

FEDERAL REGULATION OF THE FINANCIAL SERVICES INDUSTRY

The following is a list of federal laws that apply to state-regulated financial institutions in addition to state law:

Federal Trade Commission Act (FTC Act)/Unfair or Deceptive Acts or Practices (UDAP) 1914

Under the FTC Act, any “unfair or deceptive acts or practices (UDAP)” by any individual or financial institution that affects commerce are prohibited. Enforced by the Federal Trade Commission (FTC) against nonbank entities and by the Federal Deposit Insurance Corporation (FDIC) against its supervised institutions, a practice is deemed “unfair” if it cannot be reasonably avoided by consumers, is likely to cause injury to consumers and is not outweighed or offset by benefits to consumers or to competition. An act is “deceptive” if there is a material misrepresentation or omission to mislead the consumer and the consumer’s misled interpretation is considered reasonable.

Federal Arbitration Act (FAA) 1925

The FAA, enacted in 1925, establishes a favorable policy towards the use of arbitration to settle disputes in both federal and state courts.

Office of Foreign Asset Control (OFAC) Specially Designated Nationals (SDN) list 1950

OFAC maintains a regularly updated list of individuals, companies, groups and entities referred to as “Specially Designated Nationals,” or SDNs, with which United States citizens are prohibited from engaging in commerce, including foreign trade and financial transactions.

Truth in Lending Act (TILA)/Reg. Z 1968

Implemented by Regulation Z, TILA aims to promote the informed use of consumer credit through required disclosures regarding terms and costs, including annual percentage rates (APRs), with the goal of allowing consumers to compare the cost of credit for multiple loans.

Fair Credit Reporting Act (FCRA) 1970

Financial institutions are required to certify that the information they request from consumers will be used as specified by the FCRA. The act also requires various disclosures.

Fair and Accurate Credit Transactions Act (FACT Act)/FTC Red Flags Rule 2003

The FACT Act, enacted in 2003, amended the FCRA to further regulate credit-reporting actions. Under the FACT Act, credit-reporting businesses must annually furnish one free credit report to consumers, as well as credit scores and additional calculation information, upon request.

FCRA Furnisher Rule

According to the Fair-Trade Commission (FTC), the FCRA Furnisher Rule is “all about accuracy and integrity.” Though reporting to credit bureaus under the FCRA is voluntary, furnishers of information must establish, implement, periodically review, and update reasonable written policies and procedures regarding the accuracy and integrity of consumer information reported.

Equal Credit Opportunity Act (ECOA)/Reg. B 1974

ECOA, implemented through Regulation B, prohibits discrimination on the basis of race, color, age, national origin, marital status, sex, religion, receipt of income by public assistance, or execution in good faith any right under the Consumer Credit Protection Act, by a creditor during the process of evaluating a consumer’s credit application.

FTC Preservation of Consumers’ Claims and Defenses Rule (Holder Rule) 1975

With the intention to prevent consumer fraud, the FTC enacted the Preservation of Consumers’ Claims and Defenses Rule, also referred to as the Holder Rule, in 1975. The rule requires the inclusion of a clause in all contracts made by sellers of consumer goods or services stating that the holder or assignee of the credit contract is responsible, up to a cap, for any claims the consumer may bring against the seller.

Fair Debt Collection Practices Act (FDCPA) 1978

FDCPA enforced by the FTC, places a variety of limitations on the operation of lenders and debt collectors and their ability to recover money owed them by consumers.

Electronic Fund Transfer Act (EFTA)/Regulation E 1978

EFTA, implemented by Regulation E, was enacted with the intention of protecting consumers engaged in electronic funds transfers (EFTs). The services covered under this act include automated clearinghouse (ACH) systems, remittance transfers, ATM transfers, point of sale (POS) transfers, telephone bill payment systems, and remote banking programs.

FTC Credit Practices Rule 1985

State-licensed and other entities subject to FTC jurisdiction must comply with the FTC Credit Practices Rule. The Rule prohibits creditors from using certain contract provisions deemed unfair by the FTC; requires creditors to advise consumers who cosign obligations about their potential liability if the other person fails to pay; and prohibits late charges in some situations.

Telephone Consumer Protection Act (TCPA) 1991

TCPA restricts the ability of financial services companies and other callers to make telemarketing calls and use pre-recorded voice messages via automatic dialing systems.

Telemarketing and Consumer Fraud and Abuse Prevention Act/Telemarketing Sales Rule 1994

The Telemarketing Sales Rule, which implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, sets forth requirements for entities engaging in “a plan, program, or campaign...to induce the purchase of goods or services or a charitable contribution” through interstate telephone calls.

Gramm-Leach-Bliley Act (GLBA)/Privacy Rule/Safeguards Rule 1999

GLBA sets forth requirements regarding the treatment of nonpublic person consumer information by financial institutions. Under the act, financial institutions are prohibited from disclosing this information to third parties unless the institution makes the required opt-out disclosures and the consumer has not selected to opt-out of sharing this information.

Electronic Signatures in Global and National Commerce Act (ESIGN Act) 2000

The ESIGN Act sets forth requirements to facilitate the use of electronic records and signatures in interstate or foreign commerce.

USA PATRIOT Act 2001

The USA PATRIOT Act subjects foreign financial institutions and international transactions to special scrutiny, requiring strict reporting of potential money laundering and strengthening measures to protect against exploitation of the United States financial system for personal gain.

Servicemembers Civil Relief Act (SCRA) 2003

SCRA provides protections for full-time active duty servicemembers and members of the National Guard on federal orders. The SCRA caps the interest rate on certain financial obligations incurred prior to entering active duty at six percent annually while on active duty.

Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) 2003

The CAN-SPAM Act establishes requirements for sending consumers unsolicited commercial e-mail messages.

Dodd-Frank Act/Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) 2010

Dodd Frank added a new section to the National Bank Act that preempts a “state consumer financial law” by federal law if it: (1) “would have a discriminatory effect on national banks, in comparison with the effect” on state banks, (2) is preempted by a federal law other than the National Bank Act, or (3) “prevents, significantly interferes with, or materially impairs the ability of a [national bank] to engage in the business of banking,” based on the legal standard for preemption in the decision of the United States Supreme Court in *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25 (1996), as well as a variety of other procedural requirements.

The Dodd-Frank Act also granted state attorneys general authority to enforce violations of Title X, known as the Consumer Financial Protection Act of 2010 and any regulations promulgated by the CFPB against persons other than national banks and federal thrifts.