

Key Retail Sales Practices and Compensation

by Patti Blenden

To help organize a review of your sales practices and incentive-based compensation practices, we have assembled a list of

some of the existing laws and regulations impacting most financial institutions. Search high and low enterprise-wide to identify each and

every opportunity to access or share confidential consumer information to facilitate the sale of products and services.

Statutory & Regulatory Citations	Coverage	Restrictions & Prohibitions
Anti-Tying Disclosures §106 of the Bank Holding Company Act 12 CFR 343.40	Consumer credit applications when the regulated financial institution or its affiliates offers insurance or annuity products with that application.	The anti-tying rules prohibit extending credit, leasing or selling property, or furnishing services or varying prices on products and services on the condition the customer obtain additional product or service from the same bank or its affiliates, or NOT obtain certain products or services from competitors.
Consumer Protection in Sales of Insurance Sales 12 CFR 343	Applies to retail sales, solicitation, advertising, or offers of any insurance product or annuity to a consumer by a bank or person on behalf of the bank, excluding the bank's trust or fiduciary activities.	Insurance products are not FDIC-insured and therefore contain inherent risks. Some requirements overlap with 12 CFR 343, particularly with respect to disclosures and when sales and recommendations may be made. To the extent they overlap, Part 343 governs. A bank that offers annuities should establish policies and procedures for its sales program and offer variable annuities only when suitable for customers.
FCRA Affiliated Business Marketing Practices 12 CFR 1022.21	Consumer eligibility information used for marketing and other purposes by affiliated entities	Eligibility information, transaction and experience information plus other application data supplied by the applicant or a third party, may not be shared with bank affiliates for any purpose unless the consumer has not executed the required opt-out offered by the bank.
FCRA Permissible Purpose 15 USC §1681 b	Consumer reporting agencies (CRA) maintain a significant amount of information about an individual in a consumer report and limits access to permissible purposes only.	Access to consumer reports to determine eligibility is limited to extending, reviewing or collecting credit; per consumer's written instructions; or other legitimate need (e.g. in connection with a business transaction initiated by consumer; or account review to determine if consumer still meets account terms). Do not use for cross-sell without consumer's permission!
GLBA Nonpublic Personal Information (NPI) Sharing Practices 12 CFR 1016.13 - 15	Consumer NPI retained by the institution to be used for any purposes	Subject to certain exceptions, financial institutions are prohibited from disclosing consumer NPI to nonaffiliated third parties for marketing or other purposes, unless institution satisfies various notice and opt-out requirements, and consumer has not elected to opt out of disclosure.
Nondeposit Investment Products (NDIP) Referrals Reg R 12 CFR 218 Gramm Leach Bliley Act (GLBA) Required NDIP Disclosures	Regulation R prescribes how sales of NDIP securities to consumer customers must be conducted by retail banking institutions without a broker license.	Permissible broker exceptions include a networking exception for third-party arrangements to sell NDIPs. GLBA requires certain disclosures when selling NDIP to consumers: not a bank product, not guaranteed by bank or any government agency, may go down in value, and not bank insured. Paying a referral fee to an unlicensed person is prohibited unless a one-time, nominal, fixed sum not contingent upon NDIP sale.
RESPA Reg X Affiliated Business Arrangements (AfBA) 12 CFR 1024.15	RESPA-covered federally related mortgage loans where the LO has either an affiliate relationship or a direct or beneficial > 1% ownership interest in a settlement service provider and LO directly or indirectly refers business to the provider.	An AfBA is not a violation of RESPA §8 if prior to the referral, the person making each referral has disclosed the nature of the relationship (explaining ownership and financial interest) to the affiliate and the provider's estimated charge or range of charges. This disclosure must be provided on a separate piece of paper either at application with the GFE or Loan Estimate, or at the time of the referral. The only AfBAs that can be required are appraisers, attorneys and credit bureaus.
RESPA Section 8 Reg X Prohibition of Referral Fees 12 CFR 1024.14	Federally related mortgage loans, consumer closed-end or open-end first or subordinate lien dwelling secured transactions	Any person who gives or accepts a fee, kickback, or thing of value (payments, commissions, gifts, tangible item or special privileges) for the referral of settlement business is in violation of Section 8(a) of RESPA, other than for services actually performed.
SAFE Act Mortgage Loan Originator (MLO) Compensation 12 USC §5101-5116	Closed-end or open-end consumer credit transactions secured by a dwelling, excluding loans secured by a timeshare interest.	Prohibits individuals from engaging in residential mortgage loan origination without first obtaining and maintaining annually either registration as an MLO employed by a covered financial institution or a state license and registration for all other individuals.
TILA Reg Z Loan Originator Compensation (LO Comp) 12 CFR 1026.36	Closed-end consumer credit transactions secured by a dwelling, excluding loans secured by a timeshare interest.	Only individuals with appropriate expertise may coordinate and negotiate consumer mortgage loans. With limited exceptions, LOs cannot receive (and no person pay directly or indirectly), loan term-based compensation to mitigate risk of incenting an LO to ignore consumer's best interest for personal benefit. Direct or indirect dual compensation is also prohibited.
TILA Reg Z TRID Service Provider & Fee Identification 12 CFR 1026.37	Consumer closed-end mortgages secured by any real estate excluding reverse mortgages.	Creditor is required to disclose charges required to be paid at or before closing pursuant to the property contract for sale, if any, are disclosed to the extent the Creditor has knowledge of those charges, consistent with the good faith standard under §1026.19(e).