional?	10-23
Q 10.38	Do TCPA violations cause “concrete harm” such that a plaintiff has Article III standing to sue?	10-24
Q 10.39	May a defendant moot a plaintiff’s claim merely by making a Rule 68 offer of judgment?	10-25
Telemarketing Sales Rule		10-25
Q 10.40	What is the TSR?	10-25
Q 10.41	What is “telemarketing” for purposes of the TSR?	10-26
Q 10.41.1	Is any form of telemarketing excluded?	10-26
Q 10.42	Are all telemarketers covered?	10-26
Q 10.42.1	Are persons who merely assist sellers or telemarketers also covered?	10-27
Q 10.43	What entities are excluded from the TSR?	10-27
Q 10.44	What information must sellers and telemarketers disclose?	10-27
Q 10.44.1	When must “material information” be given to consumers?	10-28
Q 10.45	Does the TSR require telemarketers to disclose the total cost of any purchase?	10-28
Q 10.46	How does the TSR address abusive telemarketing?	10-29
Q 10.46.1	May a telemarketer request or receive advance fees to arrange a loan?	10-29
Q 10.46.2	Are there any prohibitions relating to debt relief services?	10-29
Q 10.46.3	May a telemarketer submit bills for payment without the express consent of the customer?	10-30
Q 10.47	Does the TSR prohibit any specific payment methods obtained over the phone?	10-30
Q 10.48	What is a negative option feature?	10-31
Q 10.48.1	What disclosures must be made about these features?	10-31
Q 10.49	How must material restrictions, limitations or conditions be disclosed?	10-31
Q 10.50	Are there disclosure rules regarding refund policies?	10-32
Q 10.51	What disclosures must be made for credit card loss protection plans?	10-32

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

<i>Charging Customers Using Pre-Acquired Account Information</i>	10-33
Q 10.52 What is pre-acquired account information?	10-33
Q 10.53 What requirements apply to using pre-acquired information when there is a free-to-pay offer?	10-33
<i>Enforcement of the TSR</i>	10-34
Q 10.54 Who may enforce the TSR?	10-34
Q 10.55 Have there been any significant TSR enforcement actions?	10-34
Do-Not-Call Registry	10-35
Q 10.56 What are the Do-Not-Call provisions?.....	10-35
Q 10.57 What calls are covered by the DNC provisions?	10-36
Q 10.58 Are any types of calls excluded from the national DNC provisions?	10-36
Q 10.59 Who may access the National DNC Registry?.....	10-36
Q 10.60 How is the National DNC Registry accessed and what information is available?	10-37
Q 10.61 May the National DNC Registry be used for any purpose other than preventing telemarketing calls?	10-37
Q 10.62 How often must sellers and telemarketers update their call lists?	10-37
Q 10.63 Are there entity-specific DNC provisions?	10-38
Q 10.64 Are separate divisions of a company considered a single “seller” or “telemarketer” for purposes of the Internal DNC Lists?	10-38
Q 10.65 Does the TCPA also restrict contact with a consumer who has registered his or her name on the National Registry or made a DNC request to the company?	10-38
Q 10.65.1 What are the entity-specific DNC provisions?	10-39
Q 10.65.2 Does the TCPA have a safe harbor provision?.....	10-39
<i>Exceptions Allowing Calls to Persons on the National DNC Registry</i>	10-39
Q 10.66 What is the EBR exception?	10-39
Q 10.67 What is the “express agreement” exception?	10-40
Q 10.68 Are charities and tax-exempt organizations bound by these provisions?	10-41
<i>DNC Enforcement and Remedies</i>	10-41
Q 10.69 Who may enforce the DNC rules?.....	10-41
Q 10.70 Have there been any significant enforcement actions?	10-41

Table of Contents

Q 10.71	Is there a private right of action for persons receiving calls on numbers that are on either the National DNC Registry or the caller-specific DNC list?	10-42
---------	---	-------

Chapter 11 State Licensing

Haydn J. Richards, Jr.

Licensing	11-3	
<i>Basics of Licensing</i>	11-3	
Q 11.1	What activities require a license?	11-3
Q 11.2	What products and services are subject to licensing?.....	11-5
Q 11.2.1	What is a residential mortgage loan?.....	11-5
Q 11.2.2	What is a consumer loan?	11-6
Q 11.2.3	What is a small loan?	11-6
Q 11.2.4	What is a debt collector or debt collection agency?	11-6
Q 11.2.5	What activities potentially might require our company to obtain a money transmitter license?	11-7
Q 11.2.6	What activities typically require an entity to be licensed as a check casher?	11-7
Q 11.2.7	What is a payday loan or short-term, small-dollar loan?.....	11-7
Q 11.2.8	What is a sales finance company?.....	11-8
Q 11.2.9	What is virtual currency?	11-8
Q 11.3	What entities are typically exempt from licensing?.....	11-10
Q 11.4	What is the interplay between licensing and usury laws?	11-10
Q 11.5	What is the jurisdictional basis for a state to require that a person be licensed?	11-10
Q 11.6	Do the states cooperate when licensing entities?.....	11-11
<i>Basics of the NMLS</i>	11-12	
Q 11.7	What is the NMLS?	11-12
Q 11.7.1	What types of licenses are issued through the NMLS?	11-12
Q 11.7.2	What is an NMLS Record?	11-13
Q 11.7.3	What is the NMLS Consumer Access website?.....	11-13
The Consumer Financial Protection Bureau	11-13	
Q 11.8	What is the role of the CFPB in licensing?.....	11-13

State Mortgage Licenses	11-14
<i>Basics of State Mortgage Licenses</i>	11-14
Q 11.9 What is a state mortgage license?	11-14
Q 11.9.1 Is a license required in order to make residential mortgage loans?	11-15
Q 11.9.2 Is a license required in order to broker residential mortgage loans?	11-15
Q 11.9.3 Is a license required in order to service residential mortgage loans?	11-15
Q 11.9.4 Is a license required in order to process or underwrite residential mortgage loans for third parties?	11-15
Q 11.9.5 Is a license required in order to buy, sell, or hold already-funded and closed residential mortgage loans?	11-16
Q 11.9.6 Is a license required in order to conduct lead generation activities?	11-16
Q 11.10 Is a license required in order to service student loans?	11-16
Q 11.11 What are the ramifications of conducting business without the appropriate license approval?	11-16
Q 11.12 Can entities or branch locations that are outside the United States be licensed to conduct financial services activities?	11-17
<i>Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act")</i>	11-17
Q 11.13 What is the SAFE Act?	11-17
Q 11.13.1 Pursuant to the SAFE Act, who is permitted to register as a Mortgage Loan Originator?	11-18
Q 11.13.2 What requirements must an individual meet in order to be registered as a Mortgage Loan Originator?	11-18
Q 11.13.3 Pursuant to the SAFE Act, who is required to be licensed as a Mortgage Loan Originator?	11-19
Q 11.13.4 Are there any individuals who are exempt from registration or licensing requirements under the federal SAFE Act?	11-19
Q 11.13.5 What are "administrative or clerical tasks" for purposes of the SAFE Act?	11-19
Q 11.13.6 What requirements must an individual meet in order to be licensed as a Mortgage Loan Originator?	11-20
Q 11.13.7 What is the Uniform State Test?	11-21

Table of Contents

Q 11.13.8	After an individual holds a state mortgage loan originator license, is he or she required to complete any continuing education requirements?	11-22
Q 11.13.9	Does the SAFE Act require loan processors and underwriters to be individually licensed as mortgage loan originators?.....	11-22
Q 11.13.10	Does the SAFE Act require individuals who engage in loss mitigation and loan modification activities on behalf of their mortgage servicer employer to be licensed or registered?	11-23
Q 11.13.11	What does it mean for a mortgage loan originator to have temporary authority to conduct business in a state?.....	11-23
Q 11.13.12	Which mortgage loan originators are eligible to receive temporary authority?.....	11-24
Q 11.13.13	If a mortgage loan originator has temporary authority in a state, when will that authority end?.....	11-24
Q 11.13.14	When did temporary authority first go into effect?.....	11-24
Q 11.13.15	What is an individual's Unique Identifier?.....	11-24
Q 11.13.16	Why did states pass their own versions of the SAFE Act?.....	11-25
Q 11.13.17	Are there differences between the federal SAFE Act and the state versions of the SAFE Act?.....	11-25
Q 11.13.18	What is the primary difference between the federal SAFE Act and the state versions of the SAFE Act?	11-25
Q 11.13.19	What agencies are responsible for oversight of the SAFE Act?.....	11-26
Q 11.13.20	Are there regulations that have been promulgated regarding the federal SAFE Act?	11-26
Obligations of State Licensed Mortgage Companies and Individuals.....		11-27
Q 11.14	What obligations arise by holding a state mortgage license?	11-27
Q 11.15	What is the Mortgage Call Report?	11-27
Q 11.16	Which regulatory agencies have authority to examine state-licensed mortgage companies?.....	11-28
Q 11.16.1	What is a Multi-State Mortgage Examination?	11-28
Q 11.16.2	What resources should be consulted to prepare for future examinations?	11-29

Chapter 12 Consumer Automotive Finance Law

Ashley R. Fickel

The Basics of Consumer Automotive Finance	12-3
Q 12.1 What is “automotive finance”?.....	12-3
Q 12.1.1 What are the most common purchase and lease options available to consumers?.....	12-3
Q 12.1.2 What is “direct lending”?.....	12-3
Q 12.1.3 What is “indirect financing”?	12-4
Q 12.1.4 What is a captive finance company?.....	12-4
Q 12.1.5 What is floorplan financing?	12-4
Q 12.1.6 What is a sale out of trust (SOT)?	12-5
Regulation of Automotive Finance	12-5
Q 12.2 Who regulates the automotive finance industry?	12-5
Q 12.2.1 With respect to auto finance, what specific companies are supervised by the CFPB?	12-6
Q 12.2.2 How has the CFPB defined “larger participant” in the auto finance market?.....	12-6
Q 12.2.3 What is included in the definition of automobile finance transactions?.....	12-6
Q 12.2.4 How is “automobile” defined under the rule?.....	12-7
Q 12.2.5 How does the rule address asset-backed securities?.....	12-7
Q 12.2.6 Are automotive dealers regulated by the CFPB?.....	12-7
Q 12.2.7 Does the FTC Credit Practices Rule apply to motor vehicle transactions?.....	12-7
Q 12.3 How do states regulate auto finance?.....	12-8
Fair Lending in Automotive Finance	12-8
Q 12.4 What is fair lending?.....	12-8
Q 12.4.1 What areas of automotive finance are of particular interest from a fair lending perspective?	12-9
Q 12.4.2 What type(s) of discrimination does the CFPB focus on?	12-9
Q 12.4.3 Has the CFPB issued any guidance on fair lending with respect to automotive finance transactions?.....	12-9
Retail Installment Sales Contracts	12-10
<i>Generally</i>	12-10
Q 12.5 What is a retail installment sales contract?.....	12-10
Q 12.5.1 Who is the lender on a RISC?	12-10

Table of Contents

Q 12.5.2	What is the FTC Holder Rule?	12-11
Q 12.5.3	What are the limits to the Holder Rule?	12-12
<i>Laws Governing the Form and Content of RISCs</i>		12-13
Q 12.6	What laws govern the form and content of RISCs?	12-13
<i>Truth in Lending Act</i>		12-13
Q 12.6.1	How does TILA apply to RISCs?.....	12-13
Q 12.6.2	What is the relationship between the Holder Rule and TILA?.....	12-14
Q 12.6.3	What is a “spot delivery agreement”?	12-14
Q 12.6.4	Does TILA apply to automotive advertising?	12-16
<i>Prohibition of Discrimination</i>		12-16
Q 12.6.5	Are there any laws prohibiting discrimination in auto finance transactions?	12-16
<i>Fair Credit Reporting Act</i>		12-17
Q 12.6.6	Does FCRA apply to automotive finance transactions?.....	12-17
<i>Form and Content of RISCs</i>		12-17
Q 12.6.7	What state laws regulate the form and content of RISCs?.....	12-17
<i>Ability-to-Repay Principles Under State Law</i>		12-19
Q 12.6.8	Do ability-to-repay principles apply to RISCs?	12-19
<i>Uniform Consumer Credit Code</i>		12-20
Q 12.6.9	What is the Uniform Consumer Credit Code and how does it apply?	12-20
<i>Consumer Leasing of Motor Vehicles</i>		12-21
Q 12.7	What are consumer leases of motor vehicles?	12-21
Q 12.7.1	Who are the parties to a consumer motor vehicle lease?	12-22
Q 12.7.2	Does the FTC Holder Rule apply to leases?	12-22
Q 12.8	What does the Consumer Leasing Act require?	12-22
Q 12.8.1	What are the general disclosure requirements under the Consumer Leasing Act?.....	12-23
Q 12.8.2	What must be included in the Consumer Leasing Act disclosures?	12-23
Figure 12-1	Federal Consumer Leasing Act Disclosures	12-24
Q 12.8.3	What if the transaction involves more than one lessor or lessee?.....	12-25

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 12.8.4	What if the lease is renegotiated, extended, or assumed?.....	12-26
Q 12.8.5	Does the CLA regulate the amount of late fees that may be imposed on a lessee?	12-26
Q 12.8.6	What if state law is inconsistent with the CLA and Regulation M?	12-26
Q 12.8.7	What do the CLA and Regulation M advertising disclosures require?.....	12-27
Q 12.9	Do state laws regulate the form and content of consumer leases?.....	12-27
Ancillary Products		12-30
<i>Generally</i>		12-30
Q 12.10	What are ancillary products?.....	12-30
Q 12.10.1	Have regulators taken any position on ancillary products?.....	12-30
<i>Vehicle Service Contract</i>		12-32
Q 12.11	What is a Vehicle Service Contract?	12-32
Q 12.11.1	Do any state laws regulate VSCs?.....	12-33
Q 12.11.2	How are pre-paid maintenance plans different than VSCs?.....	12-34
Guaranteed Asset Protection (GAP)		12-35
Q 12.12	What is “GAP Insurance” or a “GAP waiver”?	12-35
Q 12.12.1	Does TILA require certain disclosures for GAP agreements?	12-36
Q 12.12.2	Do state laws regulate GAP agreements?	12-37
<i>Consumer Credit Insurance</i>		12-38
Q 12.13	What is consumer credit insurance?	12-38
Q 12.13.1	How do states regulate the sale of consumer credit insurance?	12-39
Federal Odometer Act		12-40
Q 12.14	What is the Federal Odometer Act?.....	12-40
Rules Relating to the Sale of Used Motor Vehicles		12-40
Q 12.15	What is the Federal Trade Commission’s “Used Car Rule”?	12-40
Q 12.15.1	How does the FTC define a “used car”?.....	12-41
Q 12.15.2	What is the Buyers Guide?	12-41

Table of Contents

Figure 12-2	Buyers Guide.....	12-42
Q 12.15.3	What do the terms “full warranty” and “limited warranty” mean in the Buyers Guide?.....	12-45
Q 12.15.4	How does the Used Car Rule impact the use of window stickers?.....	12-46
Q 12.15.5	What are the penalties for noncompliance with the Used Car Rule?.....	12-46
Rules Relating to Termination of Consumer Automotive Finance Contracts		12-47
Q 12.16	What happens if the consumer pays off the contract early?.....	12-47
Q 12.16.1	Are consumers entitled to a refund of GAP agreement or credit insurance premiums if they pay off the RISC or lease early?	12-47
Q 12.16.2	What is the Rule of 78’s financing method?	12-50
Q 12.16.3	What is the actuarial financing method?.....	12-50
Q 12.17	May a lessor impose penalties or other charges for early termination of a consumer lease?	12-51
Repossessions		12-52
Q 12.18	What happens if a consumer defaults?.....	12-52
Q 12.18.1	May a creditor engage in “self-help” repossession?	12-53
Q 12.18.2	Are there any laws that regulate the procedure for “self-help” repossessions?.....	12-53
Q 12.19	What are the notice requirements for RISCs? Is the creditor required to give notice before repossessing the vehicle?.....	12-54
Q 12.19.1	Is the creditor required to give notice after repossession?	12-54
Q 12.19.2	Does UCC Article 9 allow a consumer to waive the right to receive notice of disposition of collateral?	12-58
Q 12.19.3	May a consumer redeem the vehicle before sale?	12-58
Q 12.19.4	How is a sale conducted?	12-59
Q 12.19.5	Are any post-sale notices required?.....	12-59
Q 12.19.6	What are the consequences of noncompliance with these provisions?	12-60
Q 12.20	What are the requirements for repossessions involving consumer leases?	12-62
Q 12.21	Does a lender have to automatically return a repossessed vehicle if the customer files for bankruptcy?	12-63

Chapter 13 Credit Cards

Gregg D. Stevens and Joseph A. Apatov

Basics of Credit Cards	13-3
Q 13.1 What is a credit card?	13-3
Q 13.2 What is a debit card?	13-3
Q 13.3 What are some types of credit cards?	13-4
Q 13.4 Who are the parties involved in a credit card transaction?	13-5
Q 13.5 What is a credit card network?	13-5
Q 13.5.1 Do debit cards use the same networks as credit cards?	13-5
Q 13.6 What is a credit card issuer and who are they?	13-6
Q 13.7 What is a merchant-acquiring bank?	13-6
Q 13.8 What is the interchange fee?	13-6
Q 13.9 What is a credit card agreement?	13-7
Legal Framework	13-7
Q 13.10 Do state laws apply to credit cards?	13-7
Q 13.10.1 How do states regulate issuers?	13-7
Q 13.10.2 Do retail installment sales acts apply to issuers?	13-8
Q 13.11 May a bank “export” its home interest rate?	13-8
Q 13.11.1 May retailers or merchants “export” their home state’s interest rate?	13-8
Q 13.12 What industry standards affect credit cards?	13-9
Q 13.13 What are the principal federal laws that apply to credit cards?	13-9
Q 13.13.1 Does TILA apply to credit cards?	13-9
Q 13.13.2 Does FCRA apply to credit cards?	13-9
Q 13.13.3 Does ECOA apply to credit cards?	13-10
Q 13.14 Does the Consumer Financial Protection Bureau regulate credit cards?	13-10
Q 13.14.1 Are issuers subject to the CFPB’s rulemaking and enforcement authority regarding unfair, deceptive, or abusive acts or practices?	13-11
Q 13.14.2 What constitutes unfair, deceptive, or abusive acts or practices?	13-11
Soliciting Accounts	13-13
Q 13.15 May an issuer send an unsolicited credit card?	13-13
Q 13.16 May an issuer obtain consumer information from credit reports in order to make offers of credit?	13-13

Table of Contents

Q 13.17	May an issuer give college students gifts (such as Frisbees) to induce them to apply for credit cards?.....	13-13
Advertising to New and Existing Cardholders		13-14
Q 13.18	Do some advertising terms trigger additional disclosures?	13-14
Q 13.18.1	Must a radio or television advertisement include all the additional disclosures?.....	13-14
Q 13.18.2	Do minimum payment advertisements trigger additional disclosures?.....	13-14
Q 13.19	May an advertisement refer to a fixed rate as “fixed”?.....	13-15
Q 13.20	Are there special requirements for promotional rates and fees?	13-15
Q 13.21	Do special requirements apply to deferred interest offers?	13-16
Credit Card Applications.....		13-17
Q 13.22	Are there any required disclosures for credit card applications?.....	13-17
Q 13.22.1	Must issuers provide the required disclosures over the phone?.....	13-19
Q 13.22.2	Are the same disclosures required on a “take-one” application?.....	13-19
Q 13.23	What disclosures must be given when a consumer applies in person?	13-21
Underwriting		13-21
Q 13.24	May an issuer open an account based solely on credit score?.....	13-21
Q 13.25	Does the issuer have ECOA notice obligations if it denies a credit card application?	13-23
Q 13.26	Does the issuer have FCRA disclosure obligations if it denies a credit card application?	13-23
Q 13.27	Are there situations other than denial of credit when the issuer has ECOA and FCRA adverse action obligations?	13-24
The Credit Card Agreement and Account-Opening Requirements.....		13-24
Q 13.28	Is the issuer required to make disclosures before the consumer may use the account?.....	13-24
Q 13.29	What disclosures are required?.....	13-25
Q 13.30	Is the issuer required to make additional copies of the card agreement available to the cardholder?.....	13-25
Q 13.30.1	Is the issuer required to publicize the card agreement?.....	13-25

Q 13.31	Are there additional disclosure requirements for cash access or balance transfer checks?	13-27
Billing Statement Requirements		13-28
Q 13.32	Is an issuer required to send a billing statement?	13-28
Q 13.33	Is there a timing requirement for statements?	13-28
Q 13.34	Is there any content that must be in each billing statement?.....	13-28
Q 13.35	Is an issuer required to give a billing rights statement?	13-28
Identity Theft Prevention		13-29
Q 13.36	Are there specific identity theft protections that apply to issuers?	13-29
Q 13.37	Is it permissible to display the cardholder's full credit card number on a receipt?	13-29
TILA Limits on Rates and Fees		13-29
Q 13.38	Must the disclosed Annual Percentage Rate be accurate?	13-29
Q 13.39	Are there limits on an issuer's ability to increase rates and fees?	13-30
Q 13.39.1	May an issuer increase rates and fees at the end of a promotion?	13-30
Q 13.39.2	May an issuer increase an APR if it is a variable APR?.....	13-30
Q 13.39.3	May an issuer increase rates and fees via a change-in-terms notice?	13-30
Q 13.39.4	May an issuer increase rates on an existing balance after a severe delinquency?	13-31
Q 13.39.5	May an issuer increase rates and fees after a workout or temporary hardship arrangement ends?	13-31
Q 13.39.6	May an issuer increase rates and fees on an account that no longer qualifies for a Servicemembers Civil Relief Act exception?	13-31
Q 13.40	Are there dollar amount limits on late and other penalty fees?	13-32
Q 13.40.1	Are there additional restrictions on over-the-limit fees?	13-33
Q 13.40.2	Are there any over-the-limit practices that are prohibited entirely?	13-33
Q 13.41	Is there a maximum on the total amount of fees that an issuer may charge during the first year an account is open?	13-34

Table of Contents

Changes in Terms and Renewals	13-35
Q 13.42 Is advance notice required before a significant change?	13-35
Q 13.43 Does the issuer have ECOA or FCRA “adverse action” disclosure requirements?	13-35
Q 13.44 May the consumer reject the new terms?	13-35
Q 13.45 If a consumer rejects a change, may the issuer make the consumer repay the entire balance immediately?	13-36
Q 13.46 Is notice required if an issuer decreases a credit limit?	13-36
Q 13.47 Is notice required if the consumer agrees to a change?	13-36
Q 13.48 Does an issuer need to notify a consumer when it makes a change that is not considered significant?	13-37
Q 13.49 Are disclosures required at card renewal?	13-37
Q 13.50 Are disclosures required when an issuer increases rates due to delinquency or default, or as a penalty?	13-37
Q 13.51 Are there limits on an issuer’s right to terminate an account?	13-38
Q 13.52 Must the issuer periodically reevaluate its rate increases?	13-38
Q 13.52.1 When does the rate review requirement end?	13-39
Q 13.52.2 Must an issuer reevaluate rates for acquired accounts?	13-39
Accounting	13-39
Q 13.53 Are there timing rules for crediting payments?	13-39
Q 13.54 Are pay-by-phone fees permitted?	13-40
Q 13.55 Is an issuer permitted to allocate payments to low interest rate balances first?	13-40
Q 13.56 Is a credit required to refund a credit balance?	13-40
Basics of the Fair Credit Billing Act of 1974	13-41
Q 13.57 What is the Fair Credit Billing Act?	13-41
Q 13.58 What is the FCBA’s purpose?	13-41
Dispute Resolution	13-42
Q 13.59 How does the FCBA regulate dispute resolution procedures in connection with consumer credit?	13-42
Q 13.60 What is a billing error under the FCBA?	13-42
Q 13.60.1 What types of errors are <i>not</i> “billing errors” within the meaning of the FCBA?	13-43
Q 13.61 How must a cardholder notify a creditor of a billing error?	13-43
Q 13.62 What is the deadline if the creditor fails to send the billing statement, and thereafter mails the statement?	13-45

Q 13.63	What are the creditor’s obligations after receiving a billing error notice?.....	13-45
Q 13.64	Is the creditor required to investigate the billing error?.....	13-46
Q 13.65	What is a “reasonable investigation”?	13-47
Q 13.66	What restrictions apply when a billing error is pending?.....	13-47
Regulation, Supervision, and Enforcement		13-48
Q 13.67	What agency is responsible for supervising, enforcing, and promulgating rules under the FCBA?	13-48
Q 13.68	What is the penalty for non-compliance with the FCBA?.....	13-48
Q 13.69	Is there a private right of action under the FCBA?.....	13-49
Creditor Obligations.....		13-49
Q 13.70	What are the creditor’s obligations regarding billing periods and payments under the FCBA?	13-49
Q 13.71	What are the creditor’s obligations regarding limits on interest rates, fees, and finance charge increases applicable to outstanding balances?	13-50
Sellers		13-52
Q 13.72	Is the card issuer subject to the cardholder’s claims and defenses against a seller?.....	13-52
Cardholder Indebtedness.....		13-53
Q 13.73	May a card issuer offset the cardholder’s indebtedness against funds held on deposit with the card issuer?	13-53
Preemption.....		13-53
Q 13.74	Does the FCBA preempt state law?	13-53
Billing Disputes and Unauthorized Use.....		13-54
Q 13.75	What is the extent of a cardholder’s liability for unauthorized use of a credit card?	13-54
Q 13.76	May a cardholder assert claims or defenses against an issuer arising out of a billing dispute?.....	13-54

Chapter 14 Consumer Bankruptcy Law

Stephen T. Masley

Bankruptcy Basics	14-3
Q 14.1 What is the source of bankruptcy law?	14-3
Q 14.2 Is state law preempted?.....	14-4
Q 14.3 Why would a consumer debtor file a bankruptcy petition?	14-4
Q 14.4 How does a consumer debtor commence a bankruptcy case?.....	14-5
Q 14.5 What occurs when the bankruptcy case is commenced?	14-5
Q 14.6 What information must the debtor provide when commencing a bankruptcy case?	14-6
Q 14.6.1 What information do the schedules contain?.....	14-7
Q 14.6.2 What information does the statement of financial affairs contain?	14-8
Q 14.6.3 What information does the statement of intention contain?	14-8
Q 14.7 Do creditors receive notice of filing of the bankruptcy?.....	14-9
Q 14.8 What is a Section 341(a) meeting of creditors?	14-10
Q 14.9 What are the different types of bankruptcy cases?	14-10
Q 14.9.1 What is a Chapter 7 case?	14-11
Q 14.9.2 What is a Chapter 13 case?	14-11
Q 14.9.3 How do creditors' rights differ in a Chapter 7 versus Chapter 13 case?	14-12
Q 14.9.4 What is a Chapter 11 case?	14-13
Q 14.9.5 What is a Chapter 12 case?	14-13
Q 14.10 Who are the key participants in a consumer bankruptcy case?.....	14-14
Q 14.10.1 Which court presides over a bankruptcy case?.....	14-14
Q 14.10.2 What is the Office of the United States Trustee?.....	14-14
Q 14.10.3 Who are the debtor and other fiduciaries of an estate?.....	14-15
Q 14.10.4 Who are creditors?.....	14-15
Q 14.10.5 In what ways are secured and unsecured creditors treated differently?.....	14-15
Q 14.10.6 May a committee of creditors be appointed?.....	14-16
Early Case Considerations	14-17
Q 14.11 What are the initial steps creditors should take, or consider taking, when a bankruptcy case is commenced?	14-17
Q 14.11.1 Does the bankruptcy filing require cessation or modification of servicing activities?.....	14-17

Q 14.11.2	Are there any special rules for mortgage servicers?	14-17
Q 14.11.3	Should a servicer cease all collection activities?.....	14-18
Q 14.12	What are the steps to consider taking during the bankruptcy case?	14-18
Q 14.13	How does the bankruptcy filing impact credit reporting?	14-20
Bankruptcy Estate		14-21
Q 14.14	What is a bankruptcy estate?.....	14-21
Q 14.14.1	Is there an obligation to turn over property of the estate?.....	14-21
Q 14.14.2	What happens when a secured party has mere possession of collateral?	14-21
Q 14.14.3	Is a receiver required to turn over assets?	14-22
Q 14.15	May a debtor exempt assets from the bankruptcy estate?.....	14-22
Q 14.16	How does a trustee or other party seek abandonment of assets?.....	14-22
Q 14.16.1	When do assets re-vest in a Chapter 11, Chapter 12, or Chapter 13 case?.....	14-23
Q 14.16.2	When are assets abandoned in a Chapter 7 case?	14-23
Q 14.17	Should a creditor file a proof of claim to preserve its rights to a distribution from the estate?.....	14-23
Business Operations During Case		14-24
Q 14.18	What happens when a consumer debtor or trustee seeks to continue business operations during a bankruptcy case?	14-24
Automatic Stay		14-25
<i>Generally</i>		14-25
Q 14.19	What is the automatic stay?.....	14-25
Q 14.20	What actions do not violate the automatic stay?.....	14-26
Q 14.20.1	Do loan modification discussions violate the automatic stay?	14-27
Q 14.20.2	May an administrative freeze be placed on a bank account?	14-27
Q 14.20.3	What rights do consumer lenders have when a debtor fails to redeem or reaffirm personal property within forty-five days of the Section 341(a) meeting?	14-28
<i>Creditor Rights and Remedies</i>		14-28
Q 14.21	How does a creditor obtain relief from the automatic stay?.....	14-28
Q 14.22	What happens to any deficiency claim after relief from stay is obtained?.....	14-30

Table of Contents

<i>Bad Faith Cases</i>	14-30
Q 14.23 What are bad faith cases?	14-30
Q 14.24 May a creditor obtain extraordinary relief in the form of “in rem” or prospective relief in bad faith cases?	14-31
Q 14.25 When does the automatic stay not go into effect in bad faith cases?	14-31
<i>Violations of the Automatic Stay</i>	14-31
Q 14.26 May the automatic stay be retroactively terminated to validate unauthorized action?	14-31
Q 14.27 What happens when there is a willful violation of the automatic stay?.....	14-32
Individual Chapter 13 and Chapter 11 Plans	14-32
<i>Generally</i>	14-32
Q 14.28 What is the process to confirm a plan?	14-32
Q 14.28.1 What is the process to confirm a Chapter 13 plan?	14-32
Q 14.28.2 What is the process to confirm a Chapter 11 plan?	14-33
Q 14.29 Are there particular protections for a mortgage loan secured by a principal residence?.....	14-35
<i>The Absolute Priority Rule</i>	14-36
Q 14.30 What is the absolute priority rule?	14-36
Q 14.31 What is the future of the absolute priority rule?.....	14-36
<i>Lien Stripping</i>	14-37
Q 14.32 What is lien stripping?	14-37
Q 14.33 Is there a way to avoid lien stripping?	14-37
Q 14.34 What is the effect of lien stripping?	14-37
<i>Binding Plans</i>	14-38
Q 14.35 How is a plan binding on creditors?	14-38
Litigation in Bankruptcy Cases	14-38
<i>Generally</i>	14-38
Q 14.36 What are adversary proceedings?.....	14-38
Q 14.37 What happens to the debtor’s litigation claims?.....	14-39
Q 14.37.1 Does the debtor have standing to pursue its pre-petition claims?.....	14-39

Q 14.38	What are the forum options for pending state court actions?.....	14-40
	<i>Types of Litigation Unique to Bankruptcy Cases</i>	14-40
Q 14.39	What are avoidance actions?	14-40
Q 14.40	What are the particular claims asserted against mortgage lenders?	14-41
Discharge of Debts		14-43
	<i>Generally</i>	14-43
Q 14.41	What is a bankruptcy “discharge”?	14-43
	<i>Potentially Dischargeable Debt</i>	14-44
Q 14.42	What debts are potentially excepted from discharge?.....	14-44
Q 14.43	Does fraud and other misconduct lead to nondischargeable debt?	14-44
Q 14.44	Is credit card debt dischargeable?	14-44
Q 14.45	Is student loan debt dischargeable and is nondischargeability self-executing?.....	14-44
Q 14.46	Is marital debt dischargeable?.....	14-45
Q 14.47	Are unpaid taxes dischargeable?.....	14-46
Q 14.48	Are mortgage obligations dischargeable?.....	14-46
Q 14.49	Is a retail installment sales contract dischargeable?.....	14-46
Q 14.50	Is community debt discharged?	14-46
Q 14.51	May a debtor be denied discharge in its entirety?.....	14-47
Q 14.52	Does a creditor have the right to challenge the dischargeability of its debt or seek denial of discharge?	14-47
Q 14.53	What happens to a judgment for fraud obtained prior to the bankruptcy case?	14-48
	<i>Reaffirmation of a Pre-Petition Debt</i>	14-48
Q 14.54	What is a “reaffirmation” and why would it be sought?	14-48
Q 14.55	What are the requirements for a valid reaffirmation agreement?	14-49
Q 14.56	May a debtor rescind a reaffirmation agreement?	14-49
	<i>Violations of Discharge Injunction</i>	14-50
Q 14.57	What happens upon a violation of the discharge injunction?	14-50
	<i>Revoking a Discharge</i>	14-50
Q 14.58	May a creditor seek to revoke discharge?.....	14-50

Table of Contents

COVID-19 and the CARES ACT	14-51
Q 14.59 What is the impact of COVID-19 and the CARES Act?	14-51

Chapter 15 Short-Term Lending

Richard E. Gottlieb

Basics of Short-Term Lending	15-3
Q 15.1 What is a short-term loan?	15-3
Q 15.2 What are the common features of payday loans?	15-4
Q 15.3 What are the costs of a payday loan?	15-5
Q 15.4 What are the common eligibility requirements for a payday loan?	15-5
Q 15.5 What are the typical repayment features for a payday loan?	15-5
Q 15.6 What are the common features of deposit advances?	15-6
Q 15.6.1 How are the costs of a deposit advance determined?	15-6
Q 15.6.2 What are the eligibility requirements for a deposit advance?	15-6
Q 15.6.3 What are the credit limits on deposit advances?	15-7
Q 15.6.4 What are the repayment requirements for deposit advances?	15-7
Q 15.7 What are refund anticipation loans?	15-7
Q 15.7.1 What are refund anticipation checks?	15-8
Federal Oversight of the Short-Term Lending Industry	15-8
Q 15.8 What entities license and regulate short-term lending?	15-8
Q 15.9 Do federal banking regulators have any authority to supervise banks that provide short-term loans?	15-9
Q 15.10 Are banks permitted to offer short-term, small-dollar loans?	15-9
Q 15.11 Does the CFPB have the authority to supervise and examine lenders that provide short-term loans?	15-10
Q 15.11.1 Does CFPB authority extend to tribal short-term lending?	15-10
Q 15.12 What are the CFPB examination initiatives regarding short-term lenders?	15-11
Q 15.13 What are the CFPB's compliance management expectations for short-term lenders?	15-13

Federal Laws Governing Short-Term Lending	15-13
<i>Compliance with Federal Consumer Financial Laws by Short-Term Lenders</i>	15-13
Q 15.14 Which federal consumer financial laws are applicable to short-term loans?	15-13
Q 15.15 How does federal law calculate charges associated with payday loans?	15-14
Q 15.16 Do any <i>federal</i> laws limit the interest a bank or credit union may charge?	15-15
<i>The Payday Lending Rule</i>	15-16
Q 15.17 What is the Payday Lending Rule?	15-16
Q 15.17.1 What was the original 2017 Payday Lending Rule?.....	15-16
Q 15.17.2 What happened to the original version of the Payday Lending Rule?.....	15-17
Q 15.17.3 What changes did the CFPB make to the 2017 Payday Lending Rule?.....	15-17
Q 15.18 What does the current Payday Lending Rule address?	15-18
Q 15.19 What types of loans are covered by the Payday Lending Rule?.....	15-18
Q 15.19.1 What is a “covered loan” under the Payday Lending Rule?.....	15-19
Q 15.19.2 What is a “covered short-term loan” within the meaning of the Payday Lending Rule?.....	15-19
Q 15.19.3 What is a “covered longer-term loan” within the meaning of the Payday Lending Rule?.....	15-19
Q 15.19.4 What is a “covered longer-term balloon payment loan” within the meaning of the Payday Lending Rule?.....	15-20
Q 15.20 How is APR calculated under the Payday Lending Rule?.....	15-20
Q 15.21 Even if otherwise covered, what types of loans are excluded by the Payday Lending Rule?	15-21
Q 15.22 What is an exempted “no-cost” advance for purposes of the Payday Lending Rule?	15-21
Q 15.23 What is the Payday Alternative Loan program?.....	15-22
Q 15.24 Does the Payday Lending Rule apply to banks and credit unions?.....	15-22
Q 15.25 Does the Payday Lending Rule impose any compliance and recordkeeping requirements?	15-22
Q 15.26 What requirements has the Payday Lending Rule imposed regarding customer payment procedures?	15-23

Table of Contents

Q 15.27	What disclosures must the lender make to the customer before any payment transfer?.....	15-23
Q 15.27.1	What is a “payment transfer” under the Payday Lending Rule?.....	15-24
Q 15.27.2	Are there any special disclosure requirements if the payment varies from a scheduled payment?	15-25
Q 15.27.3	When is a payment transfer deemed to have failed?.....	15-25
Q 15.27.4	Are there any special disclosure requirements after the lender has made two failed payment transfer attempts?.....	15-26
Q 15.27.5	Are there any exclusions for the institution holding the lender’s account?.....	15-26
Q 15.27.6	What if the consumer initiates the payment transfer?.....	15-27
	<i>Unfair, Deceptive, or Abusive Acts or Practices</i>	15-27
Q 15.28	What can a short-term lender do to prevent any unfair, deceptive, or abusive acts or practices with respect to its interactions with consumers?	15-27
	<i>Compliance with Other Federal Law</i>	15-28
Q 15.29	What must a short-term lender do to facilitate compliance with the laws administered by the Office of Foreign Assets Control?	15-28
Q 15.30	Are there Bank Secrecy Act and Anti-Money Laundering Law issues for short-term lenders?.....	15-29
Q 15.31	Must a short-term lender comply with the USA PATRIOT Act?	15-31
	State Regulation of Short-Term Lending	15-32
Q 15.32	Does state law impose requirements and restrictions on short-term loans?	15-32
Q 15.32.1	What states have enacted limitations on the interest rate charged for consumer loans?	15-32
Q 15.32.2	Have any states adopted the 36% MAPR imposed by the Military Lending Act?.....	15-33
Q 15.33	How have states attempted to regulate lending terms other than interest rate?.....	15-33
Q 15.33.1	Have any state laws attempted to address and counteract the use of bank partnerships in short-term lending?.....	15-34

Effect on Bankruptcy	15-35
Q 15.34 Are short-term lenders prohibited from cashing a debtor's check after they have filed a petition for relief under the U.S. Bankruptcy Code?.....	15-35

Chapter 16 Student Lending

Jonathan Joshua and Madelaine Newcomb

Basics of Student Lending	16-2
Q 16.1 What is a student loan?	16-2
Q 16.2 Is a refinance of a student loan still a student loan?	16-3
Q 16.3 Who is eligible to obtain student loans?	16-4
Q 16.4 What is the difference between a federal and private student loan?.....	16-4
<i>Federal Disclosure Requirements</i>	16-5
Q 16.5 Are student loans subject to TILA and Regulation Z requirements?	16-5
Q 16.5.1 What is the Application and Solicitation Disclosure?.....	16-5
Q 16.5.2 What is the Approval Disclosure?	16-6
Q 16.5.3 What is the Final Disclosure?.....	16-6
Q 16.5.4 Does TILA require any other disclosures?.....	16-7
<i>Repayment and Forgiveness</i>	16-7
Q 16.6 What is the Public Service Loan Forgiveness (PSLF) program?	16-7
Q 16.7 What payment plans are available for student loan borrowers?	16-7
<i>Student Loan Debt Collection</i>	16-8
Q 16.8 What debt collection tools are available for federal student loans?.....	16-8
Q 16.9 What debt collection tools are available for private student loans?.....	16-9
Q 16.10 May defaulted student loans be rehabilitated?	16-9
<i>Discharge of Student Loan Debt</i>	16-10
Q 16.11 May student loans be discharged in bankruptcy?	16-10
Q 16.11.1 In what other circumstances may a student loan obligation be discharged?	16-11

Table of Contents

<i>State Regulation of Student Lending</i>	16-11
Q 16.12 How do states typically regulate student loan servicers?	16-11
Q 16.12.1 What requirements do states impose on originating, servicing, and collecting student loans?	16-12
Q 16.12.2 Are student loan servicers required to be licensed?	16-12
<i>Other Federal Student Loan Issues</i>	16-12
Q 16.13 Are there restrictions on the relationships between schools and lenders?	16-12
Q 16.14 What is a “preferred lender” arrangement?	16-13
Q 16.15 What is the 90/10 Rule?	16-14
<i>Litigation Against Student Loan Servicers</i>	16-14
Q 16.16 What types of claims are typically brought against student loan servicers?	16-14
<i>Income Share Agreements</i>	16-15
Q 16.17 What is an Educational Income Share Agreement?	16-15

Chapter 17 Military Lending and Loan Relief

Richard E. Gottlieb, Brian Fink, and Brett J. Natarelli

Overview	17-3
Q 17.1 What are the primary federal consumer financial laws impacting servicemembers and their families?	17-3
Q 17.2 What is the SCRA?	17-3
Q 17.3 Are there any state law versions of the SCRA?	17-4
Q 17.4 What is the MLA?	17-4
Servicemember Civil Relief Act	17-5
Q 17.5 Who is protected by the SCRA?	17-5
Q 17.6 What role does the Consumer Financial Protection Bureau play?	17-6
<i>Persons Eligible for SCRA Protections</i>	17-6
Q 17.7 Which members of the full-time federal Military are eligible for SCRA protection?	17-6
Q 17.8 Which members of the Military reserves are eligible for SCRA protection?	17-7
Q 17.9 Which members of the National Guard are eligible for SCRA protection?	17-7

Q 17.10	Which members of NOAA or PHS are eligible for SCRA protection?	17-9
Q 17.11	Are U.S. citizens in the military service of <i>other</i> countries eligible for SCRA protection?	17-9
Q 17.12	Who is <i>not</i> protected by the SCRA?	17-9
Q 17.13	When does military service begin and end?	17-9
Q 17.14	What is the DMDC website?	17-10
Q 17.14.1	Is a search result from the DMDC a “certificate” under the SCRA?	17-11
Q 17.15	May a servicemember waive the protections afforded by the SCRA?	17-11
Procedural Protections		17-12
<i>Default Judgment Protection</i>		17-12
Q 17.16	What is the SCRA’s default judgment protection?	17-12
Q 17.17	What is a military status affidavit?	17-12
Q 17.17.1	What actions may a court take after the filing of a military status affidavit?	17-13
Q 17.18	If a default judgment is entered against a servicemember, what effect does that have upon a servicemember?	17-13
Q 17.18.1	If a default judgment is entered against a servicemember, what effect does that have upon a bona fide purchaser of property?	17-14
<i>Stay of Proceedings</i>		17-14
Q 17.19	If a servicemember does not have actual notice of a proceeding, how may a servicemember’s attorney obtain a stay of proceedings?	17-14
Q 17.20	If a servicemember has actual notice of a proceeding, how may the servicemember obtain a stay of proceedings?	17-14
<i>Statute of Limitations and Redemption</i>		17-15
Q 17.21	How does the SCRA affect a statute of limitations or a right of redemption?	17-15
Substantive Protections		17-16
<i>Interest Rate Limitation</i>		17-16
Q 17.22	Does the SCRA impose any limits on the interest rate charged to protected persons?	17-16
Q 17.22.1	When is the interest rate limitation triggered?	17-16
Q 17.22.2	What is “interest” under the SCRA?	17-17

Table of Contents

Q 17.22.3	For purposes of receiving the statutory interest rate benefit, what is “written notice” under the SCRA?	17-18
Q 17.22.4	For purposes of receiving the statutory interest rate benefit, what is an “order calling the servicemember to military service”?	17-18
Q 17.22.5	What procedure must a covered person follow to receive the interest rate protection?	17-19
Q 17.23	Are there any circumstances in which the creditor may seek exceptions from the interest rate benefit?	17-19
Q 17.24	How should a creditor calculate the application of the interest rate benefit?	17-20
Q 17.25	Does the SCRA’s interest rate protection apply to student loans?	17-20
Q 17.26	How does the SCRA’s interest rate protection apply to revolving credit accounts?	17-21
<i>Foreclosure Protection</i>		17-21
Q 17.27	Does the SCRA protect servicemembers against foreclosure?	17-21
Q 17.28	Who is entitled to the SCRA’s foreclosure protections?	17-22
Q 17.28.1	Does foreclosure protection extend after the end of military service?	17-23
<i>Eviction Protection</i>		17-23
Q 17.29	Does the SCRA protect covered persons against eviction?	17-23
Q 17.29.1	What relief is available to a landlord seeking eviction?	17-25
<i>Termination of Residential or Motor Vehicle Leases</i>		17-25
Q 17.30	What protections apply to a lease of real property under the SCRA?	17-25
Q 17.31	What protections apply to a motor vehicle lease under the SCRA?	17-26
Q 17.32	What steps may a covered lessee take to terminate a real property or motor vehicle lease under the SCRA?	17-26
Q 17.32.1	If the lease is properly terminated, how does a lessor calculate remaining payments for a lease?	17-27
Q 17.32.2	Have there been any recent enforcement actions concerning lease terminations?	17-27
<i>Other Substantive Protections</i>		17-28
Q 17.33	Does the SCRA allow termination of telephone and internet service?	17-28
Q 17.34	Does the SCRA address COVID-19?	17-28

Q 17.35	How does the SCRA affect installment contracts?	17-29
Q 17.35.1	Have there been any enforcement matters involving installment contract errors?	17-29
Q 17.36	Does the SCRA affect storage liens?.....	17-30
Q 17.37	How may a court protect a servicemember from fines and penalties under contracts?	17-30
Q 17.38	May a servicemember seek anticipatory SCRA relief?	17-30
Q 17.38.1	What happens to the SCRA protections after the servicemember leaves military service?.....	17-31
<i>Miscellaneous Protections</i>		17-31
Q 17.39	Are there any tax protections for spouses who are in a state solely because of the servicemember's active duty?	17-31
Q 17.40	Does the SCRA apply to commercial loans?	17-31
Q 17.41	If a servicemember applies for SCRA protection, will this interfere with the servicemember's ability to obtain future credit?.....	17-32
Q 17.42	Who controls a servicemember's power of attorney if the servicemember is missing in action?.....	17-33
Q 17.42.1	May a creditor seize a servicemember's personal assets when there is a default on the servicemember's business or trade obligations?	17-34
Protections and Benefits for Non-Servicemembers		17-34
<i>Dependents</i>		17-34
Q 17.43	Who qualifies as a dependent under the SCRA?.....	17-34
Q 17.44	What protections may dependents receive?	17-35
<i>Guarantors/Sureties/Co-Obligors</i>		17-35
Q 17.45	What protections are available for non-servicemembers who are not dependents but are liable on a servicemember's obligations?	17-35
<i>Enforcement and Remedies</i>		17-36
Q 17.46	May individual borrowers bring private causes of actions?.....	17-36
Q 17.47	May the government bring enforcement actions based upon SCRA violations?.....	17-37
Military Lending Act		17-37
Q 17.48	What is the MLA?.....	17-37
Q 17.48.1	How does the MLA differ from the SCRA?.....	17-38

Table of Contents

<i>Rulemaking and Supervision</i>	17-38
Q 17.49 Which agencies have authority to promulgate MLA rules?	17-38
Q 17.50 What are the examination procedures for MLA compliance?	17-38
Q 17.51 Does the MLA preempt inconsistent state law?	17-39
Q 17.52 Is there a private right of action?	17-40
Q 17.53 Who is entitled to the protections of the MLA?	17-40
Q 17.53.1 How does a creditor determine if a borrower is entitled to the MLA's protections?	17-41
Q 17.54 Who are the creditors and other entities covered by the MLA?	17-41
Q 17.55 What types of consumer credit are covered by the MLA?	17-42
Q 17.56 What types of credit transactions are excluded?	17-42
Q 17.56.1 Does credit extended for the purpose of purchasing personal property that is used as collateral fall within the exception to "consumer credit" where the creditor simultaneously provides additional "cash advance"?	17-43
Q 17.57 What is the maximum amount that a creditor may charge under the MLA?	17-43
Q 17.58 Does the MLA require specific disclosures on covered transactions?	17-44
Q 17.58.1 How is the MAPR disclosed?	17-44
Q 17.58.2 Must the MAPR disclosures also be made orally?	17-45
Q 17.59 How does the MLA calculate the MAPR?	17-46
Q 17.60 Are any costs or fees excluded from the MAPR that are unique to the MLA?	17-46
Q 17.61 May a covered loan transaction be refinanced, renewed, consolidated or rolled over?	17-47
Q 17.62 Are there any other limitations on covered MLA transactions?	17-47
Q 17.63 Are there any special rules for closed-end credit?	17-48
Q 17.64 Are there any special rules for open-end credit?	17-48
Q 17.64.1 What happens if a covered borrower's usage of an open-end line of credit causes the MAPR to exceed 36%?	17-49
Q 17.64.2 What are "bona fide" fees under the MLA?	17-49

Chapter 18 CFPB Enforcement

Richard E. Gottlieb, Scott M. Pearson, and Bryan Schneider

CFPB Overview	18-3
Q 18.1 What is the CFPB?	18-3
Q 18.2 How is the CFPB organized?.....	18-3
Q 18.3 What is SEFL?	18-3
Q 18.4 What is the CFPB’s Office of Enforcement?.....	18-4
Q 18.4.1 Does Enforcement coordinate with the Offices of Fair Lending and Supervision?	18-4
Q 18.5 How is Enforcement organized?	18-4
Q 18.5.1 What is the Enforcement Policies and Procedures Manual?.....	18-5
<i>Scope of Enforcement Authority</i>	18-6
Q 18.6 What is the CFPB’s enforcement authority?	18-6
Figure 18-1 CFPB Office of Enforcement Organizational Chart.....	18-6
Q 18.6.1 Who is a “covered person” for purposes of CFPB enforcement authority?	18-6
Q 18.6.2 Who is a “service provider” for purposes of CFPB enforcement authority?	18-7
Q 18.6.3 Are there any limitations on CFPB enforcement authority tied to the size of the financial institution?	18-7
Q 18.6.4 Are any entities excluded from CFPB enforcement authority?	18-8
<i>UDAAP Authority</i>	18-8
Q 18.7 What is the CFPB’s authority to address unfair, deceptive, or abusive practices?	18-8
Q 18.7.1 What is an unfair or deceptive act or practice?	18-9
Q 18.7.2 What is an abusive practice?	18-9
<i>Coordination with Other Agencies</i>	18-10
Q 18.7.3 Does Enforcement coordinate with other federal regulatory enforcement authorities?.....	18-10
Q 18.7.4 Does the CFPB coordinate with state regulatory authorities?	18-12
Investigations	18-13
Q 18.8 Are there any formal rules that govern the commencement and conduct of investigations?.....	18-13

Table of Contents

Q 18.9	How might an institution become subject to a CFPB enforcement investigation?	18-13
Q 18.10	May a matter be referred to Enforcement based upon findings made by Supervision in an examination?.....	18-14
Q 18.10.1	May supervisory guidance alone form the basis for an action?	18-14
Q 18.10.2	May entities rely on examples provided in supervisory guidance?	18-15
Q 18.10.3	What is the difference between an Examination Report and a Supervisory Letter?.....	18-15
Q 18.10.4	May a low examination compliance rating lead to enforcement?	18-15
Q 18.10.5	May a Matter Requiring Attention (MRA) lead to enforcement?	18-16
Q 18.10.6	Could a Supervisory Recommendation lead to enforcement?	18-17
Q 18.10.7	If a depository institution is involved, may the CFPB refer matters identified during an examination to Enforcement without first conferring with the entity's prudential regulator?	18-17
Q 18.10.8	May an examiner refer potential criminal conduct directly to the DOJ?.....	18-18
Q 18.11	Under what circumstances might Enforcement decide to open an investigation on its own?.....	18-18
Q 18.11.1	What is a "Research Matter"?	18-19
Q 18.11.2	What is an "Investigation"?	18-19
Q 18.11.3	May Enforcement investigate an institution based on a referral from another regulatory body?.....	18-20
Q 18.11.4	What is the Opening Investigation Memorandum?.....	18-20
Q 18.11.5	Will the CFPB advise whether a person or entity is the target of an investigation?	18-20
Q 18.11.6	What is a PARR letter?	18-21
Q 18.12	What is a civil investigative demand?.....	18-22
Q 18.12.1	To whom may the CFPB issue a CID?.....	18-23
Q 18.13	What is the process for responding to a CID?	18-24
Q 18.13.1	What happens during the meet-and-confer process?	18-24
Q 18.14	What is the process for challenging or modifying a CID?	18-26
Q 18.14.1	What must a petition to modify or set aside a CID contain?	18-26
Q 18.14.2	What are the potential consequences of filing a petition to modify or set aside a CID?	18-27

Q 18.14.3	How often has the CFPB granted a petition to modify or set aside a CID?	18-28
Q 18.14.4	What is the “Notice to Persons” form?	18-29
Q 18.15	Is information provided to Enforcement in an investigation confidential?	18-29
Q 18.16	Will the CFPB provide notice to the subject of an intended enforcement action prior to initiating such proceedings?	18-30
Q 18.16.1	What is a NORA letter?	18-30
Q 18.17	What actions may the CFPB take at the end of an investigation?	18-31
Q 18.17.1	How does the CFPB formally close a research matter or an investigation?	18-31
Q 18.17.2	Does the CFPB advise when an investigation is being closed?	18-32
Formal Enforcement Proceedings	.....	18-32
Q 18.18	What is the CFPB’s authority to commence administrative or federal court proceedings?	18-32
Q 18.18.1	What is the CFPB’s authority to commence enforcement proceedings in federal court?	18-33
Q 18.18.2	What is the CFPB’s authority to commence enforcement proceedings in its administrative tribunal?	18-33
Q 18.19	Is there a time limitation in which the CFPB must bring an enforcement action?	18-34
Q 18.20	Must the CFPB provide any documents to the respondent in an enforcement action?	18-34
Q 18.20.1	What categories of documents may the CFPB withhold from production?	18-35
<i>Hearings Process</i>	.....	18-36
Q 18.21	Has the CFPB issued rules that govern investigational hearings?	18-36
Q 18.22	What is the process for an investigational hearing?	18-36
Q 18.22.1	Will the witness be given a copy of the transcript?	18-38
<i>Remedies Available to CFPB</i>	.....	18-39
Q 18.22.2	What is the CFPB’s authority to issue or seek cease-and-desist orders?	18-39
Q 18.23	What relief may be granted in an administrative proceeding or court action brought by the CFPB?	18-40

Table of Contents

Q 18.24	May the CFPB recover civil monetary penalties?.....	18-40
Q 18.24.1	How does the CFPB determine the amount of civil money penalties to assess in an administrative proceeding or court action?	18-41
Q 18.24.2	What additional factors does the CFPB consider in determining the civil monetary penalty to seek?.....	18-41
Q 18.25	Does the CFPB allow parties to delay CMP payments, or be indemnified by others?.....	18-42
Q 18.26	What is the Civil Penalty Fund?	18-42
<i>Mitigating Factors</i>		18-43
Q 18.27	What is responsible conduct?	18-43
Q 18.27.1	What is the standard for responsible conduct?	18-44
Q 18.27.2	How does the CFPB define “self-assessing”?.....	18-44
Q 18.27.3	How does the CFPB define “cooperation”?	18-44
Q 18.27.4	How does the CFPB define “remediating”?	18-45
Q 18.27.5	How does the CFPB define “self-reporting”?.....	18-45
<i>Decisions and Appeals in Administrative Actions</i>		18-46
Q 18.28	How and when are final decisions made in administrative proceedings?.....	18-46
Q 18.29	Are administrative enforcement decisions subject to appeal?.....	18-47
Q 18.29.1	How does the CFPB proceed in an administrative enforcement proceeding?.....	18-47
Enforcement Activity to Date		18-48
Q 18.30	How often does Enforcement choose to litigate in administrative proceedings versus federal court?	18-48
Q 18.30.1	How does the CFPB proceed in federal court litigation?.....	18-48
Q 18.31	What types of actors has Enforcement pursued in its enforcement actions?.....	18-49
Q 18.31.1	Does Enforcement pursue only institutions of a particular size or nature?	18-49
Q 18.31.2	Does Enforcement pursue institutions for assisting in another person’s violations of federal consumer financial law?.....	18-50
Q 18.31.3	Does Enforcement pursue individuals?.....	18-50
Q 18.32	Is the CFPB presently more or less likely to seek relief from individuals?	18-52
Q 18.33	Has the CFPB coordinated its enforcement actions with other federal regulators or state authorities?	18-52

Q 18.34	To what extent has the CFPB used its UDAAP authority for violations of enumerated statutes?.....	18-53
Q 18.34.1	To what extent has the CFPB used its UDAAP authority where enumerated statutes cannot apply?	18-54
Q 18.34.2	How has the CFPB used its abusiveness authority?.....	18-55
Q 18.35	Which industries, products, or practices has Enforcement targeted?.....	18-56
Q 18.35.1	Has the CFPB brought enforcement actions against national banks?.....	18-56
Q 18.35.2	What types of actions has the CFPB pursued against the mortgage industry?	18-57
Q 18.35.3	How has the CFPB dealt with the sale of ancillary products?.....	18-58
Q 18.35.4	What actions have been pursued against credit card issuers?.....	18-59
Q 18.35.5	Has the CFPB pursued short-term lenders?.....	18-59
Q 18.35.6	What types of actions has the CFPB pursued against student lenders and servicers?	18-60
Q 18.35.7	What types of enforcement actions have been pursued in the area of debt collection and debt relief?.....	18-61
Q 18.35.8	What are some of the other industries that have been targeted for enforcement?	18-62

Chapter 19 Unfair, Deceptive, or Abusive Acts and Practices Statutes

Lukas Sosnicki, Jan Lynn Owen, and Brett J. Natarelli

The FTC Act	19-3	
Q 19.1	What statutes regulate unfair or deceptive acts or practices?	19-3
Q 19.2	How do FTC regulations define “unfair” or “deceptive” acts or practices?	19-4
Q 19.3	How is the FTC Act’s prohibition of UDAPs enforced?.....	19-6
The Dodd-Frank Act and the Consumer Financial Protection Bureau	19-8	
<i>Generally</i>	19-8	
Q 19.4	How does the CFPB regulate unfair and deceptive acts and practices?	19-8

Table of Contents

<i>Definitions</i>	19-9
Q 19.5 How is UDAAP defined?	19-9
Q 19.6 How does the Dodd-Frank Act define “unfair” acts or practices?	19-9
Q 19.7 How does the Dodd-Frank Act define “deceptive” acts or practices?	19-10
Q 19.8 How does Dodd-Frank define “abusive” acts or practices?	19-11
<i>Triggering Activity</i>	19-12
Q 19.9 Has the CFPB focused on any particular activity as giving rise to UDAAPs?.....	19-12
<i>Enforcement</i>	19-14
Q 19.10 Is there a private right of action for enforcement of the Dodd-Frank Act’s proscription of UDAAPs?.....	19-14
Q 19.11 Has the CFPB promulgated any formal rules governing enforcement against UDAAPs?	19-14
State Laws and Regulations	19-14
<i>Generally</i>	19-14
Q 19.12 How do states regulate against unfair, deceptive, and abusive acts and practices?.....	19-14
<i>Use of the Dodd-Frank Act UDAAP Authority</i>	19-15
Q 19.13 What UDAAP-based actions have state officials filed under the Dodd-Frank Act?.....	19-15
<i>Multistate Action Against Mortgage Servicer</i>	19-15
<i>Florida Action Against Major Mortgage Servicer</i>	19-15
<i>Illinois Action Against Lender</i>	19-16
<i>Illinois Action Against For-Profit College</i>	19-17
<i>New York Action Against Auto Lender</i>	19-17
<i>New York Action Against Sterling Jewelers</i>	19-18
<i>New York Action Against Debt Buyers</i>	19-18
<i>Florida/Connecticut Action Against Mortgage Rescue Scam</i>	19-19
<i>North Carolina/Virginia Action Against Credit Reporting Agency</i>	19-19

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

<i>New Mexico Action Against Tax Refund Scheme</i>	19-20
<i>Pennsylvania Action Against Student Loan Lender and Servicer</i>	19-20
<i>Pennsylvania Action Against Internet-Based Lender</i>	19-21
<i>State UDAP Laws</i>	19-22
Q 19.14 How do state laws prohibit unfair and deceptive acts?	19-22
Table 19-1 State UDAP/UDAAP Statutes	19-22
Q 19.15 What activities do state UDAP laws prohibit?	19-24
Q 19.16 Must an act or practice be intentional to be a UDAP?.....	19-25
Q 19.17 Do state UDAP statutes provide agency rulemaking authority?	19-25
Q 19.18 To what activities do state UDAP laws apply?.....	19-26
Q 19.19 How do state agencies enforce the state UDAP laws?.....	19-26
Q 19.19.1 What types of UDAP-based lawsuits have agency officials representing multiple states filed?	19-27
<i>Multistate Action Against Wells Fargo</i>	19-27
<i>Multistate Action Against Santander</i>	19-27
<i>Multistate Action Against ITT Technical Institute</i>	19-28
Q 19.19.2 May consumers bring lawsuits under state UDAP laws?	19-28
Q 19.19.3 What damages are available to consumers bringing lawsuits under state UDAP laws?	19-29
Q 19.19.4 May consumers bring class action lawsuits under state UDAP laws?.....	19-30

Chapter 20 Residential Foreclosures and Evictions

Brett J. Ntarelli and Madelaine Newcomb

Foreclosures	20-2
<i>Basics of Foreclosure</i>	20-2
Q 20.1 What is a foreclosure?.....	20-2
Q 20.2 What gives a lender the right to foreclose?	20-2
Q 20.3 What is the difference between a mortgage and a deed of trust?	20-3
Q 20.4 Who has standing to bring a foreclosure action?.....	20-3

Table of Contents

Q 20.5	What is MERS?	20-4
Q 20.5.1	Does recording a mortgage naming MERS split the note from the security instrument?	20-5
Q 20.6	What is the difference between a judicial and a non-judicial foreclosure?	20-6
Q 20.6.1	What is a “power of sale” clause?	20-7
Q 20.7	What happens in a judicial foreclosure?	20-7
Q 20.8	What is an Affidavit of Indebtedness?	20-8
Q 20.8.1	What is a “quasi-judicial” foreclosure?	20-8
Q 20.8.2	What are the judicial, quasi-judicial, and non-judicial states?	20-9
Q 20.9	What is “strict” foreclosure?	20-11
<i>Foreclosure Process</i>		20-11
Q 20.10	How is the foreclosure process initiated?	20-11
Q 20.10.1	Do some jurisdictions require mediation or counseling before foreclosure?	20-11
Q 20.10.2	Must the lender or servicer provide notice of default before commencing foreclosure proceedings?	20-13
Q 20.10.3	What happens after the loan is accelerated?	20-13
Q 20.10.4	Must lenders/servicers exhaust loan modification efforts prior to foreclosing?	20-14
Q 20.11	What effect do loss mitigation efforts have on foreclosure?	20-14
Q 20.11.1	May the lender or servicer complete a foreclosure before it has either approved or denied a loan modification application?	20-15
Q 20.11.2	Is the lender or servicer required to cancel the sale if the borrower completes an application less than thirty-seven days prior to sale?	20-15
Q 20.11.3	Does Regulation X require that the servicer repeat all these steps every time the borrower applies?	20-16
Q 20.12	What happens if the foreclosure sale generates a surplus?	20-16
Q 20.13	How long does a foreclosure take?	20-17
<i>Impact of Bankruptcy on Foreclosure Proceedings</i>		20-17
Q 20.14	Does a bankruptcy filing suspend foreclosure?	20-17
Q 20.14.1	What steps may a lender take to proceed with foreclosure following bankruptcy?	20-18
Q 20.14.2	What happens when the borrower confirms a Chapter 13 or Chapter 11 plan?	20-19
Q 20.14.3	What is “lien stripping”?	20-19
Q 20.14.4	What other steps do borrowers take during a bankruptcy case to delay foreclosure?	20-20

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

<i>Contested Foreclosures</i>	20-20
Q 20.15 What percentage of foreclosure cases are contested?	20-20
Q 20.15.1 What is the borrower typically alleging when claiming lack of notice?	20-21
Q 20.15.2 What is the borrower typically alleging when claiming lack of standing?	20-21
Q 20.15.3 What are the typical claims regarding loss mitigation?.....	20-22
Q 20.15.4 What are borrowers' typical unfair practices and statutory violations claims?.....	20-22
Q 20.15.5 What types of conspiracy and related theories are seen in contested foreclosures?	20-23
<i>Post-Foreclosure Borrower/Mortgagor Rights, Remedies and Liabilities</i>	20-24
Q 20.16 What remedies does a borrower have against a wrongful foreclosure?.....	20-24
Q 20.17 What is the right to redemption?	20-24
Q 20.18 What is a deficiency judgment?.....	20-25
Q 20.18.1 Do some states limit the use of deficiency judgments?.....	20-25
Evictions	20-27
<i>Basics of Eviction</i>	20-27
Q 20.19 What is an eviction?	20-27
Q 20.19.1 Who has standing to evict?.....	20-28
<i>Eviction Process</i>	20-28
Q 20.20 What happens when a mortgagor or tenant refuses to vacate the property?.....	20-28
Q 20.20.1 How long does an eviction take?	20-29
<i>Holdover Tenant/Borrower Rights and Remedies</i>	20-29
Q 20.21 What happens to a holdover tenant's possessions upon eviction?	20-29
Q 20.22 What are a borrower's remedies for wrongful eviction?	20-30

Chapter 21 Fair Debt Collection Practices Act

Theodore W. Seitz and Madison S. Laskowski

Introduction	21-3
Q 21.1 What is the Fair Debt Collection Practices Act?.....	21-3
Enforcement	21-3
Q 21.2 Who enforces the FDCPA?	21-3
Q 21.3 What role does the CFPB play?.....	21-4
Q 21.3.1 Under what authority is the CFPB authorized to supervise debt collectors?.....	21-4
Q 21.3.2 What is a “larger participant” as applied to debt collectors?.....	21-5
Q 21.3.3 What is Regulation F?.....	21-5
Q 21.3.4 Has the CFPB otherwise provided any supervision or examination guidance?.....	21-6
Q 21.3.5 Does the CFPB also engage in enforcement for or supervision of debt collection activities not covered by the FDCPA?.....	21-6
Q 21.3.6 Has the CFPB taken stances in private FDCPA litigation?.....	21-7
Q 21.3.7 What role does the FTC continue to have on FDCPA enforcement matters?.....	21-8
Q 21.4 Does the FDCPA preempt state law?	21-8
Application of the FDCPA	21-9
<i>Debts Covered by the FDCPA</i>	21-9
Q 21.5 What debts are covered under the FDCPA?	21-9
Q 21.6 Must a debtor be in default for the FDCPA to apply?	21-10
Q 21.6.1 When does a debt become in “default”?	21-10
Q 21.6.2 When does the statute of limitations begin to run?.....	21-10
<i>Persons Considered Debt Collectors Under the FDCPA</i>	21-10
Q 21.7 Who is a debt collector under the FDCPA?	21-10
Q 21.7.1 Who is included in the definition of debt collector?	21-10
Q 21.7.2 What qualifies as a person whose principal purpose is the collection of debt?.....	21-11
Q 21.7.3 What qualifies as a person who regularly collects debts owed to another?.....	21-12
Q 21.7.4 Who is excluded from the definition of debt collector?.....	21-12

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 21.7.5	Is a creditor ever a debt collector?	21-13
Q 21.7.6	Is a debt buyer a debt collector?.....	21-13
Q 21.7.7	Is a lawyer a debt collector?	21-14
Q 21.7.8	How does Regulation F define “communications”?	21-14
Q 21.7.9	May a mortgage servicer or assignee of a mortgage be a debt collector?.....	21-15
Q 21.7.10	Is a foreclosure considered debt collection?.....	21-16
<i>Persons Considered Consumers Under the FDCPA</i>		21-17
Q 21.8	Who is a consumer under the FDCPA?	21-17
Q 21.8.1	Who qualifies as a person who “allegedly” owes the debt?.....	21-18
Q 21.8.2	Are only consumers permitted private right of action under the FDCPA?.....	21-18
Prohibited Practices		21-19
Q 21.9	What practices are prohibited under the FDCPA?	21-19
Q 21.10	What constitutes harassment or abuse?.....	21-19
Q 21.11	What constitutes false or misleading representation?	21-20
Q 21.12	May a debt collector furnish information to a consumer reporting agency before communicating with the debtor?	21-23
Q 21.13	What is meaningful attorney involvement?	21-23
Q 21.14	What constitutes unfair practices?	21-24
Q 21.14.1	Does Regulation F address the standards for what constitutes “unfair or unconscionable means”?	21-25
Communicating with a Consumer		21-26
<i>Communications Under the FDCPA</i>		21-26
Q 21.15	What is considered a communication under the FDCPA?	21-26
Q 21.15.1	What does it mean to convey information regarding a debt?	21-26
Q 21.15.2	What is a “limited content message”?	21-27
<i>Frequency of Communications</i>		21-27
Q 21.16	How many phone calls constitute harassment?.....	21-27
Q 21.16.1	Does Regulation F address call frequency?	21-28
<i>Allowed Communication Times</i>		21-29
Q 21.17	At what times may a debt collector call a consumer under the FDCPA?	21-29
Q 21.17.1	For purposes of communications, who is included in the definition of “consumer”?.....	21-29

Table of Contents

<i>Meaningful Disclosure of Identity</i>	21-30
Q 21.18 How must a collector identify itself during a phone call?.....	21-30
<i>Initial Communications</i>	21-30
Q 21.19 What are the requirements for an initial communication?	21-30
Q 21.19.1 What content must be included in the debt validation notice?	21-31
Q 21.19.2 What is the debt validation period?.....	21-33
Q 21.19.3 Are there any safe harbors applicable to debt validation notices?	21-33
Q 21.19.4 Are debt collectors required to provide a specific opportunity to opt out of electronic communications?	21-33
Q 21.19.5 How must the amount of debt be stated where interest or other charges are accruing?	21-34
Q 21.19.6 Who must send an initial communication?.....	21-34
Q 21.20 Is a lawsuit or a privacy notice considered an initial communication?	21-35
Q 21.21 How should a debt collector respond to a consumer’s response to an initial communication?	21-35
<i>Overshadowing</i>	21-36
Q 21.22 What is overshadowing?	21-36
Q 21.22.1 How do debt collectors avoid overshadowing?.....	21-36
Q 21.22.2 Is filing a lawsuit considered overshadowing?.....	21-37
<i>Subsequent Communications</i>	21-38
Q 21.23 Are subsequent communications subject to any requirements?	21-38
<i>Consumer Disputes</i>	21-39
Q 21.24 When may a consumer dispute a debt?	21-39
Q 21.25 How may a consumer dispute a debt?.....	21-39
Q 21.26 What constitutes a dispute?	21-39
Q 21.27 How should a collection agency respond to a verbal dispute?	21-39
Q 21.28 How should a collection agency respond to a written dispute?	21-40
Q 21.29 What triggers the verification requirement?.....	21-40
Q 21.29.1 Why is the verification requirement triggered merely by a dispute?.....	21-40
Q 21.29.2 What constitutes verification of a debt?	21-41

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 21.30	How should a disputed debt be credit-reported?	21-42
Q 21.31	What must a debt collector avoid saying when communicating with a consumer?	21-43
<i>Cease Communications Requests</i>		21-43
Q 21.32	When must a debt collector cease communications with a consumer?	21-43
Q 21.33	Are there exceptions to communicating with the consumer once a cease communications request has been received?	21-43
Q 21.34	At what time does the “cease communications” request become effective?	21-44
<i>Communicating with Third Parties</i>		21-45
Q 21.35	Are debt collectors allowed to communicate with third parties?	21-45
Q 21.36	For what permissible purpose is a debt collector allowed to communicate with a third party concerning the consumer?	21-45
Q 21.37	What are the consequences to debt collectors who leave messages on a consumer’s voicemail or answering machine?	21-47
<i>Consumers Represented by Attorneys</i>		21-49
Q 21.38	Does a debt collector have a duty to communicate with a consumer’s attorney?	21-49
<i>Time-Barred Debt</i>		21-49
Q 21.39	May a debt collector collect on time-barred debt?	21-49
Q 21.39.1	Do the time-barred debt prohibitions apply in bankruptcy?	21-50
Q 21.40	What happens if the debtor retains an attorney?	21-50
Taking Legal Action Against a Consumer		21-51
Q 21.41	What are the requirements for taking legal action against a consumer?	21-51
Defenses		21-52
Q 21.42	Is a debt collector liable for false statements if the false statement is not material?	21-52
Q 21.43	Are there any defenses to FDCPA violations?	21-52
Q 21.43.1	How may a debt collector prove the bona fide error defense?	21-53

Table of Contents

Q 21.43.2	Does the bona fide error defense apply to mistakes of law?	21-54
Q 21.43.3	Are there any specific ways for debt collectors to establish a bona fide error defense with respect to electronic communications?	21-54
Q 21.43.4	What non-statutory defenses are commonly utilized in litigation involving the FDCPA?	21-56
Remedies	.....	21-56
Q 21.44	What remedies or penalties may be imposed under the FDCPA?	21-56
State Statutes	.....	21-57
Q 21.45	If the debt is not subject to the FDCPA, are there any other restrictions on collection practices?	21-57

Chapter 22 Service Providers and Third-Party Risk

*Richard E. Gottlieb, John W. McGuinness, and
Kristin E. Haule*

The Basics	.....	22-3
Q 22.1	Why this discussion?	22-3
Q 22.2	What is third-party risk?	22-4
Q 22.3	What are service providers?	22-4
Q 22.3.1	Are vendors and suppliers the <i>same</i> as service providers?	22-4
Q 22.4	Do “third-party relationships” include everything that is outsourced?	22-5
Q 22.5	What are common types of service provider relationships?	22-5
Types of Service Provider Risks	.....	22-7
Q 22.6	What are the key risk types that regulators have identified regarding the use of service providers?	22-7
Q 22.6.1	What is compliance risk?	22-8
Q 22.6.2	What is reputation risk?	22-8
Q 22.6.3	What is strategic risk?	22-8
Q 22.6.4	What is transaction risk?	22-9
Q 22.6.5	What is credit risk?	22-9
Q 22.6.6	What is operational risk?	22-9

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 22.6.7	What is concentration risk?	22-9
Q 22.6.8	What is country risk?.....	22-10
Q 22.6.9	What are legal risks?	22-10
Regulatory Authority		22-11
Q 22.7	Who has regulatory authority over financial institutions to enforce oversight of service providers?	22-11
Q 22.8	What are the primary sources of regulatory requirements or guidance?.....	22-12
Q 22.9	What is the latest banking regulator guidance on the topic of third-party risk management?	22-12
Q 22.10	Does the CFPB have supervisory authority with third-party risk management?	22-13
Q 22.11	Are the supervisory powers afforded to each of the regulators consistent?	22-13
Q 22.11.1	What steps should a supervised institution take to ensure compliance with the latest applicable guidance?.....	22-14
Q 22.12	How do regulators enforce service provider oversight?.....	22-14
Regulatory Expectations of Service Provider Engagements		22-15
Q 22.13	What are the regulators' general expectations for third-party risk management?	22-15
Q 22.13.1	What are "critical activities"?	22-16
Q 22.14	Is there a standard risk-rating scale for vendors?.....	22-17
Q 22.14.1	What is the typical risk-rating methodology?.....	22-17
Q 22.15	Once the inherent risks, costs, and benefits have been identified, what should the financial institution do?	22-18
Q 22.16	How frequently should risk assessments be conducted?	22-19
Q 22.17	Once risk assessment and planning is complete, what specific due diligence must be performed for potential vendors prior to contracting?.....	22-20
Q 22.18	Are financial institutions required to perform due diligence on all service providers prior to engagement?.....	22-21
Q 22.18.1	In conducting due diligence, may financial institutions collaborate with other potentially competing institutions?	22-21
Q 22.19	What are the key factors to be considered with respect to each service provider?	22-22
Q 22.20	What should institutions consider when negotiating a contract with a service provider?	22-24

Table of Contents

Q 22.21	What are Service Level Agreements?.....	22-24
Q 22.21.1	How are SLAs used to manage service providers to financial institutions?.....	22-24
Q 22.21.2	Are there any minimum expectations for SLA content?.....	22-25
Q 22.22	Once a contract with a service provider is executed, what types of ongoing relationship monitoring activities are required?.....	22-26
Q 22.23	What is a technical service provider?	22-27
Q 22.23.1	What have FDIC examiners observed in financial institutions' contracts with TSPs?	22-27
Q 22.23.2	Are there specific guidelines addressed to cyber attacks?.....	22-28
<i>Ongoing Monitoring</i>		22-29
Q 22.24	What are current areas of regulatory focus related to ongoing monitoring?	22-29
Q 22.24.1	What aspects of legal and regulatory compliance should an institution focus as part of its ongoing monitoring of vendors?	22-30
Q 22.24.2	What does “early identification of issues” mean?.....	22-30
Q 22.24.3	What aspects of information security should an institution focus on with respect to ongoing monitoring?	22-30
Q 22.24.4	What actions should a financial institution take to ensure that subcontractors to service providers are complying with the contract and applicable laws and regulations?	22-31
Q 22.24.5	What steps should an institution take in its ongoing monitoring of consumer complaints?.....	22-31
<i>Engagement and Termination of Service Provider Relationships</i>		22-32
Q 22.25	What role do executive management and the board have with respect to the engagement of service providers?	22-32
Q 22.26	What considerations should financial institutions give when terminating a relationship with a service provider?	22-32
<i>OCC-Specific Guidance</i>		22-33
Q 22.27	Has the OCC issued any formal bulletins addressing servicing providers?	22-33
Q 22.28	What is OCC Bulletin 2013-29?	22-34

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 22.29	What is OCC Bulletin 2017-7?	22-34
Q 22.29.1	Under OCC Bulletin 2017-7, what aspects of a bank's vendor management processes does the examiner review?.....	22-34
Q 22.29.2	How does the OCC determine the <i>quantity</i> of risk associated with a particular third-party relationship?.....	22-35
Q 22.29.3	How does the OCC determine the <i>quality</i> of risk associated with a particular third-party relationship?.....	22-36
Q 22.30	What is OCC Bulletin 2020-10?	22-37
Q 22.31	Does the OCC permit collaboration among banks with respect to service providers?	22-37
Q 22.31.1	In what ways are there still bank-specific responsibilities with common vendors?	22-38
Q 22.31.2	What outside resource may banks use to augment their third-party management capabilities?	22-38
Q 22.31.3	May banks use a third-party assessment service to monitor and evaluate service providers?	22-38
<i>Fintechs and Marketplace Lenders</i>		22-39
Q 22.32	By their nature, do all fintech relationships constitute "critical activities"?	22-39
Q 22.33	If a bank contracts with a fintech, is the fintech relationship deemed a covered third-party relationship?	22-40
Q 22.34	What additional steps should national banks take with respect to fintech startups that have limited financial information?.....	22-40
Q 22.35	May banks meet certain of their obligations to provide banking services to the underbanked via fintech relationships?.....	22-41
Q 22.36	Does the OCC treat marketplace lending relationships differently from other fintech companies?.....	22-42
<i>CFPB Guidance on Service Providers</i>		22-43
Q 22.37	What are the primary bulletins addressing service provider relationships?.....	22-43
Q 22.38	What are the CFPB's general expectations with respect to regulated entities and their oversight of service provider relationships?.....	22-43
Q 22.38.1	What steps should entities supervised by the CFPB take to ensure that their business arrangements with service providers avoid harm to consumers or violation of federal consumer financial laws?	22-44

Table of Contents

Q 22.38.2	Does the CFPB allow for “flexibility” in the oversight of third-party service providers?	22-44
Q 22.39	What are the risks to consumers associated with some production incentive programs?	22-45
Q 22.39.1	What guidance does the CFPB provide to prevent risks to consumers from certain production incentive programs?	22-45
<i>Other Federal Regulatory Guidance</i>		22-46
Q 22.40	Do the other prudential regulators offer general TPRM guidance?.....	22-46
Q 22.40.1	What is the FFIEC Management Booklet?.....	22-46
Q 22.40.2	What is FHFA Advisory Bulletin 2018-08?.....	22-47
<i>Remedies for Noncompliance with Oversight Responsibilities</i>		22-47
Q 22.41	What happens if a banking organization fails to have an effective third-party risk management process?.....	22-47
Q 22.42	What remedies are available to regulators against financial institutions for failure to manage service providers effectively?	22-48
Q 22.42.1	What is a Matter Requiring Attention (MRA)?.....	22-49
Q 22.42.2	What is a Memorandum of Understanding (MOU)?.....	22-49
Q 22.43	May banking regulators directly examine service providers?	22-49
Q 22.44	Do regulators prepare examination reports for all Technology Service Providers (TSPs)?.....	22-49
Q 22.44.1	May banks access the TSP reports of examination?.....	22-50
Enforcement Actions		22-51
Q 22.45	Is a financial institution or its service provider subject to an enforcement proceeding if either or both fail to adhere to regulatory requirements?	22-51
Q 22.46	What is a public enforcement action?	22-52
Q 22.47	May enforcement actions be brought by regulators directly against service providers?	22-52
Q 22.48	Do the Dodd-Frank Act’s unfair, deceptive, and abusive acts and practices (UDAAP) standards apply to service providers?	22-53
Q 22.49	Have regulators brought UDAAP actions for violation by service providers of federal consumer financial laws?	22-53
Q 22.49.1	Have state enforcement actions been brought against financial institutions and their service providers for violation of state consumer protection laws?	22-53

CONSUMER FINANCIAL SERVICES ANSWER BOOK 2022

Q 22.49.2	Has the CFPB brought enforcement actions against mortgage servicers with respect to oversight of service providers?.....	22-54
Q 22.49.3	Has the CFPB brought enforcement actions directly against service providers?	22-54
Q 22.50	What additional steps should entities consider to reduce the risk of state enforcement actions and consumer class actions by private litigants?.....	22-54
Index		I-1