RESCINDED

Unfair or Deceptive Acts or Practices

Credit Practices Rule

Program

This document and any attachments are superseded by Comptroller's Handbook – Consumer Compliance - Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices

EXAMINATION OBJECTIVES

To determine if the institution has established an effective system to ensure that it:

- does not originate, acquire, or enforce contracts which contain prohibited provisions
- does not 'pyramid' late charges
- does not engage in deceptive cosigner practices
- provides the required disclosure to cosigners prior to becoming obligated.

To determine whether the institution's contracts contain prohibited provisions in their originated or purchased credit contacts.

To determine whether the institution used impermissible late charge accounting practices.

To determine if the institution advised cosigners prior to becoming contractually liable of the nature and extent of their liability.

To determine if the institution provides the required notices to cosigners prior to becoming obligated, or in case of open-end credit plans, prior to the time the cosigner becomes obligated for fees or transactions on the account.

To determine if the institution has attempted to enforce prohibited provisions in contracts it has originated or acquired.

EXAMINATION PROCEDURES

1. Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

<u>WKP. REF.</u>

2. Obtain and review blank notes (contracts) and disclosures (including those furnished to dealers) used by the institution in extending consumer credit for the following prohibited contract provisions:

- Confessions to Judgment - which is a waiver of the right to notice and the opportunity to be heard in the event of a suit on the obligation (§ 535.2(a)(1)).
- Waiver of Statutory Property Exemption - which is a provision that waives the consumer's statutory right to protect his or her home (known as the homestead exemption), possessions, or wages unless given solely on property that will serve as security for the obligation (§ 535.2(a)(2)).
- Assignment of Wages - which is a provision that gives the institution the right to receive the consumer's wages or earnings directly from the consumer's employer (§ 535.2(a)(3)). However, such an assignment is permitted if:
  - — It is revocable, at will, by the consumer.
  - — It is a payroll deduction plan or preauthorized payment plan (whether or not revocable by the consumer), commencing at consummation, for the purpose of making loan payments.
  - — It applies only to wages or earnings already earned at the time of the assignment.
- Blanket Security Interest in Household Goods - which is a provision which allows the institution to hold as collateral the clothing, furniture, appliances, and the personal effects of the consumer's dependents (§ 535.2(a)(4)).

3. Determine through discussions with management and staff if the institution attempts to enforce confessions of judgment, assignments of wages, security interests in household goods, or waivers of exemption in originated or acquired contracts.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

4. Review the institution's collection policies, procedures, and practices to ensure that staff members are not using an assignment of wages except where permissible (§ 535.2(a)(3)).

5. Judgmentally sample an adequate number of loan files to ensure that prohibited contract provisions are not included in contracts (or related documents) originated, or enforced in contracts acquired, by the institution.

6. Judgmentally sample an adequate number of overdue loans to determine if the institution collects or attempts to collect overdue payments through assignments of wages (§ 535.2(a)(3)).

7. Judgmentally sample an adequate number of overdue loans to determine if the institution collects or attempts to collect a late charge on a timely payment because of the consumer's failure to pay a late charge attributable to a prior delinquent payment (§ 535.4(a)).

8. Determine through a review of procedures, policies, and practices whether the institution takes steps to prevent its staff from engaging in prohibited cosigner practices in loans it originated or acquired (§ 535.3(a)).

RESCINDED

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

9. Determine through discussions with management and staff if there is evidence that the institution engages in prohibited cosigner practices (i.e., misrepresentation of a cosigner's liability and contractually obligating cosigners prior to informing them of their liability).

10. Determine through discussions with management and staff of the institution, whether the nature and extent of a cosigner's liability is properly represented to cosigners prior to the time signatures are obtained (§ 535.3(b)).

11. Judgmentally sample the documents evidencing the credit obligation for the required notice to cosigners (§ 535.3(b)(1)).

- If the notice to cosigners is contained in the note or disclosure, it must be clear, conspicuous, and substantially similar to that provided in the regulation and must be provided before the cosigner becomes obligated.
- If the notice to cosigners is contained in a separate document also:
  - — Interview applicable employees to determine if they are aware that the notice must be provided prior to the cosigners becoming obligated.
  - — Review the institution's polices, procedures, and practices to ensure that staff members are aware that cosigners must be provided with the notice prior to becoming obligated.

RESCINDED

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	