Consumer protection is a key part of banking regulation, and public interest in consumer protection laws has increased rapidly in response to the dramatic growth over the past few decades in consumer lending and other consumer banking relationships. Federal regulation to provide consumer protection essentially began with the Consumer Credit Protection Act of 1968, which included the Truth in Lending Act. This legislation was soon followed by other consumer laws, which were passed to address some of the problems and complexities associated with the increased use of consumer credit. Other legislation was enacted because technological advances in banking had outgrown the current body of law, and a new legal framework was necessary if orderly development was to continue. The Electronic Fund Transfer Act is an example of this type of legislation. Between 1978 and 1985, no new additions to the body of consumer laws were enacted. A new wave of consumer protection laws began in 1985, with the adoption of the Credit Practices Rule. Since then, more than a dozen new laws have been enacted, most of which were incorporated into existing regulations.

Consumer protection laws may be grouped into three general categories or objectives. Two can be classified broadly as disclosure laws and civil rights laws. The third category consists of laws designed to protect a consumer’s privacy and provide safeguards against specific abuses in the extension, collection, and reporting of consumer credit.

The following sections discuss the regulatory considerations in
implementing consumer protection laws and present the major federal laws in the three general consumer protection categories.

**REGULATORY CONSIDERATIONS**

Since financial transactions by consumers involve many types of credit and a variety of services, no single method has been used to regulate consumer credit practices or to implement and enforce consumer credit laws. In trying to address particular abuses and practices in consumer credit, Congress has taken a combination of approaches. Some laws forbid certain practices. The Fair Debt Collection Practices Act, for example, in most instances prohibits contacts by a third-party debt collector with people other than the debtor. Other laws require appropriate disclosures to the consumer. The prime example is the Truth in Lending Act, which requires uniform disclosure of credit terms. The theory of disclosure laws is that consumers with adequate information make better financial choices, thereby driving out abusive creditors and practices.

Another approach used by Congress is merely to make unlawful all activities that have a particular effect. For example, the Fair Housing Act broadly prohibits any activity, without specifying the activity, that has the effect of unfairly discriminating in the financing, purchasing, and renting of housing. Finally, as another approach, Congress requires the compilation of data. The best example of this approach is the Home Mortgage Disclosure Act. The intent of this law is to provide regulatory agencies and others with data to help analyze whether creditors may be unjustly excluding particular neighborhoods from receiving home loans. Most consumer protection laws do not take any one approach exclusively but use a combination of them.

Consumer protection laws are implemented and enforced in various ways. Many of the acts are implemented through regulations written by the Board of Governors of the Federal Reserve System. In other cases, such as the Community Reinvestment Act,
each federal agency must write its own regulation to be applied to institutions under its direct supervision. The Department of Housing and Urban Development (HUD) is in charge of implementing regulations for the Real Estate Settlement Procedures Act. The Homeowners Protection Act of 1998, on the other hand, has no provision for the promulgation of regulations. In this case, all enforcement practices are based on provisions of the act itself. 

Enforcement of the consumer laws for depository institutions is the responsibility of the institution’s primary federal supervisory agency. Examinations and, to a lesser extent, investigations of consumer complaints are used by the regulators to check compliance. For nondepository creditors, such as retail stores and finance companies, the Federal Trade Commission has primary responsibility for enforcing consumer laws. Because of the large number and variety of such firms, the Federal Trade Commission relies principally on consumer complaints to ensure compliance. 

Violations of consumer laws by depository institutions are generally corrected during the examination process. Examinations normally entail the prospective correction of particular practices, and the correction is made voluntarily. However, remedial action is required for certain violations of the Truth in Lending, Equal Credit Opportunity, and Fair Housing Acts. Violations of some provisions of the Real Estate Settlement Procedures Act and Flood Insurance Protection Act can trigger civil money penalties, assessed either by the Secretary of HUD or the institution’s primary supervisory agency. Where voluntary compliance is not achieved, regulatory agencies must use their enforcement powers. 

Most of the federal credit laws can also be enforced by individual consumers through civil lawsuits. Successful individuals are entitled to an award of actual damages, court costs, attorney fees, plus punitive damages in some instances.
DISCLOSURE LAWS

Truth in Lending Act—Federal Reserve Regulation Z

The best known of the disclosure laws is the Truth in Lending Act. It was enacted in 1968 as Title I of the Consumer Credit Protection Act and is implemented by Federal Reserve Regulation Z. The act is enforced by a depository institution’s primary federal supervisor and by the Federal Trade Commission for most other lenders.

With the rapid growth of consumer credit in the late 1960s, Congress became concerned that consumers might be confused by the many different ways that lenders charged them for credit. Consumers might be quoted an add-on rate, a discount rate, a simple interest rate, or a compounded rate. Rather than legislate the method for imposing credit charges, Congress left the individual states with the authority to set credit terms but required lenders to disclose these terms in a uniform manner. The intent behind uniform disclosures was to provide consumers with the information they would need to compare credit terms and make informed decisions on the use of credit.

To do this, the Truth in Lending Act establishes standard disclosures for consumer creditors nationwide. Important loan terms must be disclosed in uniform terminology, with rules for each type of credit. For example, the cost of credit must be disclosed as a dollar figure, known as the “finance charge,” and as a yearly rate, known as the “annual percentage rate.”

The Truth in Lending Act is an extremely complex, technical body of law. The act was simplified in 1980, but the evolution of financing alternatives has resulted in numerous amendments to cover such products as variable-rate loans, home equity credit lines, reverse mortgages, and high-cost mortgage loans. Amendments to the Truth in Lending Act are further increasing its use as a vehicle for prohibiting or restricting creditor policies and practices, espe-
cially on loans secured by residences. One example is the lifetime rate cap rule for adjustable-rate mortgage loans, which protects consumers from unlimited rate increases that might cause them to lose their home.\(^1\)

*General provisions*—Regulation Z applies to consumer credit offered primarily for personal, family, or household purposes. Extensions of credit primarily for business, commercial, or agricultural purposes are exempt from all but certain credit card rules. Only creditors that regularly extend consumer credit are subject to Truth in Lending, and Regulation Z provides a numerical test for determining whether a creditor is covered.

The regulation makes a distinction between open-end and closed-end consumer credit. Open-end credit can generally be characterized as revolving lines of credit on which a finance charge may be imposed on the outstanding balance. Typical examples of open-end credit are credit cards, overdraft protection plans, and home equity lines of credit. Closed-end credit is defined by exclusion: it is any consumer credit that does not meet the definition of open-end credit. Home purchase loans, home improvement loans, car loans, and demand loans are examples of closed-end credit.

The keystone to Truth in Lending is disclosure of the basic credit terms in a uniform manner. The most crucial disclosures are the finance charge and the annual percentage rate.

*Finance charges*—To make sure that credit disclosures are uniform, the regulation sets out strict rules for the items to be included in the finance charge figure. Any charge payable by the consumer and imposed by the creditor as an incident to or a condition of the loan is a finance charge. A finance charge might be directly or indirectly paid or imposed. Examples of finance charges are interest, loan origination fees, premiums for mortgage guaranty insurance, cash advance fees, and credit report fees. If the charge is

\(^1\) The rate cap rule was established under Title XII, section 1204 of the Competitive Equality Banking Act of 1987 (12 U.S.C. §3806).
payable in a comparable cash transaction, it is not a finance charge. Property taxes, for instance, are not finance charges since they are due regardless of whether credit is involved.

There are several exceptions to the general definition of finance charge. The most important pertain to charges often assessed on loans secured by real property, such as title examination fees, credit report fees, and appraisal fees. None of these are included in the finance charge on real property loans, provided they are bona fide and reasonable in amount.

Annual percentage rate—The annual percentage rate (APR) is the cost of credit expressed as a percentage of the unpaid balance. It relates the total finance charge to the net amount of funds used over the life of the loan. This converts add-on, discount, and other types of interest rates and charges into a uniform measurement that consumers may use to compare the prices of different loans. The APR is similar to a lender’s internal rate of return on a loan. However, the APR is unique because Regulation Z has its own definitions of the components going into the finance charge. Special rules and equations in the regulation and its appendices explain how to calculate the APR for open-end and closed-end transactions.

Regulation Z allows for errors in disclosing finance charges and APRs. The disclosure tolerance depends on a variety of factors, but it is generally larger for mortgage loans than other types of loans. The regulatory agencies must order restitution to consumers where a lender is found to have engaged in a pattern or practice of understating the cost of credit.

Open-end credit—Creditors offering open-end credit plans must disclose important terms of the plan before the first transaction occurs. These “initial” disclosures include such information as how the finance charge and account balance will be computed, the

---

2 The larger tolerance for mortgage loans was adopted following passage of the Truth in Lending Class Action Relief Act of 1995. This amendment was a Congressional response to class action lawsuits involving relatively minor disclosure errors.
periodic and annual percentage rates used to compute interest, and other charges that could be imposed.

Consumers with open-end credit accounts must regularly receive a statement that itemizes account activity and discloses the finance charge and APR for the billing cycle. If the consumer believes there is an error on the statement, the provisions of the Fair Credit Billing Act apply. This act, implemented by Regulation Z, establishes the rights and responsibilities of the parties involved in a disputed open-end credit bill. Each party has specific procedures to follow in order to protect their rights and limit liability.

In addition to these general requirements for open-end credit, the act and regulation include a few special rules for credit cards, charge cards, and home equity plans. Among these is the requirement that applications and solicitations for credit or charge cards include full disclosure of the account terms and conditions. This rule was included in the Fair Credit and Charge Card Act of 1988 and is designed to provide consumers with information before they pay a nonrefundable fee or make a deposit to secure a card. The regulation includes other protections that apply only to credit card accounts, such as prohibiting the issuance of unsolicited cards and limiting a cardholder’s liability to $50 for unauthorized transactions.\(^3\)

The home equity rules contain a number of provisions to help consumers shop for this type of credit. For instance, lenders must disclose extensive information about their plan when they provide an application form.\(^4\) Other home equity provisions restrict lender actions. To prevent manipulated rate increases, for example, lenders may not increase the APR if they use an internal interest rate index. Lenders must also have legitimate reasons for changing

---

\(^3\) These credit card rules are the only two provisions of the act and regulation that extend to business, agricultural, and other types of credit. A credit card issuer may negotiate higher liability limits when it issues 10 or more credit cards for the use of employees of an organization. 12 CFR 226.12(b)(5).

\(^4\) The home equity rules were adopted following passage of the Home Equity Loan Consumer Protection Act of 1988. They apply to plans secured by the borrower’s dwelling, including second and vacation homes.
the rate index, reducing a borrower’s credit limit, or preventing additional advances after the account is opened.

**Closed-end credit**—There are 18 “material” credit terms that must be disclosed on closed-end loans. Six of these items are critical, as they carry civil liability exposure if omitted or misstated: the amount financed, payment schedule, total of payments, finance charge, APR, and collateral requirements.

For most closed-end loans, creditors can provide the disclosures just before consummation, which is when the borrower becomes legally obligated on the loan. However, for a home purchase or construction loan, disclosures are to be given shortly after an application is received. The intent of these earlier disclosures is to encourage comparison shopping by consumers on the most important credit decision they typically will make.

As adjustable-rate mortgages (ARMs) became prevalent, the act and regulation were amended to require that consumers receive information about a lender’s ARM program before they apply. Among the disclosures that must be made are how interest rates will be determined, how often rates and payments will change, and an example of how monthly payments can be affected by a rate increase. These “program” disclosures are given along with a standardized pamphlet designed to help consumers understand ARM features such as negative amortization and rate and payment caps.

The Home Ownership and Equity Protection Act of 1994 was passed in an effort to protect the interest consumers have in their homes and to address two emerging types of home loans: “high-cost” and reverse mortgages. The high-cost home loan rules include special disclosures and restrictions that seek to prevent abusive practices in lending to persons of modest means and to provide applicants with information for making an informed credit decision. Among the abusive or predatory lending practices these rules

---

5 This act is Subtitle B of Title I of the Riegle Community Development and Regulatory Improvement Act of 1994.
prohibit are the extension of credit without regard to a consumer’s repayment ability and the use of such lending provisions as prepayment penalties, rising interest rates after default, balloon payments, or negative amortization. Several special disclosures are also required for reverse mortgages, which have unique characteristics and are most often used by elderly borrowers.

Right to Rescind—When consumers put up their primary dwelling as collateral for a nonpurchase money loan, the lender must provide them with notice of their right to rescind the loan. This right gives consumers a three-business day “cooling off” period to reconsider their decision and is a leverage against unfair and deceptive practices. Until the rescission period expires, the lender may not advance any money except into escrow, perform any services, or deliver any materials. Consumers may waive their rescission rights only if they have a bona fide personal financial emergency that must be met before the end of the rescission period.

The right to rescind applies to both open- and closed-end credit and probably subjects a creditor to more potential liability than any other provision of the Truth in Lending law. If handled improperly, the right to rescind can continue for up to three years. Even if the creditor initiates foreclosure within that three-year period, the consumer may have the right to rescind on a closed-end loan.

Advertising—The act and regulation set rules for advertising both open-end and closed-end credit terms. These rules cover creditors and anyone else who advertises the availability of credit. Only the credit terms actually available may be advertised, and rates must be stated as annual percentage rates. To promote full

---

6 A “nonpurchase money loan” is a loan in which the proceeds are not used to purchase the dwelling. Loans for the initial purchase or construction of the borrower’s primary dwelling are exempt from the rescission rules. Refinancings of a home purchase loan by the same creditor are also exempt to the extent no new money is advanced.

7 The consumer’s ability to rescind after foreclosure is initiated was part of the Truth in Lending Class Action Relief Act of 1995. See 12 CFR 226.23(h) for the information on when this right applies.
disclosure, Regulation Z requires other terms be included in an advertisement when certain “triggering terms” are used.

**Conclusion**—The Truth in Lending Act remains a difficult, complex law despite its simplification in 1980. There are tools, however, that can aid in preparing the various disclosures. The appendices to Regulation Z contain model disclosures and forms that, when properly used, will protect a creditor from liability. Some private vendors have also developed automated disclosure platform systems to assist creditors in complying with Regulation Z.

**Consumer Leasing Act of 1976—Federal Reserve Regulation M**

The Consumer Leasing Act of 1976 requires meaningful, accurate, and uniform disclosures of consumer lease terms. Like the Truth in Lending Act, the Consumer Leasing Act is intended to facilitate shopping for financial services. It also addresses consumer (lessee) liability at the end of a lease, establishes procedures for resolving disputes over the consumer’s final liability, and standardizes lease advertisement disclosures.

The act was an amendment to the Truth in Lending Act, and it was first implemented through Regulation Z. However, when Regulation Z was revised in 1981, the consumer leasing provisions were extracted and compiled into Federal Reserve Regulation M. Most recently, the Economic Growth and Regulatory Paperwork Reduction Act of 1996 revised the act by streamlining its advertising disclosure provisions.

The act generally applies to any lessor that regularly extends, offers or arranges consumer leases of personal property if the contractual obligation does not exceed $25,000 and has a term of more than four months. Real property, as defined by state law, is

---

not covered by the act. Automobile leases are the most common type of consumer lease subject to the act.

Lessors must provide extensive disclosures before consummation of the lease agreement, which include, in part, the amount of initial payments, end-of-lease charges, and other charges to be paid by the consumer (such as security deposits, insurance premiums, disposition fees, and taxes); an identification of the leased property; a payment schedule; the responsibilities for maintaining the leased property; and the liability for terminating a lease early. Some of the other disclosures include a statement of whether the lessee has the option to buy the leased property, a description of any security interest that the lessor will obtain in connection with the lease, information on the leased property’s fair market value, and a statement regarding lessee liability at the end of the lease if the realized value of the leased property is less than the residual value (i.e., remaining lease payments).

All of the required disclosures must be made together on a dated, written statement signed by the lessor and lessee, such as in the lease contract. In 1998, the Federal Reserve Board amended Regulation M to require the segregation of some key disclosures and recommended a disclosure format that resembles the initial disclosure requirements of Regulation Z for closed-end transactions. The Appendix to Regulation M contains model lease disclosure statements.

Special disclosure provisions apply to open-end leases, which represent only a small portion of the consumer leasing market but can result in greater consumer liability. In open-end leases the consumer must pay the difference between the residual value of the leased property and its realized value at the end of the lease term and assumes the risk that the realized value may be substantially less than was initially estimated. Closed-end leases are sometimes called “walk-away” leases because the consumer has no liability for the difference between the residual and the realized value at the end of the lease term.
New lease disclosures are usually required when a lease is renegotiated or extended, but there are exceptions. New disclosures are not necessary even for renegotiated or extended leases, provided the lease is being extended for no more than six months or is extended on a month-to-month basis for up to a six-month period. In addition, new disclosures are not required when there is a reduction in the rent charge, payments are deferred, or, in certain circumstances, when leased property will be added, deleted or substituted for other property of equal or greater value. New disclosures are also not required for lease assumptions.

Not only are radio, television and magazine advertisements subject to the act, but other medium, such as merchandise tags, are as well. Lessors that advertise a lease rate or the amount due at lease signing must disclose these terms in a “clear and conspicuous” manner, and the lease rate may not be stated in terms of an annual lease rate or annual percentage rate. A lessor advertising any payment amount or the amount of any capitalized cost reduction or other payment triggers the requirement to make additional disclosures. Liability for inaccurate or false advertisements always rests with lessors instead of with the owners or employees of the advertising medium used.

The Consumer Leasing Act and Regulation M are enforced by the same agencies that enforce Regulation Z. Civil suits for noncompliance may be brought within one year of the violation, and an aggrieved party may be awarded a civil penalty equal to 25 percent of the total lease payments, not to exceed $1,000 or less than $100, plus actual damages, court costs, and reasonable attorney fees. Class action suits might result in an award of the lesser of $500,000 or one percent of a lessor’s net worth.
Passed by Congress in 1974, the Real Estate Settlement Procedures Act (RESPA) requires lenders to inform borrowers of mortgage loan settlement charges. RESPA also seeks to ensure that home loan costs are bona fide by prohibiting kickbacks for settlement services. More recent amendments cover the administration of escrow accounts and other aspects of servicing mortgage loans. The act is implemented by Regulation X of the Department of Housing and Urban Development and is enforced by the lender’s primary federal regulator.

RESPA applies to federally related mortgage loans. This generally includes any consumer purpose loan secured by a lien on a one- to four-family residence, mobile or manufactured home, or condominium unit. Business and agricultural loans that are exempt from Truth in Lending are also exempt from RESPA, even if they are secured by a one- to four-family residence.

Applicants for loans subject to RESPA receive three documents designed to help them plan for loan closing. These include information on whether the loan servicing rights might be sold or transferred, a HUD booklet describing the settlement process, and an estimate of their closing costs. At closing, they receive a final statement of settlement charges, as well as an initial escrow account statement.

Loan servicers who escrow for taxes, insurance, or other charges provide borrowers with annual escrow account statements. To pro-

---

9 HUD prescribes the forms to be used in making the various disclosures. Sample forms are in appendices to the regulation or are available on HUD’s RESPA website at http://www.hud.gov/fha/sfh/res/RESPA_bm.html. This site also includes answers to commonly asked questions about RESPA.

10 Only the notice of servicing rights is required if the lender denies the loan within three business days of application.
tect borrowers against excessive escrow balances, RESPA limits the amount of escrow that can be collected and requires that excess balances be refunded. Borrowers may not be required to maintain more in escrow than is necessary to pay the aggregate amount of escrow expenses projected for the next 12 months. As a safeguard against shortages caused by interim increases in taxes, insurance, or other escrow expenses, servicers may also collect a two-month cushion.

RESPA was amended in 1992 to address problems consumers were experiencing when their loan servicer changed. They were not being notified of a change in time to direct their next payment to the new servicer, resulting in a late payment charge. Others had difficulty contacting the proper party in the event of a question or dispute. Borrowers now have a 60-day grace period to begin sending payments to the new servicer without penalty. Any payment disputes that arise during the life of the loan must be promptly resolved and, until then, servicers may not report these payments as late to credit bureaus.

Lenders, mortgage brokers, real estate agents, and others competing for mortgage business may form tie-in arrangements or refer customers. This can sometimes lead to questionable fees and costs being passed along to the consumer. RESPA addresses this by prohibiting kickbacks and unearned fees in connection with settlement services. No one may give or accept a fee or anything of value for merely referring settlement business. This restriction against kickbacks and unearned fees does not prohibit the payment of reasonable fees for settlement services actually performed.

Penalties for certain violations can be severe. The Secretary of HUD may assess penalties for the failure to send annual escrow account statements. The Secretary and any state attorney general or insurance commissioner can order all persons involved with kickbacks and unearned fees to pay affected consumers three times the amount charged, or consumers may bring private cause of action to recover such amounts. In addition, borrowers may sue
for actual damages and for punitive damages up to $1,000 if a loan servicer fails to promptly investigate payment disputes.

**Electronic Fund Transfer Act—Federal Reserve Regulation E**

The Electronic Fund Transfer Act was enacted in 1978, but compliance with the Federal Reserve’s Regulation E, which implements the act, did not become mandatory until 1980.

The act resulted from the rapid development of electronic banking and the regulatory dilemmas it raised. In considering electronic fund transfer (EFT) legislation, Congress recognized that electronic banking had simply outgrown existing law:

As with many new developments in data communications, however, the substantial benefits which EFT promises are accompanied by a broad range of new policy questions. Chief among these issues are the rights and liabilities of the consumer who uses an EFT service.

These questions are particularly acute because existing state laws covering checks and Federal consumer protection laws governing credit cards were not drafted with EFT in mind, leaving the rights of consumers, as well as financial institutions and retailers, undefined in the law.\(^\text{11}\)

Opponents felt that legislation was premature and that EFTs should be left to develop without regulation. However, Congress believed legislation was needed not only to protect consumers but also to promote public confidence in and use of EFT systems.

Recent technological advances affecting electronic banking such as the Internet and “smart cards” are requiring Congress and the Federal Reserve to continually review the adequacy of the consumer protections afforded by Regulation E. Federal Reserve staff has addressed several EFT issues through Regulation E Staff Commentary and, to ensure uniformity of interpretation by the regula-

---

tory agencies, joint policy statements issued through the Federal Financial Institutions Examination Council.

The act applies to all financial institutions or others holding consumer asset accounts, such as checking or savings accounts. Accounts covered by this legislation must be established primarily for personal, family, or household purposes. The act defines an EFT as a funds transfer initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. Examples of EFTs covered by the act include transactions at point-of-sale terminals, at automated teller machines (ATMs), through pay-by-phone systems, and by means of deposits or withdrawals initiated through the automated clearinghouse system.

In 1984, the definition of an EFT was expanded to cover all transactions resulting from the use of a debit card, even though some transactions may not involve an electronic terminal. Thus, the provisions of the act also apply to paper-based, point-of-sale transactions made with a debit card.

Otherwise, transactions originated by check, draft, or similar paper instruments are not EFTs. This is the case even if the check is a composite check, such as an institution might receive from the federal government, with a computer listing of deposits and the amounts due each. Cash advances directly from a credit card account via an ATM are not considered EFTs since a consumer asset account is not involved. The act also does not cover check guarantee or authorization services, wire transfers, transfers for the purchase or sale of securities or commodities, and telephone-initiated transfers between a consumer and financial institution that are not pursuant to a telephone bill-payment or other prearranged plan. Other laws and regulations already protected most of these transfers and services when EFT legislation was being considered.

In 1996, Congress also exempted from the act need-based electronic benefit transfer (EBT) programs administered by state and
local governments in an attempt to decrease the act’s compliance burden on governments. Need-based benefit programs take a recipient’s income or other resources into account to determine the level of benefits that individual will receive. EBT programs allow recipients of need-based benefits to obtain their benefits through electronic terminals such as automated teller machines and point-of-sale terminals. State-administered pension, food stamp and supplemental security income (SSI) programs are examples of need-based programs subject to the 1996 exemptions. However, the EBT exemption does not apply to Federally-administered programs or state employment-related benefits.

The nation’s smallest account-holding institutions, with under $100 million in assets, are excluded from the preauthorized transfer provisions of the act. Small institutions must still comply with the act’s rules for other types of EFT services, such as ATM cards, and all financial institutions are subject to the act’s prohibition against compulsory use of EFTs and its civil and criminal liability provisions.

Congress focused on five major concerns in developing the Electronic Fund Transfer Act: (1) unsolicited issuance of access devices, (2) liability of parties for unauthorized EFTs, (3) resolution of errors, (4) disclosure of terms and conditions and the documentation of transfers, and (5) freedom of consumer choice in selecting a financial institution.

To prevent the unauthorized use of access devices, a financial institution may not issue unsolicited devices without providing some safeguards. This prohibition was based on a history of losses suffered by consumers and credit card issuers when unsolicited credit cards were sent to consumers.

The act imposes responsibility on both the consumer and the depository institution for unauthorized transfers, thus establishing a sharing of risk. It also emphasizes the quick resolution of problems by providing reduced liability for consumers that promptly

---

inform institutions of the loss or theft of an access device or of any unauthorized EFTs appearing on monthly account statements. Consumers that promptly notify financial institutions of an unauthorized EFT are only liable for the first $50 of that EFT. Congress rejected the idea of imposing liability based on a consumer’s or institution’s negligence because of the constant lawsuits that might be required to define and determine negligence. Consumer liability for unauthorized EFTs cannot be increased because of an argument of negligence.

An institution must try to complete its investigation of any EFT error alleged by a consumer within ten business days. If the institution is unable to complete its investigation within ten business days, it may take 45 calendar days to investigate the alleged error if it recredits the consumer’s account for the amount in question until the investigation is concluded.\(^\text{13}\) In this way, a consumer is not deprived of the funds for an extended period of time while the dispute is being resolved.

The act and regulation contain several disclosure requirements that are intended to provide not only proof of payment but also a means of confirming EFTs and aiding in the investigation of errors. To provide consumers with information about EFT transactions before the first EFT occurs, financial institutions must disclose EFT terms and conditions to consumers when they open asset accounts that may be subject to the act. Institutions must also provide consumers with a written receipt when an EFT is initiated at an electronic terminal and a monthly statement showing all EFTs occurring against the asset account. Government EBT programs are subject to more abbreviated disclosure requirements.

The act’s disclosure requirements also apply to ATM surcharge fees. These fee disclosures, which are contained in Title VII of the

---

\(^{13}\) For point-of-sale transactions, new deposit accounts, and transactions occurring outside of the United States, the financial institution has 20 business days to resolve the error but may take up to 90 calendar days, provided it recredits the customer’s account for the amount in question.
Gramm-Leach-Bliley Act of 1999, resulted from public concerns about the widespread assessment of ATM surcharges and their increasing costs. When consumers contract for ATM cards, financial institutions must disclose that the consumer may incur a surcharge fee when the card is used at ATMs not owned or operated by the card issuer. Also, before operators impose a surcharge at an ATM, they must notify the customer of the surcharge and the amount it will be. This notification must take place before the fee is imposed and must be through a posted message on or near the ATM or on the ATM screen. Furthermore, the ATM operator must give the consumer an opportunity to stop a transaction after the surcharge notice is given and thus avoid being assessed the fee.

The act contains several provisions that protect consumers against compulsory use of EFTs. An individual, for instance, cannot be required to make loan payments through preauthorized EFTs as a condition of gaining credit. Consumers also cannot be required, as a condition of employment or receiving government benefits, to establish an account with a particular financial institution for receipt of EFTs.

**Expedited Funds Availability Act of 1987—Federal Reserve Regulation CC**

This act and regulation, which became effective on September 1, 1988, are intended to assure that customers have timely access to their deposits. Before the act was passed, some institutions placed holds on accounts in the event deposited checks were returned unpaid. Until this hold period expired, customers were unable to write checks or make withdrawals against these deposits and might not earn interest on the funds. Those who were not advised that a hold had been placed were in danger of unknowingly overdrawing their accounts.

Yet several studies indicated that lengthy deposit hold periods were seldom appropriate, since very few checks were actually
returned unpaid. Given the potential consequences to consumers resulting from frozen funds, Congress placed limits on check holds and delayed interest accruals. It further required that customers be made aware of their institution’s check hold policies and notified when a hold is placed on a deposit.

Unlike many other consumer laws, the act’s protections extend to deposit accounts used for either consumer or business purposes. Not all classes of deposit accounts are covered, however. The regulation applies only to transaction accounts, as defined in Federal Reserve Regulation D. Examples of transaction accounts include demand deposit and negotiable order of withdrawal (NOW) accounts.

The act does not prohibit most check holds but instead sets maximum time frames that an institution can withhold funds. On certain types of checks, such as U.S. Treasury checks or certified checks, institutions generally cannot place holds because the risk of the check being returned unpaid is extremely low. Other types of checks can be held from two to four business days, based on the proximity of the account-holding institution and institution upon which the check is drawn. To protect institutions from losses on higher risk checks and depositors, the regulation sets out specific circumstances under which even longer holds may be placed. These “exception” holds cover situations such as redeposited checks and checks believed to be uncollectible, large deposits, accounts with repeated overdrafts, and new accounts.

Since check hold policies vary, institutions must provide consumers with a written disclosure of their policy when a transaction account is opened. Institutions that do not place holds on all deposits must give the consumer a written notice when a hold is placed. The notice advises the depositor of the amount being held and when the funds will be available for withdrawal or payment of checks written on the account, thereby avoiding an unintentional overdraft.

---

14 Studies found that less than one percent of all checks are never paid, and many of those are in amounts of less than $100.
In computing interest on accounts, the act and regulation require that consumers earn interest on their funds from the date the institution receives provisional credit for the deposit from its check clearing agent. If a check is later returned unpaid, the institution may reverse any interest accrual on that amount.

Prior to passage of the act and regulation, the system for advising the account-holding institution that a check was being returned unpaid was often slow. Checks took an average of seven days to be returned — longer than the maximum hold period now permitted on most checks. Regulation CC contains provisions designed to speed up the check return process. In most cases, institutions will be advised that a check is being returned before the funds have to be made available to the depositor.

Compliance with most of Regulation CC is enforced by the institution’s primary federal supervisor. The act and regulation provide for individual and class action lawsuits to be brought. Recovery can include actual damages, attorney’s fees, and court costs. Punitive damages for individual actions can range from $100 to $1,000, and, for class actions, up to the lesser of $500,000 or 1 percent of the institution’s net worth. The regulatory agencies do not enforce compliance with the check processing rules. Instead, institutions must “police” themselves. The institution liable for losses resulting from violations of these rules is specified in the regulation. The act limits liability to the amount of the check involved in the loss or liability, although higher damages could be awarded where an institution acted in bad faith.

Truth in Savings Act—Federal Reserve Regulation DD

The Truth in Savings Act ensures that consumers receive written

---

15 A brochure on Regulation CC compliance is available through the Federal Reserve Board’s website at http://www.federalreserve.gov/pubs/regcc/regcc.htm.
information about the terms of their deposit accounts. It also governs the advertising of deposits and interest computations. Only deposit accounts opened primarily for personal, family or household purposes are subject to this law. The act is implemented by Federal Reserve Regulation DD, which became effective on June 21, 1993, and is enforced by the institution's primary federal regulator.\(^{16}\)

Different versions of *Truth in Savings* had been periodically introduced as legislation for more than 20 years. An act was finally passed in response to the growing complexity of deposit products available after interest rate ceilings were deregulated in the 1980s. Institutions began offering consumers a larger choice of accounts, adopting a variety of interest rate structures, minimum balance requirements, and fee schedules. This made it difficult for consumers to determine which accounts best suited their needs or offered the best returns.

Under *Truth in Savings*, a depository institution must provide a written statement of the terms of a deposit account before a consumer opens the account and also upon request. The most important of these terms is the annual percentage yield (APY), which provides a uniform measurement of the depositor’s potential return on a deposit account. Unlike the APR on a loan, which reflects interest and other finance charges, the APY is only a function of the interest accrued. It does not account for any fees or early withdrawals that may reduce the consumer’s actual return on funds. Appendices to the regulation set out specific formulas for computing the APY for various types of interest rate structures.

The advertising provisions of the act and regulation apply to both depository institutions and deposit brokers who solicit funds for deposit into an insured institution. The specific rules vary by the form of advertising. For example, printed ads must contain more detailed information than radio ads. In any form of adver-

---

\(^{16}\) Credit unions are not governed by Regulation DD but are subject to a similar regulation issued by the National Credit Union Administration.
tisement, the information cannot be misleading or inaccurate, and any rate of return must be stated in terms of the APY.

One of the main benefits to consumers under the act is the requirement that institutions pay interest on the full balance in the customer’s account for each day that funds are on deposit.17 Prior to Truth in Savings, institutions had varying methods for computing the balance on which interest accrued. These included, for example, netting out the reserves institutions must maintain with the Federal Reserve or charging withdrawals against the earliest deposit (also known as “first in, first out”). Although the act places some restrictions on computations, it does not require an institution to pay interest. In fact, institutions may set a minimum balance for earning interest and decide such other key account provisions as what interest rates they will pay and whether they will compound interest.

Other provisions of the regulation apply once an account is opened. If an institution sends regular account statements to consumers, the statements must disclose the time period covered, fees imposed, and the interest and APY earned for the statement cycle. Institutions must also give depositors advance notice of adverse changes in account terms and of maturing time deposits. These advance notice rules ensure that consumers have time to reinvest their funds elsewhere or in another type of account if desired.

Consumers may bring private cause of action for violations by institutions or deposit brokers. Violators can be held liable for actual damages, attorney’s fees, and court costs. Punitive damages can also be recovered up to $1,000 in the case of individual actions or, in class actions, the lesser of $500,000 or one percent of the institution’s or broker’s net worth. However, the civil liability provisions of the act are repealed by the Economic Growth and Reg-

\[17\] Institutions can delay interest accruals on deposited checks until they receive provisional credit for the funds from their check clearing agent.
CIVIL RIGHTS LAWS

Congress has enacted several laws dealing with invidious discrimination, beginning with the Civil Rights Act of 1968. All extensions of credit inherently involve discrimination between those who are judged creditworthy and those who are not. Antidiscrimination laws, however, are aimed at eliminating consideration of any factors that are unrelated to a person’s creditworthiness. Illegal discrimination is not only inequitable, but also works to the disadvantage of creditors by cutting off viable customers and lending markets and thus lowering potential returns. Civil rights laws are directed at both intentional acts of discrimination and practices that have the effect of discrimination. The equal credit laws are part of a line of civil rights laws that ensure equal access to housing, employment, education, and public accommodations.

Equal Credit Opportunity Act—
Federal Reserve Regulation B

The Equal Credit Opportunity Act, passed in 1974 and implemented by Federal Reserve Regulation B, prohibits certain types of discrimination in personal, commercial, and farm credit transactions. Creditors may not discriminate against an applicant, or discourage a potential applicant, on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance programs, or good faith exercise of rights under the Consumer Credit Protection Act.

The regulation applies to anybody who regularly participates in decisions to extend credit. The general rules prohibiting discrimination and discouraging applicants also apply to those who regu-
larly refer potential applicants to creditors or otherwise arrange for credit, such as mortgage brokers. This broad scope ensures that every stage of a credit transaction is covered: marketing, taking applications, making credit decisions, setting or changing loan terms and conditions, reporting loan histories, and collecting on past due loans.

In addition to the general rules, Regulation B has specific prohibitions and requirements. These preclude creditors from making credit decisions or taking actions that might be influenced by discriminatory considerations. One way to do this is by restricting the types of information that creditors can ask of applicants or potential applicants.

The regulation specifies information that either may never be requested (such as birth control practices) or may be asked only in limited circumstances (such as questions about a spouse or ex-spouse). However, it also requires creditors to request certain information on applications for the purchase or refinance of a principal dwelling. This monitoring data enhances the ability of regulators and lenders to identify possible discrimination on home loans.

Even if the information may (or must) be requested, the regulation may prohibit it from being considered. For example, lenders may always ask about an applicant’s age, but can only consider it for determining a pertinent element of creditworthiness, to favor elderly applicants, or in a valid credit scoring system. Age (or any other prohibited basis) cannot be used as a reason for imposing a higher rate, terminating a credit card, or pursuing other types of adverse actions.

Discrimination can take many forms, such as using delay tactics to discourage minority applicants from pursuing a loan request. The act therefore requires creditors to promptly process applications and inform the applicant of the credit decision. If a loan

---

18 The required monitoring information is race or national origin, sex, age, and marital status. Creditors subject to the Home Mortgage Disclosure Act must also request this information on applications to refinance or improve a dwelling and may do so without violating the Equal Credit Opportunity Act and Regulation B.
request is denied, the creditor must disclose the specific reasons for
denial to the applicant. These disclosures ensure that creditors
justify their decisions, while helping applicants identify deficien-
cies they must overcome to ultimately gain access to credit.

Other specific rules address lending practices that historically
have discriminated against females. Before the Equal Credit
Opportunity Act was enacted, credit histories were often reported
only in the husband’s name, and married women had difficulty
obtaining credit on the basis of their own credit record. Conse-
quently, Regulation B requires lenders to accurately report credit
histories and to reflect the participation of both spouses if both
were permitted to use the account or were contractually liable.

Another previous practice of some lenders was to approve loans
to females only with a male cosigner, typically their husband. This
practice kept women from obtaining credit in their own name
when they were individually creditworthy. The act therefore for-
bids lenders from requiring an applicant to have a cosigner or guar-
antor, if the applicant applies and qualifies for individual credit.
This does not prohibit a lender from offering to make the loan
with a cosigner or guarantor when the applicant is not qualified.
But in doing so, the lender may not require that the applicant’s
spouse be that party.20

During the early 1990s, fair lending issues again came to the
forefront of lender and regulatory concern. Allegations of racial
discrimination in particular were the subject of various news arti-
cles and studies. One concern was the accuracy and fairness of
appraisals of real estate located in racial minority neighborhoods.

---

19 There are special denial notice rules for businesses. These are summarized in a brochure
available on the Federal Reserve Board’s website at http://www.federalreserve.gov/pubs/
buscredit/applica3.htm.

20 State law might require that a spouse or joint owner of property sign certain documents
to make the property available to the lender in case of default or death of the applicant.
The regulation allows creditors to obtain signatures on these documents if jointly owned
property secures the loan or the applicant relies on joint property to qualify. This would
normally include the security agreement or mortgage, but not the debt instrument.
Under a 1991 amendment, creditors must inform applicants of their right to receive a copy of the appraisal used in evaluating the loan application. Since applicants now have access to appraisals, creditors and appraisers have more incentive to use only legitimate factors in establishing the value of the property and in deciding creditworthiness.

To provide more fair lending guidance to their institutions, the federal regulatory agencies issued a joint policy statement in 1994 concerning credit discrimination. This statement describes the general principles the agencies will consider in identifying lending discrimination. The statement also encourages creditors to implement programs for self-detecting illegal practices, although there was no initial guaranty that the agencies would not use the information to initiate an examination or conclude a finding of discrimination. A 1996 amendment to the act partially addressed this concern by treating the results of certain self-tests as privileged information.

In the case of depository institutions, the requirements of the Equal Credit Opportunity Act and Regulation B are enforced by the primary federal supervisory agency. For other creditors, enforcement is either through the federal agency or department with regulatory responsibility or the Federal Trade Commission. When possible discrimination is identified, the federal regulatory agencies may refer the matter to the U.S. Department of Justice. Most of the recent referrals have involved higher interest rates and fees charged on loans to racial minorities and elderly borrowers.

Individual and class action lawsuits may be brought under the act. In addition to actual damages, the act provides for punitive damages up to $10,000 in individual lawsuits and up to the lesser of $500,000 or 1 percent of the creditor’s net worth in class action lawsuits. Successful complainants are also eligible for an award of court costs and attorney’s fees.
**Fair Housing Act of 1968**

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale or rental of housing and in any part of a credit transaction involving housing. Its credit protections dovetail with many of those in the Equal Credit Opportunity Act, but there are differences in coverage. For example, the prohibited bases of discrimination vary somewhat, and fewer types of loans are covered by the Fair Housing Act.

The prohibited bases of discrimination under the Fair Housing Act are race, color, national origin, religion, sex, handicap, and familial status. As with the Equal Credit Opportunity Act, the lending provisions of the Fair Housing Act do not try to supplant a creditor's judgment of creditworthiness. They seek only to eliminate the use of criteria that have no bearing on individual creditworthiness.

The credit-related provisions of the act cover both secured and unsecured loans to finance the purchase, construction, improvement, repair, or maintenance of a dwelling. They also govern loans secured by residential real estate, regardless of the loan purpose. For instance, a loan to buy business equipment would be covered by the act, if secured wholly or partly by the borrower's residence. The act further prohibits unlawful discrimination in property appraisals and residential loan brokerage services.

There is no regulation implementing the act. Individual complaints may be filed with the Secretary of Housing and Urban Development, and violations of the act can be pursued through individual civil action, as well as by the U.S. attorney general.

**Home Mortgage Disclosure Act of 1975—
Federal Reserve Regulation C**

The Home Mortgage Disclosure Act (HMDA) and the Federal Reserve's implementing Regulation C are part of the civil rights laws, even though they contain only disclosure requirements. The
act was passed to counter any home lending practices that denied or limited the extension of credit based on the racial or ethnic makeup of neighborhoods. Such lending practices, often called “redlining,” have the effect of discriminating against individuals, and the disinvestment can lower the quality of neighborhoods and housing, typically in older, urban areas.

By requiring mortgage lenders to disclose home loan information, the act provides both individuals and public officials with the means of making informed decisions about which lenders are best serving the housing credit needs of their communities and which communities may need additional housing funds. The data can also be used to identify lenders with high loan denial rates, which could indicate discrimination against racial or ethnic minorities and women.

The act and regulation originally applied only to certain depository institutions and their majority-owned subsidiaries, but Congress desired a more comprehensive picture of home lending patterns in urban areas. Thus, the act was amended several times, and virtually all types of mortgage lenders have been covered since 1990. Some lenders are exempt from the regulation because they are small, have limited mortgage lending activity, or receive few loan applications from urban areas.21

In addition to expanding the types of lenders subject to HMDA, amendments to the act have substantially expanded the information that these lenders must gather and report. The original act required institutions to report only property locations on loans originated or purchased. Under the revised law, lenders subject to HMDA are required to maintain a quarterly register that records data on each home purchase, refinance, or improvement loan application received. These registers must include, in part, the loan purpose, the loan amount, the property location and the final disposition of each loan requested. Most lenders must also record each applicant’s gender, race, and income level.

21 12 CFR 203.3(a) and (b).
This information is filed annually with the Federal Financial Institutions Examination Council, which merges the HMDA data with census information to produce a series of tables, known as the HMDA disclosure statement, for each lender. Data from the lenders is also aggregated to provide an overall picture of lending patterns within each MSA. Lenders must make both their HMDA disclosure statement and their loan register available to the public.

Since becoming publicly available, the HMDA data have attracted much interest on the part of community groups, researchers, and participants in the mortgage markets. This increased use of HMDA data in analyzing the performance of lenders has pointed out the need for having the data available from a single source. Consequently, through the Federal Reserve Board, interested parties can purchase copies of loan application registers, disclosure statements, and the aggregated MSA data tables. More detailed data analysis tables, which are used by regulators, are also available for purchase.

**Community Reinvestment Act of 1977**

The Community Reinvestment Act of 1977 (CRA), another of the civil rights laws directed toward the extension of credit, reflects a congressional belief that depository institutions have an obligation to serve their communities. Passage of CRA can be attributed, in fact, to a belief by Congress that some depository institutions were not meeting community credit needs.

CRA is intended to encourage depository institutions to help meet the credit and development needs of their communities, especially the needs of low- and moderate-income neighborhoods or persons, small businesses, and small farms. These needs are to be met in a manner consistent with the safe and sound operation of the institution. The act is not intended to allocate credit. Rather,
it serves as an incentive for depository institutions to take the lead in providing capital for local affordable housing and economic development, reducing reliance on government funding.

The Riegle Community Development and Regulatory Improvement Act of 1994 substantially amended the CRA statute to satisfy critics of the original CRA rating system and to provide some regulatory relief for small institutions. This also presented an opportunity to adapt CRA to reflect the changing face of the industry as banks and thrifts crossed state lines and searched for product niches. Each of the federal bank and thrift regulatory agencies wrote its own regulation for institutions under its supervision. The content of these regulations is virtually identical.22

CRA performances are evaluated under one of four possible scenarios:

- Streamlined procedures for small institutions23
- Three-tiered test for large retail institutions
- Limited-scope test for “special-purpose” institutions
- Strategic CRA plans.

Regardless of the evaluation system used, emphasis is placed on the institution’s record of making loans to low- or moderate-income persons, in low- or moderate-income areas, and to small businesses and farms. Institutions also receive CRA credit for “community development” loans, investments, and services.24 After the CRA performance of an institution is evaluated under

---

22 These CRA regulations are contained in 12 CFR 25 for institutions supervised by the Office of the Comptroller of the Currency, 12 CFR 345 for those supervised by the Federal Deposit Insurance Corporation, and Regulation BB (12 CFR 228) for those under the Federal Reserve’s oversight.

23 An institution is regarded as “small” if its assets are $250 million or less and it is not part of a holding company with total banking or thrift assets exceeding $1 billion.

24 To qualify as “community development,” the loan, investment, or service must involve: 1) providing affordable housing or community services for low- or moderate-income persons; 2) promoting economic development by financing small businesses and small farms; or, 3) revitalizing or stabilizing low- or moderate-income areas.
these procedures, one of four possible CRA ratings is assigned by its primary supervisor. The CRA ratings are descriptive rather than numerical and the terms used are: “outstanding,” “satisfactory,” “needs to improve,” or “substantial noncompliance.”

Small institutions—Small institutions are presumed to have a satisfactory CRA performance if they maintain a reasonable loan-to-deposit ratio; lend throughout their assessment area; have reasonable lending levels to low- and moderate-income borrowers, small businesses, and small farms; and are responsive to written complaints about their community lending performance. Small institutions have the option of being evaluated for a possible outstanding rating using the three-tiered test for large retail institutions.

The Gramm-Leach-Bliley Act of 1999 granted further relief to small institutions by extending their CRA examination frequency. As a rule, small institutions’ CRA performances are evaluated every four years if their current CRA rating is satisfactory and every five years if their current CRA rating is outstanding.\footnote{The regulatory agencies have the authority to conduct more frequent examinations for reasonable cause or in connection with an application for a deposit facility.}

Large retail institutions—These institutions’ CRA records are evaluated under three broad “tests”: lending, investments, and services. Under the rating system, the lending test is the most heavily weighted, and no institution can receive a satisfactory or better overall CRA rating unless the lending test component is also rated satisfactory or better.

The lending test considers the institution’s record of mortgage loans to low- or moderate-income persons, small business and small farm loans, and community development loans. Lending levels in low- or moderate-income neighborhoods are also considered. Investments and services whose primary purpose is community development qualify for consideration under the other two tests. The service test also evaluates the geographic distribution of
the institution’s facilities, ATMs, and other delivery systems, as well as the range of services provided at each facility.

*Wholesale and limited-purpose institutions*—Depository institutions that operate on a wholesale basis or offer a narrow product line are treated differently than the typical retail institution. These “special-purpose” institutions are rated primarily according to their record of making community development loans and investments and providing community development services. An institution must receive the prior approval of its primary federal regulator to be designated as a wholesale or limited-purpose institution for CRA.

*Strategic CRA plans*—All institutions have the option to develop and be rated under a strategic CRA plan. The plan must include measurable goals for meeting community credit needs under the lending, investment and service tests, with special emphasis on the needs of low- and moderate-income borrowers and neighborhoods. In developing a strategic plan, an institution is to seek input from members of the public. Strategic plans require prior regulatory approval and the goals set out in the plan must meet the performance standards for either a satisfactory or outstanding rating. These requirements prevent institutions from designing plans that do not meet their CRA obligations.

*Data collection*—CRA’s renewed focus on mortgage, small business, and small farm loans posed a dilemma for the regulatory agencies. In order to fairly evaluate and compare institutions’ small business and farm loan records, the agencies needed hard data similar to that available for mortgages under Regulation C. This information deficiency resulted in new reporting requirements for all but small institutions. As a result, institutions must collect and annually report their small business and farm loan activity, as well as their community development loans. As with HMDA data, the regulatory agencies prepare a report of CRA data reported by each institution, known as the CRA disclosure statement. The data is publicly available, both for each reporting institution and, on an aggregated basis, for each MSA and county.
**Enforcement**—Unlike most banking laws, CRA does not give the regulatory agencies the authority to enforce its purposes and objectives. The act instead attempts to provide institutions with incentives to meet community credit needs. For instance, an institution's written CRA performance evaluation and rating are publicly available. However, the primary incentive is through the process of obtaining regulatory approval to expand activities.

CRA ratings are taken into account when institutions and bank holding companies seek to open a domestic deposit facility, to acquire or merge with another institution, or to form a bank holding company. The regulatory agencies also consider any public comments about the applicant’s CRA performance. This process is not new, but the Gramm-Leach-Bliley Act of 1999 made two significant changes. First, for an organization to become a financial holding company, all of the insured depository institutions it controls must have at least satisfactory CRA ratings. Second, CRA is now tied to the nonbanking activities of institutions and holding companies. Institutions and financial holding companies may engage in the new types of financial services authorized by the bill without the prior approval of banking regulators. But a less than satisfactory CRA rating for an insured depository institution or any insured depository institution affiliates will curtail plans to offer or expand such services. Thus, expansion-minded banks and holding companies must ensure that they and all of their insured affiliates or subsidiaries achieve and maintain satisfactory CRA records.

**Sunshine provision**—Some critics of CRA have alleged that community groups use the application comment process to effectively force institutions into making financial and other commitments to their organizations. The 1999 legislation attempts to prevent abuses by requiring public disclosure of written CRA agreements between an insured depository institution or affiliate
and another party, such as a community group or an individual. Each party to the agreement must disclose the full text and all terms of the agreement to the public and to the federal banking agency with supervisory authority over the depository institution. The depository institution or affiliate involved in the agreement must also file an annual report to the appropriate federal banking agency that discloses any payments made under the agreement, the terms and conditions of such payments, and aggregate data on loans, investments, and services provided by each party. In addition, the community group or individuals involved in the agreement must file an annual report with an itemized list detailing how they used their funding. Community groups or individuals may face stiff penalties for willful and material noncompliance or for the diversion of funds or resources for personal gain.

**Community Development Financial Institutions**

Congress passed the Community Development Banking and Financial Institutions Act of 1994 in an effort to promote economic revitalization and community development in areas underserved by financial institutions. While not strictly an equal credit law, the act seeks to help fund community development projects in low- and moderate-income neighborhoods and to assist low- and moderate-income persons. It therefore has many of the same objectives as the Community Reinvestment Act.

Congress appropriates funds annually for the Community Development Financial Institutions Fund, and these funds may be distributed in either the year they are appropriated or over the fol-

---

26 12 U.S.C. §1831y. These disclosure requirements apply to written agreements that provide for annual cash payments, grants, or other considerations totaling more than $10,000, or loans annually aggregating more than $50,000. Agreements made before November 13, 1999 are exempt, as are individual mortgage loans and contracts or commitments for loans to individuals, farms and businesses at rates that are not substantially below market rates.

27 This act is Title I of the Riegle Community Development and Regulatory Improvement Act of 1994.
lowing year. Two-thirds of this funding is to be directed toward new and existing “community development financial institutions” (CDFIs). The funding level in 2000 was $95 million.

To qualify as a CDFI under the act, an entity and any affiliates must have a primary mission of community development and must serve a low- or moderate-income population or an area characterized by some form of economic distress. Institutions meeting this definition are eligible to receive funding in the form of equity investments, grants, loans, deposits, or credit union shares. The purposes for which this funding may be used include providing basic financial services and developing or supporting commercial or community facilities, businesses, or housing in targeted areas.

To receive funding, a CDFI must first file an application with the CDFI Fund. This application must establish an institution’s qualifications as a CDFI, present a comprehensive plan that analyzes the needs of the area or population and the strategy for meeting those needs, and describe the plans for securing matching funds through other sources. The CDFI Fund has responsibility for selecting institutions with appropriate plans and attributes and for granting assistance to a geographically diverse group of applicants. By 2000, the Fund had certified over 380 organizations as CDFIs.

Although most banks will not meet the qualifications for a CDFI, this legislation provides other opportunities for federally insured banks in community development. A part of the appropriated funding supports the Bank Enterprise Act of 1991, which gives depository institutions insurance assessment credit awards for initiating new community development activities. Qualifying activities include lending in distressed communities, provision of lifeline and other banking services, assistance or equity investment

28 The CDFI Fund, which administers this program, is a government corporation managed by an administrator appointed by the President and confirmed by the Senate. The administrator is advised by a 15-member board, composed of nine private citizens with community development experience; the secretaries of the Departments of Agriculture, Commerce, Housing and Urban Development, Interior, and Treasury; and the administrator of the Small Business Administration.
in CDFIs, and technical assistance regarding personal finances, housing, or new businesses in low- and moderate-income areas. These awards are to be given on a competitive basis by the administrator of the CDFI Fund. Interested parties may wish to visit the CDFI website at http://www.treas.gov/cdfi.

**OTHER CONSUMER CREDIT LAWS**

In addition to disclosure or civil rights considerations, Congress has enacted a number of other consumer credit laws dealing with specific credit practices and the use of customer information. These laws address a variety of different topics, including privacy of consumer financial information, use of flood insurance and private mortgage insurance, and possible abuses in the extension, collection, and reporting of consumer credit.

**Fair Credit Reporting Act of 1970**

The Fair Credit Reporting Act of 1970 was created in response to the growth of credit bureaus and other consumer reporting agencies. At the time the act was passed, consumer reporting agencies were beginning to assume a vital role in collecting and evaluating information on the creditworthiness of consumers, and this role has become even more prominent in recent years. New technology, including computer systems and electronic transmissions, has increased both the amount of personal information available and the number of people with access to it. As a consequence, the public is becoming more exposed to problems of inaccurate credit and employment information and the inappropriate use of such information.

To address such potential problems, the act sets out requirements that apply to all consumer reporting agencies and users of credit information. A major purpose of the act and its requirements is to extend regulation to the consumer reporting industry,
thereby helping to ensure fair, timely, and accurate reporting of consumer information. The act also places disclosure obligations on banks and other users of consumer reports and requires reporting agencies to provide timely responses to consumer inquiries.

In complying with the act, consumer reporting agencies must ensure that obsolete information is not reported, make a reasonable effort to assure the accuracy of reported information, disclose information to consumers upon request and proper identification, and investigate any disputes over the completeness and accuracy of this information. Also, consumer reporting agencies must provide reports only for legitimate purposes, such as employment or the extension of credit. In its disclosures to a consumer, a credit reporting agency generally must disclose all information in the consumer’s file at the time of the request, except for information concerning credit scores or any other risk scores.29

Financial institutions that deny an application for credit on the basis of information obtained from a reporting agency must disclose this to the consumer, along with the name and address of the reporting agency. When the decision to deny a loan is based on information obtained from anyone other than a consumer reporting agency, the creditor must inform the applicant of his or her right to file a written request for the nature of this information. Lenders who request credit bureaus to screen their data files for potential applicants must make a firm offer of credit to all consumers identified as meeting the prescreening criteria.

For depository institutions, enforcement of the act is the responsibility of an institution’s primary federal supervisor. Compliance is enforced by the Federal Trade Commission with respect to other entities and reporting agencies subject to the act’s provisions.

29 The issue of whether credit scores should have to be disclosed to consumers is a topic that is receiving some legislative attention. In fact, a number of bills have been introduced by state and federal legislators that would require such disclosures.
Fair Debt Collection Practices Act of 1977

The Fair Debt Collection Practices Act is designed to eliminate abusive and deceptive debt collection practices and to ensure that reputable debt collectors are not competitively disadvantaged. The act applies only to a person or institution regularly collecting or trying to collect consumer debts owed to another person or institution.

Under the act, a debt collector may not contact a consumer at an unusual time or place without the consumer's permission; generally may not contact third parties, including employers, other than to obtain information on the consumer's location; and may not threaten violence or otherwise harass any person in collecting a debt. Debt collectors are also prohibited from using false or misleading representations or unfair practices to collect debts.

Financial institutions may be subject to the act if they regularly collect consumer debts for a third party or use a name other than their own in collection efforts. A financial institution is not a debt collector under the act when, in its own name, it collects debts that are owed to it or an affiliate, or in isolated cases collects debts for another party.

Unfair or Deceptive Acts or Practices—Federal Reserve Regulation AA

The Federal Trade Commission Improvement Act, passed in 1975, requires federal bank and thrift supervisory agencies to investigate consumer complaints against the institutions they supervise. Each agency must adopt procedures for providing customers with prompt, responsive action on their complaints. The agencies also use the complaint process to identify acts or practices that might need congressional or regulatory action.

The Federal Trade Commission prescribes the rules for regulating unfair or deceptive practices by creditors that it supervises. Under Regulation AA, the Federal Reserve Board must adopt sim-
ilar rules for commercial banks and their subsidiaries, unless the Board determines that the practices do not exist within the commercial banking industry.

In 1985, the Federal Trade Commission adopted the Credit Practices Rule, which was in turn adopted by the Federal Reserve Board in 1986 as Subpart B of the Board’s Regulation AA. The rule applies only to loans for personal, family, or household purposes that do not involve the purchase of real property. Among other things, it prohibits lenders from including clauses in consumer credit obligation contracts whereby borrowers pre-confess judgment or waive their exemption rights for property not securing the debt. These restrictions preserve borrowers’ rights to be heard in court before judgment is rendered on a defaulted loan and their property exemption rights under state law.

Banks and their subsidiaries also may not take a security interest in a consumer’s household goods unless the loan proceeds are used to purchase the goods or the bank takes a possessory security interest in the goods. Prior to passage of the Credit Practices Rule, many lenders routinely took household goods as collateral primarily for the purpose of threatening consumers with repossession if their loan payments were late. However, such household goods seldom had much resale value, and few creditors had any actual intent to repossess the goods.

The Credit Practices Rule also prohibits creditors from misrepresenting the nature or extent of a cosigner’s or guarantor’s liability should the primary borrower default on the loan. Before cosigners or guarantors become obligated on a debt, they must receive a written notice that describes their liability. Other provisions of the rule address the use of wage assignments and the pyramiding of late payment charges.

---

30 One example of a "possessory" security interest is a pawn.
National Flood Insurance Act of 1968

The National Flood Insurance Act of 1968 sought to accomplish two objectives: (1) make flood insurance available to residents of flood-prone areas at reasonable rates and (2) encourage local governments to enact land use restrictions that limit future development in flood-prone areas. These objectives reflected a desire on the part of Congress to reduce reliance on costly and often inadequate federal disaster relief measures.

The act created the National Flood Insurance Program (NFIP), which has been a cooperative effort between the federal government and the private insurance industry to make subsidized and unsubsidized flood insurance available in communities that adopt and enforce NFIP floodplain management ordinances. Communities with special flood hazard areas may choose whether to participate in the NFIP, but subsidized insurance is available only in participating communities. Special flood hazard areas are designated by the Federal Emergency Management Agency (FEMA).

Provisions addressing bank and thrift lending in special flood hazard areas are included in the act, as amended. Loans secured by improved real property (or a mobile home on a foundation) that is in a special flood hazard area must be insured against floods if the community participates in the NFIP.

To reinforce the act’s insurance purchase requirements for loans in flood-prone areas and improve the financial condition of the NFIP, Congress clarified several provisions of the 1968 law in the National Flood Insurance Reform Act of 1994. Under the 1994 act, anyone required to obtain flood insurance as a condition of receiving federal disaster assistance must maintain the flood insurance to ensure future access to disaster assistance.

The 1994 act emphasizes lender responsibility for ensuring that flood insurance is purchased when improved real property secur-

---

31 Title V of the Riegle Community Development and Regulatory Improvement Act of 1994.
ing a loan is in a special flood hazard area. Banks and other regulated lenders may not make, increase, extend, or renew any loan on a structure in a special flood hazard area unless flood insurance is purchased in advance and maintained for the life of the loan. If a borrower fails to maintain an adequate amount of flood insurance, the lender must do so on behalf of and at the expense of the borrower. The act also requires lenders to escrow flood insurance premiums if the lender requires the borrower to have an escrow account for other reasons.

If improved real property is in a community that does not participate in the NFIP, lenders generally may make the loan without the property being insured, even when the property is in a special flood hazard area. However, a lender may not originate a federally backed loan in a nonparticipating community if the property is in a special flood hazard area.

Lender liability for noncompliance increased substantially with the 1994 legislation. Lenders may be assessed civil penalties by their regulators up to $350 per violation, not to exceed $100,000 per year, if they have a pattern or practice of not properly notifying borrowers that their improved real property is located in a special flood hazard area, not maintaining adequate flood insurance coverage, or not escrowing for flood insurance when required. These penalties do not include other civil and criminal penalties that a lender may face through the court system.

**Homeowners Protection Act of 1998**

The Homeowners Protection Act is designed to eliminate inequities in the maintenance of private mortgage guaranty insurance (PMI). The statute became effective on July 29, 1999, and its provisions are enforced by the federal banking agencies, without separate rulemaking or interpretive authority.

The primary purpose of the Homeowners Protection Act is to limit the right of lenders to require PMI once a borrower’s equity
in his or her home increases to a certain level. In making residen-
tial loans, lenders often require PMI when a borrower has less than
20 percent equity in a home. In passing the act, Congress did not
take issue with lenders using such insurance as a protection against
default and foreclosure on lower equity loans. Congress did object,
though, to the widespread practice of requiring PMI for the entire
life of the loan, especially once a borrower’s equity rises to a level
where insurance provides little additional protection to lenders. As
a result, the act attempts to put borrowers with low equity at loan
closing on par with other borrowers once the default risk to the
lender is equalized.

The majority of the act’s provisions apply only to new “residen-
tial mortgage transactions” with PMI. These are defined as loans
for the purchase, construction, or refinancing of a single-family
dwelling that is the borrower’s primary residence. The act
requires certain disclosures to borrowers on any loans meeting this
definition, and it establishes uniform procedures and standards for
canceling or terminating PMI coverage. A borrower’s rights,
though, are substantially different, depending on whether the bor-
rower or lender pays for the insurance.

For borrowers that pay for PMI, lenders are to provide written
disclosures at consummation that generally explain how long the
borrower must maintain PMI, as well as an annual notice of a bor-
rower’s right to request early cancellation of coverage. Under the
act, borrowers that pay for PMI may ask to have this insurance
coverage cancelled when their equity reaches 20 percent of the
home’s original value. To qualify for this early cancellation, the
borrower must have a good payment history (as defined in the
act), demonstrate that the home’s value has not declined, and show
that there are no subordinate liens on the property.

The act also includes an annual notice requirement for “residential mortgages,” which are
existing loans secured by a single-family dwelling that is the borrower’s primary residence,
regardless of the loan’s purpose. See 12 USC §4903(b). Mortgage loans insured or guaran-
teed by the Federal Housing or Veteran’s Administrations are exempt from the act.
The act also provides for automatic termination of PMI coverage, generally no later than the originally scheduled midpoint of the loan term and provided the borrower’s payments are current.\textsuperscript{33} For borrowers who are behind on loan payments, PMI coverage must be cancelled once the loan is brought current. Since the act requires lenders to automatically terminate the insurance regardless of the actual loan-to-value ratio or the borrower’s general payment history, lenders have less ability to control their exposure than when a borrower requests early cancellation.

When PMI is cancelled, the borrower must be notified and any excess premiums refunded with 45 days. If PMI is not cancelled because the borrower is ineligible, a notice explaining the reasons must be sent.

Lenders who pay for PMI are not required to automatically terminate that coverage, even if the cost is built into the borrower’s interest rate. Borrowers with “lender-paid” PMI loans are also not entitled to request early cancellation of coverage. Lenders must disclose these important differences between lender-paid and borrower-paid PMI on or before the loan commitment date. When a loan reaches the point where it would have been eligible for automatic cancellation as a borrower-paid loan, the borrower must be notified about financing options that may eliminate PMI requirements.

The enforcement agencies must order restitution in the amount of any unearned premiums when PMI is not cancelled by the required date. Borrowers may also bring individual or class action lawsuits for violations. Plaintiffs in individual actions can receive up to $2,000 in statutory damages. Class actions can involve maximum damages of $500,000 or 1 percent of the liable party’s net worth, whichever is less. These damages are in addition to the recovery of attorney’s fees and court costs.

\textsuperscript{33} The act sets out certain minimum loan-to-value ratios that can trigger automatic cancellation before the midpoint.
Right to Financial Privacy Act of 1978

The Right to Financial Privacy Act was adopted in response to a 1976 U.S. Supreme Court decision in which customers of financial institutions were ruled to have no right to privacy concerning their financial records at an institution. The act creates a legal interest that customers may enforce against federal agencies or employees seeking their financial records.

The act prevents a federal agency from gaining access to the financial records of a customer of a financial institution without the customer’s authorization, an administrative subpoena or summons, a judicial subpoena, or a search warrant. Until the agency certifies that it has complied with this requirement, the financial institution must not release the information. A record must be kept of all instances when a customer’s information was released under written customer authorization or in connection with an application for a government-insured or guaranteed loan. The record must note the date, name of the federal agency, and information released. Customers are entitled to inspect this record.

Privacy of Consumer Financial Information

In providing services to customers, financial institutions routinely gain access to detailed, confidential information on the financial practices of consumers. For instance, this information might include a person’s monetary and credit card transactions, responses provided on loan application forms, loan repayment history, and data from credit reports. Technological advances have further enabled institutions to collect, analyze, and distribute this information in a much more efficient and effective manner than in past years. With this greater availability of information have come increasing concerns over how consumers can protect their

---

financial privacy and keep their records from being provided to unauthorized parties.

Before the Gramm-Leach-Bliley Act of 1999, only a limited set of laws addressed a financial institution’s use of personal financial information and the right of consumers to be protected against inappropriate or unwanted disclosures. One of these laws, the Fair Credit Reporting Act, has helped to govern the use of information collected by credit bureaus and reporting agencies. Also, the Right to Financial Privacy Act establishes procedures government agencies must follow for access to financial information on individuals. These and other previous legislative acts, though, have not taken a comprehensive approach to addressing consumer privacy concerns.

To address this privacy issue, Title V of the Gramm-Leach-Bliley Act establishes a set of rules to govern the protection and disclosure of consumer financial information by institutions. The act contains three basic requirements:

- A financial institution must provide an initial notice to consumers, which describes the institution’s privacy policies and its practices regarding the disclosure of nonpublic personal information to affiliates and nonaffiliated third parties

- A financial institution must also provide an annual notice of its privacy policies to any consumers with whom the institution continues to maintain a customer relationship

- A financial institution must give consumers an opportunity to “opt-out” of having nonpublic personal information about them disclosed to nonaffiliated third parties

These requirements apply to any institutions that are engaged in financial activities as a business, including depository institu-
The act and implementing regulations are enforced by an institution’s primary federal supervisor or federal functional regulator, the applicable state insurance authority for insurance companies, and the Federal Trade Commission for other financial institutions. Each federal banking agency is responsible for implementing its own regulations and applying them to institutions under its jurisdiction. All federal depository institution regulators, though, have worked together to issue regulations that are identical in all major aspects. These privacy regulations became effective November 13, 2000, although compliance is not mandatory until July 1, 2001.

The act and regulations only apply to individuals who acquire financial products or services primarily for personal, family, or household purposes. Companies or individuals who obtain financial products or services for business, commercial, or agricultural purposes are not covered by the regulations. Also, the provisions of the act address the treatment of nonpublic personal information about consumers, which is defined as “personally identifiable financial information” and any list or description derived from personally identifiable financial information not available to the public. Under the act, personally identifiable information refers to any information provided by a consumer to obtain a financial product or service, information about a consumer that results from transactions involving a financial product or service, and any other information a financial institution might obtain about a consumer in connection with providing a financial product or service.

Examples of personally identifiable financial information include information a consumer provides on an application to obtain a loan, credit card, or other financial product or service;

---

35 These regulations are contained in 12 CFR 40 for institutions supervised by the Office of the Comptroller of the Currency, 12 CFR 332 for those supervised by the Federal Deposit Insurance Corporation, and Regulation P (12 CFR 216) for those under the Federal Reserve’s oversight.
account balance information; payment history; overdraft history; and credit or debit card purchase information. In addition, such information could come from consumer reports, Internet “cookies,” or collecting on or servicing a loan. Disclosing the fact that an individual is or has been a customer or has obtained financial services at a particular institution would also be considered personally identifiable information.

Financial institutions generally must provide an initial privacy notice to individuals before or at the time a customer relationship is established on a continuing basis. Thereafter, a privacy notice must be provided to customers on an annual basis as long as the relationship continues. Examples of a continuing relationship with a financial institution would be if the consumer has a deposit or investment account, obtains a loan or has a loan for which the institution has servicing rights, purchases an insurance product, or uses the institution for leasing, advisory, or home mortgage loan brokerage services. Individuals are not considered to have a continuing relationship if they are only involved in isolated transactions with an institution, such as using the institution’s ATM to access an account at another institution or purchasing money orders, cashier’s or traveler’s checks, or airline tickets from the institution.

A financial institution may also need to provide initial privacy notices to consumers with whom it does not have continuing relationships. For instance, a consumer may have applied and been evaluated for a loan by an institution, with this application being denied or withdrawn, or an institution may have sold the consumer’s loan to another party. In such cases, an institution must provide a privacy notice before it can disclose any nonpublic personal information about the consumer to a nonaffiliated third party. This notice, though, is not required if the institution does not disclose such information.

The privacy notices of financial institutions must be clear and conspicuous and must accurately reflect an institution’s policies and practices regarding disclosures of nonpublic personal infor-
mation to affiliates and nonaffiliated third parties. These notices must contain, when applicable, the categories of nonpublic personal information an institution collects, the categories of such information the institution discloses, types of affiliates and nonaffiliated third parties to whom the disclosures are made, categories of nonpublic personal information disclosed on former customers, an explanation of a consumer’s right and the procedures to opt out of the disclosures to nonaffiliated third parties, and the institution’s policies and practices for protecting the confidentiality and security of information.

A consumer’s right to opt out of having nonpublic personal information disclosed to nonaffiliated third parties is a key part of the act and implementing regulations. A financial institution may not make such disclosures unless it has provided a consumer with an initial notice and an opt out notice and has given the consumer a reasonable means and opportunity for opting out. If the consumer chooses to opt out, then the financial institution may not disclose any of the consumer’s nonpublic personal information to nonaffiliated third parties except under certain limited circumstances. A consumer’s opt-out privileges, for instance, do not apply to information disclosed to a nonaffiliated third party performing services for the institution, provided the third party is contractually obligated not to use the information for other purposes. Other opt-out exceptions include disclosures to law enforcement agencies, consumer reporting agencies in accordance with the Fair Credit Reporting Act, and government agencies as specified under the Right to Financial Privacy Act.

Under the privacy regulations, consumers can thus prevent financial institutions from disclosing nonpublic personal information to most nonaffiliated third parties by opting out of the disclosures. A consumer has the right to opt out at any time and the consumer’s opt-out direction is effective until the consumer revokes it in writing or electronically. Even if a consumer ceases the relationship with the financial institution, the consumer’s direction
to opt out still applies to any nonpublic personal information the financial institution collected during the relationship.

**INTERRELATIONSHIP OF CONSUMER LAWS**

Consumer credit regulations come into play in nearly every aspect of banking and, to a great extent, the various laws interact with each other. The interrelationship of these federal laws and regulations can be illustrated by the procedures involved in making a typical home purchase loan.

*Advertising*—Regulations and laws come into consideration as early as the advertising stage. The Equal Credit Opportunity and Fair Housing Acts prohibit any advertising that would discourage applications on a prohibited basis. The Fair Housing Act also requires that the advertisement contain the equal housing lender logo. Under the Truth in Lending Act, only the terms actually available may be advertised, and rates must be stated as annual percentage rates.

*Application process*—In taking an application, the creditor must comply with Federal Reserve Regulation B by taking a written application and by requesting certain demographic information about the applicant. The creditor must also be aware of certain types of information that cannot be requested or considered in evaluating the application under the fair lending laws (Regulation B and the Fair Housing Acts). Lenders subject to the Home Mortgage Disclosure Act also record the application on their HMDA register.

At application, the creditor gives the servicing rights transfer notice under the Real Estate Settlement Procedures Act (RESPA) and, if the rate could increase, the ARM program disclosures under Truth in Lending. Within three business days, the RESPA special information booklet, a good faith estimate of closing costs, and the early Truth in Lending disclosures are provided.

Once the application is complete, the creditor notifies the appli-
cant of the credit decision, as well as the right to receive a copy of any property appraisal (Regulation B). If the application is denied, a written adverse action notice must be sent, including any applicable Fair Credit Reporting Act disclosures.

Closing the loan—If the application is approved, the Regulation B rules concerning the signatures of nonapplicants must be followed. Also, the loan terms and conditions cannot be more onerous if that would entail discrimination on a basis prohibited under Regulation B. The Electronic Fund Transfer Act would prohibit the creditor from requiring repayment by electronic means. If the APR could increase, the mortgage contract would need to specify the lifetime rate cap under Truth in Lending.

New Truth in Lending disclosures may be given if the APR at closing differs from that disclosed at application. Lenders must also provide borrowers with an initial escrow account statement and a final statement of the settlement charges (RESPA). Before a new customer signs loan documents, a creditor must disclose the institution's financial privacy policy and information about its procedures for protecting customer records. Borrowers with private mortgage insurance receive information on how long coverage needs to be carried (Homeowners Protection Act).

Servicing the loan—Even after the loan is closed, consumer regulations come into consideration. The lender cannot engage in practices that constitute prohibited discrimination under Regulation B or the Fair Housing Act, including debt collection or foreclosure practices. Lenders are responsible for reporting loan history accurately under the Fair Credit Reporting Act, and this history should reflect the participation of both spouses, if applicable. Nonpersonal financial information about a loan customer cannot be shared with a nonaffiliated third party unless the customer has been given a chance to opt out of such disclosures.

A creditor may also need to put various procedures and controls in place to generate periodic notices to the customer. These include rate and payment change notices under Regulation Z,
annual escrow account statements, annual notice of the right to request early cancellation of private mortgage insurance coverage, and annual notice of the institution’s financial privacy policy.

The loan servicer will need to promptly resolve payment disputes and ensure that escrow payments and balances do not exceed RESPA limits. In addition, the servicer must cancel private mortgage insurance coverage when the borrower is eligible and promptly refund any unearned insurance premiums.

**SUMMARY**

Consumer laws and regulations have increased the responsibilities of banks and added significant cost and administrative burdens. Renewed congressional focus on such consumer concerns as abusive or predatory lending practices, lending discrimination, and customer privacy indicates that these burdens are not likely to decrease substantially. Where possible, the supervisory agencies will continue efforts to minimize the burdens. However, compliance will continue to require careful, day-to-day attention by banks. Managing compliance and its risks are as important as establishing other good banking policies and practices.