



Revised Individual Disclosure Questions Retroactive Analysis

The purpose of this document is to provide guidance for the Revised Individual Disclosure Questions.

The revised questions are retroactive and therefore the following should be noted as you complete the questions:

1. The definition of Found has been amended. Currently, all consent decrees/orders must be disclosed. The addition of “including those” to the listing for consent decrees/orders merely clarifies the existing disclosure obligation. The revised definition of Found will now require the disclosure of agreements that are public. More information is on page 30.
2. The term Financial Services has been added. The term “Financial Services” as defined includes those activities that are financial services or financial services-related and adds real estate broker to the list of activities. It also states that the term financial services statute or regulation includes, in addition to statutes or regulations pertaining to financial services, consumer protection statutes or regulations that pertain to the financial services items enumerated in the definition. This term and definition is applicable only to the Individual Disclosure Questions.¹
3. The term Court has been added. Several questions inquire about actions in a domestic or foreign court. The revisions now ask about actions in any court. Court is a newly defined term, “The term court includes, but is not limited, to a domestic, foreign, military, or tribal court.”
4. No retroactive analysis needs to be completed for those questions that inquire about pending actions, however one should note some definitions for terms used in the questions inquiring about pending matters may have changed (e.g., the definition of financial services) and therefore warrant review.

For each set of questions, the following is provided:

- a brief description of the revisions
- affected definition changes for the section if there are any
- the revised questions
- the current questions redlined to show the revisions
- a section labeled “guidance”, which notes items to consider in completing the section in addition to those noted above

This document should be used for informational purposes and should not be considered legal advice. Independent counsel should be consulted for any legal questions related to this document.

¹ The term “financial services or financial services related” as it appears in the Glossary will continue to be applicable to the Company questions.

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Civil Judicial Disclosure Questions

Civil Judicial Disclosure Questions - Summary of Changes

Question 1:

- a. Rather than ask if any domestic or foreign court has found or taken the actions listed in a-d, the question will ask if any court has found or taken the actions listed in a-d. As noted below Court is a newly defined term. This change is referred to herein as the “any court change.”
- b. The definition of found has been amended as noted below.
- c. Question 1 a is new.
- d. Added “any consumer protection authority” to question 1(d). Consumer protection is a newly defined term as noted below.

Questions 2 and 3:

Questions 2 and 3 replace what is currently question J(2) in the individual disclosure questions. Question J(2) has been broken into two questions. Question 2 has the findings that are in Question 1 and Question 3 has the actions that are in Question 1.

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Applicable Definitions (Amended and Newly Defined Terms)

Found ~~includes:~~

A determination that led to the issuance of one or more of the following:

- adverse final actions
- consent decrees/orders, including those in which the respondent has neither admitted nor denied the findings
- agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.

Does not include the issuance or imposition of:

- agreements or settlements that are not a matter of public record
- late fees
- deficiency letters
- examination reports
- memoranda of understanding
- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, unless the agreement was a matter of public record. ~~One possibility that may be relevant in determining where a “settlement” fits in your jurisdiction is to the determination of whether it is a public record or not. In this analysis, if it is a public record then it should be included and if it is not a public record, it should not be included~~

Newly Defined Terms

Consumer Protection - Consumer protection or Consumer protections refer to laws or regulations designed to protect a consumer, including but not limited to, laws or regulations which limit or prohibit unfair, deceptive, abusive or fraudulent practices, or require disclosures to consumers.

Court - The term court includes, but is not limited, to a domestic, foreign, military, or tribal court.

Financial Services - The term includes those activities that are financial services or financial services related and pertaining to securities, commodities, banking, insurance, consumer lending, money services businesses, consumer debt management or real estate (including, but not limited to; acting as or being associated with a bank or savings association, credit union, Farm Credit System institution, mortgage lender, mortgage broker, real estate salesperson or agent or broker, appraiser, closing agent, title company, escrow agent, payday lender, money transmitter, check casher, pawnbroker, collection agent, debt management company or title lender). In addition to statutes or regulations pertaining to financial services, the term financial services statute or regulation includes consumer protection statutes or regulations that pertain to the financial services items enumerated herein.

Governmental Entity – A department or agency of the United States, any state or political subdivision thereof or of a locality that regulates financial services activity. The term also includes a department or agency or the equivalent of a foreign state, nation, country, government or the like.

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Revised Questions

1. Has any court ever:
 - a. found that you made a false statement or omission, or you were dishonest, unfair or unethical?
 - b. found that you were involved in a violation of any financial services statute or regulation?
 - c. enjoined you in connection with any financial services activity?
 - d. dismissed, pursuant to a settlement agreement, a financial services civil action brought against you by a federal, state, local or foreign financial regulatory authority or any consumer protection authority?
2. Are there any pending financial services civil actions against you that allege you:
 - a. made a false statement or omission?
 - b. violated a financial services statute or regulation?
3. Are there any pending financial services civil actions against you whereby the remedy being sought is an injunction?

Revised Questions Redlined

1. Has any ~~domestic or foreign~~ court ever:
 - a. found that you made a false statement or omission, or you were dishonest, unfair or unethical?
 - b. found that you were involved in a violation of any financial services-~~related~~ statute(~~s~~) or regulation(~~s~~)?
 - c. enjoined you in connection with any financial services-~~related~~ activity?
 - d. dismissed, pursuant to a settlement agreement a financial services-~~related~~ civil action brought against you by a ~~federal~~, state, ~~federal local~~, or foreign financial regulatory authority or any consumer protection authority?
2. Are there any pending financial services civil actions against you that allege you:
 - a. made a false statement or omission?
 - b. violated a financial services statute or regulation ~~financial services-related statute(s) or regulation(s)~~?
3. Are ~~is~~ there any pending financial services-~~related~~ civil actions against you ~~in which you are named~~ whereby the remedy being sought is an injunction? ~~for any alleged violation described in item 1 above?~~

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Civil Judicial Disclosure Questions - Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. Question 1a is new.
2. Under Question 1d language was added so the inquiry extends to a financial services civil action brought by a local financial regulatory authority or brought by a consumer protection authority. To provide further clarity, consumer protection and governmental entity are newly defined terms as shown above.

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Criminal Disclosure Questions

Criminal Disclosure Questions - Summary of Changes

Question 4:

- a. Rather than ask “have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in any domestic, foreign or military court to any felony, the term “domestic, foreign or military court” has been changed to read “any court”. This is identical to the change made in Question 1 above.

Question 5:

- a. Added the word “any” before pending.

Question 6:

- a. Rather than disclosing any misdemeanors, the revision only requires disclosure of misdemeanor items in the past ten years.
- b. The court reference has been changed as noted in Questions 1 and 4.
- c. The items listed in question 6 have not changed, however, the items are in a list rather than in one sentence.

Question 7:

- a. Added the word “any” before the words pending and misdemeanor.

Pertinent Definition (Newly Defined Term)

Court - The term court includes, but is not limited, to a domestic, foreign, military, or tribal court.

Revised Questions

4. Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in any court to any felony?
5. Are there any pending charges against you for any felony?
6. In the past 10 years, have you been convicted of or pled guilty or nolo contendere (“no contest”) in any court to committing or conspiring to commit a misdemeanor involving: (i) a financial services business, (ii) fraud, (iii) false statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?
7. Are there any pending charges against you for any misdemeanor specified in question 6?

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Revised Questions Redlined

4. Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a ~~ny domestic, foreign, or military~~ court to any felony?
5. Are there ~~any~~ pending charges against you for any felony?
6. ~~In the past 10 years~~, have you ~~ever~~ been convicted of or pled guilty or nolo contendere ("no contest") in ~~any domestic, foreign, or military~~ court to committing or conspiring to commit a misdemeanor involving: (i) ~~a financial services or a financial services-related~~ business, (ii) fraud, (iii) false statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?
7. Are there ~~any~~ pending charges against you for ~~any~~ misdemeanor specified in ~~question 6 above~~?

Criminal Disclosure - Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. In addition to the "any court" change in Question 6 the misdemeanor inquiry has been limited to 10 years.

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Customer Arbitration/Civil Litigation Disclosure Questions

Customer Arbitration/Civil Litigation Disclosure Questions- Summary of Changes

Changed the language to read respondent or defendant, rather than respondent/defendant.

Revised Questions

8. Have you ever been named as a respondent or defendant in a financial services consumer-initiated arbitration or civil litigation which:
 - a. is still pending?
 - b. resulted in an arbitration award or civil judgment against you, regardless of amount, or that required corrective action?
 - c. was settled for any amount?

Revised Questions Redlined

8. Have you ever been named as a respondent ~~or /~~defendant in a financial services~~-related~~ consumer-initiated arbitration or civil litigation which:
 - a. is still pending?
 - b. resulted in an arbitration award or civil judgment against you, regardless of amount, or that required corrective action?
 - c. was settled for any amount?

Customer Arbitration/Civil Litigation Disclosure - Guidance

1. The change to question 8 does not change the question as it is today.

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Financial Disclosure Questions

Financial Disclosure Questions - Summary of Changes

Question 9:

- a. Added language to clarify the bankruptcy may be voluntary or involuntary.

Question 10:

- a. Reworded the question to require respondents to disclose any foreclosure efforts they have been subject to, either judicial or non-judicial.
- b. Added “either commercial or residential” to the end of the question to clarify that either type must be disclosed.
- c. Efforts to foreclose is a newly defined term.

Question 11:

- a. Added “issuance of” after the word denied, so that the respondent must also disclose if they have ever been denied issuance of a bond.

Questions 12 and 13:

- a. The prior question, “do you have any unsatisfied judgments or liens against you?” has been split into two questions.
- b. The terms “lien” and “unsatisfied” are newly defined terms

Question 14:

- a. There are no changes to this question

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Pertinent Definitions (Newly Defined Terms)

Efforts to foreclose

Efforts to foreclose include, but are not limited to, a completed foreclosure, entering into a deed in lieu of foreclosure, a sale under a power of sale, Notice of Public Auction, Notice of Default, Notice of Trustee's Sale, Notice of Lis Pendens, and Release of Lis Pendens.

Lien

The term lien includes, but is not limited to judgment liens, tax liens, child support liens, IRS liens, and items related to a collection account. The term does not include security interests or liens that merely secure an obligation, so long as the underlying debt secured by the security interest or lien is not in default

Unsatisfied

Any item that is not paid in full, including but not limited to, any items for which payments are being made, pursuant to a payment plan or otherwise.

Revised Questions

9. In the past 10 years have you filed or been the subject of a personal bankruptcy petition, whether voluntary or involuntary?
10. In the past 10 years, have you been the subject of any non-judicial or judicial efforts to foreclose on real property, either commercial or residential?
11. Has a bonding company ever denied issuance of, paid out on, or revoked a bond for you?
12. Do you have any unsatisfied judgments against you?
13. Do you have any unsatisfied liens against you?
14. Are you delinquent on any court ordered child support payments?

Revised Questions Redlined

9. ~~In the past 10 years~~ Have you filed ~~or been the subject of~~ a personal bankruptcy petition, ~~whether voluntary or been the subject of an involuntary or involuntary bankruptcy petition within the past 10 years?~~
10. ~~In the past 10 years,~~ have you been the subject of ~~a foreclosure action~~ any non-judicial or judicial efforts to foreclose on real property, either commercial or residential ~~within the past ten years?~~
11. Has a bonding company ever denied ~~issuance of~~, paid out on, or revoked a bond for you?
12. Do you have any unsatisfied judgments ~~or liens~~ against you?
13. ~~Do you have any unsatisfied liens against you?~~
14. Are you delinquent on any court ordered child support payments?

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Financial Disclosure – Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. Question 9 merely clarifies the question. Currently one must disclose a bankruptcy whether it was voluntary or involuntary. If a licensee did not consider both types of bankruptcies, they should determine if an existing answer needs to be changed.
2. Question 10 merely clarifies the question. The term “efforts to foreclose” is a newly defined term as shown above and provides guidance in answering this question.
3. Question 11 merely clarifies that the question is asking whether the bonding company has denied a request to issue a bond.
4. Questions 12 and 13 split an existing question into two; one question for liens and one question for judgments. The terms lien and unsatisfied are newly defined terms as shown above.
5. Question 14 is unchanged.

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The regulatory action questions have been divided into two parts. Part I will be applicable to all applicants. Part II may or may not be applicable to an applicant.

Depending upon the state, regulatory actions may be brought via a civil or administrative action, therefore, where appropriate the language was changed throughout the regulatory action questions.

Regulatory Action Disclosure Questions - Part I

Regulatory Action Disclosure Questions - Part I – Summary of Changes

Question 15 is new

Question 16:

- a. Added local regulatory agency, governmental entity and any consumer protection authority to the question. The terms consumer protection and governmental entity are newly defined terms as shown below.
- b. Item c has been reworded to read “license or authorization to conduct” a business. Also added “a” before financial services business to make it clear the reference is to a financial services business company license.
- c. Item f was reworded to provide clarity.
- d. Item i was reworded to account for how regulatory actions may be brought as noted above (i.e., pursuant to an administrative or a civil action). Also added dismissal of an action pursuant to a settlement agreement as an item that must be disclosed.

Questions 17 and 18:

- a. Questions 17 and 18 replace what part of question N in the individual disclosure questions is currently.
- b. Both questions were reworded to account for how regulatory actions may be brought (i.e., pursuant to an administrative or a civil action).
- c. Question N asks about those pending civil actions for items in Question 16. Question 16 inquires about court findings and actions. Question 17 asks about pending actions that allege one of the enumerated findings in Question 16, while Question 18 asks about pending actions whereby the remedy being sought are any of the actions denoted in Question 16.

Question 19 is new.

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Applicable Definitions (Amended and Newly Defined Terms)

Found

Includes:

A determination that led to the issuance of one or more of the following:

- adverse final actions
- consent decrees/orders, including those in which the respondent has neither admitted nor denied the findings
- agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.

Does not include the issuance or imposition of:

- agreements or settlements that are not a matter of public record
- late fees
- deficiency letters
- examination reports
- memoranda of understanding
- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, unless the agreement was a matter of public record. ~~One possibility that may be relevant in determining where a “settlement” fits in your jurisdiction is to the determination of whether it is a public record or not. In this analysis, if it is a public record then it should be included and if it is not a public record, it should not be included.~~

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation and temporary or permanent orders to cease and desist. ~~This~~ An order includes orders agreed to by the parties, including consent orders and stipulated orders. An order does not include ~~special stipulations, undertakings or~~ agreements that relate relating to payments, limitations on activity, or other restrictions unless ~~they~~ such agreements are included in ~~an order a~~ a written directive that otherwise qualifies as an order. ~~Orders include temporary and permanent cease and desist orders.~~ Orders that must be disclosed are limited in Disclosure Question (C)(4) to orders directed to applicant or control affiliate. See definitions of control affiliate to understand the extent of required disclosures in this regard.

Newly Defined Terms

Consumer Protection - Consumer protection or Consumer protections refer to laws or regulations designed to protect a consumer, including but not limited to, laws or regulations which limit or prohibit unfair, deceptive, abusive or fraudulent practices, or require disclosures to consumers.

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Financial Services

The term includes those activities that are financial services or financial services related and pertaining to securities, commodities, banking, insurance, consumer lending, money services businesses, consumer debt management or real estate (including, but not limited to; acting as or being associated with a bank or savings association, credit union, Farm Credit System institution, mortgage lender, mortgage broker, real estate salesperson or agent or broker, appraiser, closing agent, title company, escrow agent, payday lender, money transmitter, check casher, pawnbroker, collection agent, debt management company or title lender). In addition to statutes or regulations pertaining to financial services, the term financial services statute or regulation includes consumer protection statutes or regulations that pertain to the financial services items enumerated herein.

Governmental Entity – A department or agency of the United States, any state or political subdivision thereof or of a locality that regulates financial services activity. The term also includes a department or agency or the equivalent of a foreign state, nation, country, government or the like.

Revised Questions

15. Have you ever had a financial services license, or any other professional license revoked, suspended or restricted?
16. Has any federal, state or local regulatory agency, governmental entity, foreign financial regulatory authority, self-regulatory organization (SRO) or any consumer protection authority ever:
 - a. found you to have made a false statement or omission or been dishonest, unfair or unethical?
 - b. found you to have been involved in a violation of a financial services statute or regulation?
 - c. found you to have been a cause of a financial services business having its license or authorization to conduct a business activity denied, suspended, revoked or restricted?
 - d. entered an order against you in connection with a financial services activity?
 - e. restricted or revoked your registration or license?
 - f. denied or suspended your registration or license or application for licensure, disciplined you, prevented you from associating with a financial services business or otherwise restricted your activities?
 - g. barred you from association with an entity regulated by such commissions, authority, agency, or office or from engaging in a financial services business?
 - h. issued a final order against you based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct?
 - i. taken a regulatory action, whether administrative or civil, including entering an order or dismissing an action pursuant to a settlement agreement against you in connection with any license or registration?

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17. Is there a pending regulatory action proceeding, either administrative or civil, against you that alleges you:
- made a false statement or omission or were dishonest, unfair or unethical?
 - violated a financial services statute or regulation?
 - were a cause of a financial services business having its authorization to do business denied, suspended, revoked or restricted?
 - violated a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct?
18. Is there a pending regulatory action proceeding, either administrative or civil, against you whereby the remedy being sought is:
- restriction or revocation of a license or registration?
 - denial or suspension of a registration or license or application for licensure?
 - an injunction from association with a financial services business?
 - restriction of your ability to conduct financial services activities?
 - to bar you from association with an entity regulated by such commissions, authority, agency, or office, or from engaging in a financial services business?
19. Are there any pending regulatory action proceedings against you whereby the remedy being sought is the revocation, suspension or restriction of your financial services license or any other professional license?

Revised Questions Redlined

15. Have you ever had a financial services license, or any other professional license revoked, suspended or restricted?
16. Has any federal, state or local federal regulatory agency, governmental entity, or foreign financial regulatory authority, or self-regulatory organization (SRO) or any consumer protection authority ever:
- found you to have made a false statement or omission or been dishonest, unfair or unethical or unethical?
 - found you to have been involved in a violation of a financial services statute or regulation? Financial services-related business regulation(s) or statute(s)?
 - found you to have been a cause of a financial services-related business having its license or authorization to conduct a business activity denied, suspended, revoked or restricted?
 - entered an order against you in connection with a financial services-related activity?
 - restricted or revoked your registration or license?
 - denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or otherwise restricted your activities?
 - barred you from association with an entity regulated by such commissions, authority, agency, or office or from engaging in a financial services-related business?
 - issued a final order against you based on violations of any law or regulations that prohibits fraudulent, manipulative, or deceptive conduct?

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- i. taken a regulatory action, whether administrative or civil, including entering ~~ed~~ an order or dismissing an action pursuant to a settlement agreement against ~~concerning~~ you in connection with any license or registration?
17. Is there a pending regulatory action proceeding, either administrative or civil, against you ~~for any alleged violation described in 15 that alleges you:~~
- a. made a false statement or omission or ~~were having been~~ dishonest, unfair or unethical?
 - b. violated a financial services statute or regulation? ~~financial services related business regulation(s) or statute(s)?~~
 - c. were a cause of a financial services ~~related~~ business having its authorization to do business denied, suspended, revoked or restricted?
 - d. violated a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct?
18. Is there a pending regulatory action proceeding, either administrative or civil, against you whereby the remedy being sought is:
- a. restriction or revocation of a license or registration?
 - b. denial or suspension of a registration or license or application for licensure?
 - c. an injunction from association with a financial services ~~related~~ business?
 - d. restriction of your ability to conduct financial services ~~related~~ activities?
 - ~~a-~~ e. to bar you from association with an entity regulated by such commissions, authority, agency, or office, or from engaging in a financial services ~~related~~ business? ~~For any alleged violation described in item 13 above?~~
19. Are there any pending regulatory action proceedings against you whereby the remedy being sought is the revocation, suspension or restriction of your financial services license or any other professional license?

Regulatory Action Part I Disclosure – Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. Question 15 is new.
2. In Question 16 language was added so the inquiry for items 16a-16i extends to a regulatory action brought by a local regulatory agency, a governmental entity or by a consumer protection authority. To provide further clarity, consumer protection and governmental entity are newly defined terms as shown above.
3. The other change to Question 16c merely cleans up the language.
4. Question 16e adds restricted to the item.
5. The change to Question 16f merely cleans up the language.
6. Item 16i was reworded to account for how regulatory actions may be brought. If a licensee did not consider administrative actions brought both administratively and by civil action, they should determine if an existing answer needs to be changed. Dismissal of an action pursuant to a

(continued)

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settlement agreement was added to the inquiry.

7. Question 18 was reworded to account for how regulatory actions may be brought. If a licensee did not consider administrative actions brought both administratively and by civil action, they should determine if an existing answer needs to be changed. The change to item 16a merely cleans up the language in the item.
8. Question 18 was reworded to account for how regulatory actions may be brought. If a licensee did not consider administrative actions brought both administratively and by civil action, they should determine if an existing answer needs to be changed. Restriction of a license or registration was added to 18a.
9. Question 19 is new.

Regulatory Action Disclosure Questions - Part II
Regulatory Action Disclosure Questions - Part II – Summary of Changes

To facilitate the allowance of a not applicable answer the following preamble was added to these questions:

If you answer yes to questions a or b you must complete Questions 20 and 21. If you answer no to questions a and b, questions 20 and 21 will be marked as not applicable.

- a. Are you or have you ever been licensed to act as an attorney or an accountant?
- b. Do you currently hold, or have you ever held an authorization to act as a contractor on behalf of a federal, state or local government entity?

Question 20:

- a. Expanded the type of contractor inquired about in question 20 to include local contractors
- b. Changed the contractor language to replace “act as Federal State or Local contractor[s]” with “act as a contractor on behalf of a federal, state, or local government entity.”
- c. Added restricted and debarred to the actions being inquired about.
- d. Cleaned up the language.

Question 21:

- a. Consistent with the changes made to question 20 as detailed herein, added local contractor to the question and added restricted and debarred to the actions being inquired about.
- b. Cleaned up the language

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Revised Questions

If you answer yes to questions a or b you must complete Questions 20 and 21. If you answer no to questions a and b, questions 20 and 21 will be marked as N/A (Not Applicable).

- a. Are you or have you ever been licensed to act as an attorney or an accountant?
- b. Do you currently hold, or have you ever held an authorization to act as a contractor on behalf of a federal, state or local government entity?

20. Have you ever had an ability to or authorization to act as an attorney, accountant, or a contractor on behalf of a federal, state or local government entity restricted, revoked, debarred or suspended?
21. Are there any pending regulatory action proceedings against you whereby the remedy being sought is the restriction, revocation, debarment or suspension of your authorization to act as an attorney, accountant or a contractor on behalf of a federal, state or local government entity?

Revised Questions Redlined

20. Have you ever had **an ability to or** authorization to act as an attorney, accountant, or **State or federal**-a contractor, **on behalf of a state or local government entity** ~~contractor that was~~ restricted, revoked, **debarred** or suspended?
21. **Are** ~~Is~~ there **any** pending regulatory action proceedings ~~s proceeding~~ against **you whereby the remedy being sought is the restriction, revocation, debarment or suspension of your authorization to act as an attorney, accountant or** a contractor on behalf of a **federal, state** or local government entity? ~~for any alleged violation described in item 17 above?~~

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Regulatory Action Part II Disclosure – Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. A local contractor was added to Question 20.

Termination Disclosure Questions

Revised Questions

22. Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of:
 - a. violating a statute, regulation, rule, or industry standard of conduct?
 - b. fraud, dishonesty, theft, or the wrongful taking of property?

Revised Questions Redlined

22. Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of:
 - a. violating a statute~~(s)~~, regulation~~(s)~~, rule~~(s)~~, or industry standards~~s~~ of conduct? ~~-(2)~~
 - b. fraud, dishonesty, theft, or the wrongful taking of property?

Termination Disclosure - Guidance

There is no substantive change to this question.

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Individual Disclosure Questions Pertaining to Control Activities

Rather than have questions related to activities that occurred while an individual exercised control over an organization embedded in each section, the questions have been moved to their own section entitled “Individual Disclosure Questions Pertaining to Control Activities.”

To facilitate the allowance of a not applicable answer the following preamble was added to these questions:

Do you currently exercise control, or have you ever exercised control over an organization? If you answer yes, complete questions 23-30. If you answer no, questions 23-30 will be marked as N/A (Not Applicable).

Throughout the control questions, where appropriate, the word “such” has been added to modify organization to make it clear the questions refer to the organization over which the individual had control.

Civil Judicial Disclosure Questions – Summary of Changes

- a. Questions 23 and 24 replace what was question J(3)
- b. Question J(3) asks about pending civil actions for those items that now appear in Question 1 above. The items listed in question 1 are findings and actions. Question J(3) has been broken down into two questions. Question 23 has the findings that are in question 1 and question 24 has the actions that are in question 1.
- c. Item b was added to both questions.

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Applicable Definitions (Amended)

Found

Includes:

A determination that led to the issuance of one or more of the following:

- adverse final actions
- consent decrees/orders, including those in which the respondent has neither admitted nor denied the findings
- agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.

Does not include the issuance or imposition of:

- agreements or settlements that are not a matter of public record
- late fees
- deficiency letters
- examination reports
- memoranda of understanding
- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, unless the agreement was a matter of public record. ~~One possibility that may be relevant in determining where a “settlement” fits in your jurisdiction is to the determination of whether it is a public record or not. In this analysis, if it is a public record then it should be included and if it is not a public record, it should not be included~~

Newly Defined Terms

Financial Services

The term includes those activities that are financial services or financial services related and pertaining to securities, commodities, banking, insurance, consumer lending, money services businesses, consumer debt management or real estate (including, but not limited to; acting as or being associated with a bank or savings association, credit union, Farm Credit System institution, mortgage lender, mortgage broker, real estate salesperson or agent or broker, appraiser, closing agent, title company, escrow agent, payday lender, money transmitter, check casher, pawnbroker, collection agent, debt management company or title lender). In addition to statutes or regulations pertaining to financial services, the term financial services statute or regulation includes consumer protection statutes or regulations that pertain to the financial services items enumerated herein.

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Civil Judicial Disclosure Questions

Revised Questions

23. Based on activities that occurred while you exercised control over an organization:
- was such organization found to have violated a financial services statute or regulation as a result of a civil action?
 - is there a pending financial services civil action against such organization which alleges a violation of a financial services statute or regulation?
 - is there a pending financial services civil action against such organization seeking to enjoin the organization from association with a financial services business?
 - was such organization ever enjoined from associating with a financial services business?
24. Based on activities that occurred while you exercised control over an organization:
- in connection with a financial services civil action, has such organization ever been enjoined?
 - is there a pending financial services civil action in which such organization is named for which the remedy being sought is an injunction in connection with a financial services activity?

Revised Questions Redlined

If an individual does not or has never exercised control over an organization, these questions would not be applicable.

23. Based on activities that occurred while you exercised control over an organization:
- was such organization found to have violated a financial services statute or regulation as a result of a civil action?
 - is there a pending financial services civil action against such organization which alleges a violation of a financial services statute or regulation?
 - is there a pending financial services civil action against such organization seeking to enjoin the organization from association with a financial services business?
 - was such organization ~~found to have violated a financial services statute or regulation as a result of a civil action?~~ever enjoined from associating with a financial services business?
24. Based ~~up~~ upon activities that occurred while you exercised control over an organization:
- ~~has such organization ever been enjoined~~ in connection with a financial services activity, has such organization ever been enjoined?
 - ~~is there a pending financial services-related civil action in which such organization is named for which the remedy being sought is an injunction in connection with a financial services activity? for any alleged violation described in item 11 above?~~
- ~~has such organization ever been enjoined in connection with a financial services activit~~

Control Questions, Civil Judicial Disclosure- Guidance

- Other than those items noted on page 1 herein, there are no items to note.

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Criminal Disclosure Questions

Criminal Disclosure Questions – Summary of Changes

- a. Rather than refer to any domestic, foreign or military court in items a and c the language has been changed to read any court.
- b. In items b and d added the word “any” before pending to modify the term charges.
- c. Added in the past 10 years to item c to mirror the misdemeanor inquiry

Pertinent Definitions (New Definition)

Court - The term court includes, but is not limited, to a domestic, foreign, military, or tribal court.

Revised Questions

25. Based on activities that occurred while you exercised control over an organization:
 - a. has such organization ever been convicted of or pled guilty or nolo contendere ("no contest") in any court to any felony?
 - b. are there any pending charges against such organization for any felony?
 - c. has such organization ever been convicted of or pled guilty or nolo contendere ("no contest") in any court to any misdemeanor specified in question 6 in the past 10 years?
 - d. are there any pending charges against such organization for any misdemeanor specified in question 6?

Revised Questions Redlined

25. Based ~~up~~on activities that occurred while you exercised control over an organization:
 - a. ~~h~~Has such organization ever been convicted of or pled guilty or nolo contendere ("no contest") in any ~~domestic, foreign, or military~~ court to any felony?
 - b. ~~a~~Are there ~~any~~ pending charges against such organization for any felony?
 - c. ~~h~~Has such organization ever been convicted of or pled guilty or nolo contendere ("no contest") in any ~~domestic, foreign, or military~~ court to any misdemeanor specified in ~~item~~question 6 in the past 10 years~~above~~?
 - d. Are there ~~any~~ pending charges against such organization for any misdemeanor specified in ~~question item~~ 6 ~~above~~?

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Control Questions, Criminal Disclosure - Guidance

1. Other than those items noted on page 1 herein, there are no items to note.

Financial Disclosure Questions

Financial Disclosure Questions - Summary of Changes

- a. In item a added “whether voluntary or involuntary” to describe the bankruptcy petition.
- b. In item b added “issuance of” after the word denied.

26. Based on events that occurred while you exercised control over an organization:
 - a. has such organization filed or been the subject of a bankruptcy petition, whether voluntary or involuntary, within the past 10 years?
 - b. has any bonding company ever denied issuance of, paid out on, or revoked a bond for such organization?

Revised Questions Redlined

26. Based ~~up~~on events that occurred while you exercised control over an organization:
 - a. ~~h~~Has ~~anysuch~~ organization filed ~~a bankruptcy petition~~ or been the subject of ~~an involuntary~~ bankruptcy petition, ~~whether voluntary or involuntary~~, within the past 10 years?
 - b. ~~h~~Has any bonding company ever denied ~~issuance of~~, paid out on, or revoked a bond for ~~any such~~ organization?

Control Questions, Financial Disclosure - Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. Currently one must disclose a bankruptcy whether it was voluntary or involuntary. If a licensee did not consider both types of bankruptcies, they should determine if an existing answer needs to be changed
2. The change to Question 26b merely clarifies that the question is asking whether the bonding company has denied a request to issue a bond.

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Regulatory Action Disclosure

Regulatory Action Disclosure- Summary of Changes

- a. In the prior disclosure questions, questions M and O inquire about those items listed in revised question 15 while an individual exercised control over an organization.
- b. Question 15 includes findings and actions. These items have been broken into two questions.
- c. Question 27 asks about the findings listed in question 15.
- d. Item a in question 28 asks about those actions that are listed in question 15.
- e. The prior question O asks about pending civil actions for those items listed in question 15. Items b and c in question 28 cover the pending civil actions.

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Applicable Definitions (Amended and New)

Found ~~includes:~~

A determination that led to the issuance of one or more of the following:

- adverse final actions
- consent decrees/orders, including those in which the respondent has neither admitted nor denied the findings
- agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.

Does not include the issuance or imposition of:

- agreements or settlements that are not a matter of public record
- late fees
- deficiency letters
- examination reports
- memoranda of understanding
- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, unless the agreement was a matter of public record. ~~One possibility that may be relevant in determining where a “settlement” fits in your jurisdiction is to the determination of whether it is a public record or not. In this analysis, if it is a public record then it should be included and if it is not a public record, it should not be included~~

Newly Defined Terms

Consumer Protection - Consumer protection or Consumer protections refer to laws or regulations designed to protect a consumer, including but not limited to, laws or regulations which limit or prohibit unfair, deceptive, abusive or fraudulent practices, or require disclosures to consumers.

Court - The term court includes, but is not limited, to a domestic, foreign, military, or tribal court.

Financial Services - The term includes those activities that are financial services or financial services related and pertaining to securities, commodities, banking, insurance, consumer lending, money services businesses, consumer debt management or real estate (including, but not limited to; acting as or being associated with a bank or savings association, credit union, Farm Credit System institution, mortgage lender, mortgage broker, real estate salesperson or agent or broker, appraiser, closing agent, title company, escrow agent, payday lender, money transmitter, check casher, pawnbroker, collection agent, debt management company or title lender). In addition to statutes or regulations pertaining to financial services, the term financial services statute or regulation includes consumer protection statutes or regulations that pertain to the financial services items enumerated herein.

Governmental Entity – A department or agency of the United States, any state or political subdivision thereof or of a locality that regulates financial services activity. The term also includes a department or agency or the equivalent of a foreign state, nation, country, government or the like.

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Revised Questions

27. Based on activities that occurred while you exercised control over an organization, has any federal, state or local regulatory agency or foreign financial regulatory authority, self-regulatory organization (SRO) or any consumer protection agency ever:
- found such organization to have made a false statement or omission or been dishonest, unfair or unethical?
 - found such organization to have been involved in a violation of a financial services statute or regulation?
 - found such organization to have been a cause of another financial services business having its license or other authorization to conduct a business activity denied, suspended, revoked or restricted?
28. Based on activities that occurred while you exercised control over an organization:
- has any federal, state or local regulatory agency, foreign financial regulatory authority, self-regulatory organization (SRO) or any consumer protection agency taken any of the below actions against such organization:
 - restriction or revocation of a registration or license?
 - denial or suspension of a registration or license or application for licensure?
 - entered an injunction from association with a financial services business?
 - restricted the organization's financial services activities?
 - barred the organization from association with an entity regulated by such commissions, authority, agency, or office, or from engaging in a financial services business?
 - taken a regulatory action, whether administrative or civil including entering an order or dismissing an action pursuant to a settlement agreement against the entity or a control affiliate in connection with a financial services activity?
 - are there any pending regulatory action proceedings against the organization that allege the organization:
 - made a false statement or omission or had been dishonest, unfair or unethical?
 - was involved in a violation of a financial services statute or regulation?
 - are there any pending regulatory action proceedings against the organization that allege the organization caused another financial services business to have its license or other authorization to conduct a business activity denied, suspended, revoked or restricted?
29. Based on activities that occurred while you exercised control over an organization, has any federal, state or local regulatory agency, foreign financial regulatory authority, self-regulatory organization (SRO) or any consumer protection authority restricted, revoked or suspended the organization's financial services license or any other professional license or the organization's ability to act as a contractor on behalf of a federal, state or local government entity?
30. Based on activities that occurred while you exercised control over an organization, are there any pending regulatory action proceedings against any organization whereby the remedy being sought is described in question 29?

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Revised Questions Redlined

27. Based ~~upon~~ activities that occurred while you exercised control over an organization, has any ~~federal, State or federal~~ local regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ~~or any consumer protection agency ever taken any of the actions listed in items 15-21 above against any organization?~~
- a. ~~found such organization to have made a false statement or omission or been dishonest, unfair or unethical?~~
 - b. ~~found such organization to have been involved in a violation of a financial services statute or regulation?~~
 - c. ~~found such organization to have been a cause of another financial services business having its license or other authorization to conduct a business activity denied, suspended, revoked or restricted?~~
28. Based ~~upon~~ activities that occurred while you exercised control over an organization:
- a. ~~has any federal, state or local regulatory agency, foreign financial regulatory authority, self-regulatory organization (SRO) or any consumer protection agency taken any of the below actions against such organization:~~
 - i. ~~restriction or revocation of a registration or license?~~
 - ii. ~~denial or suspension of a registration or license or application for licensure?~~
 - iii. ~~entered an injunction from association with a financial services business?~~
 - iv. ~~restricted the organization's financial services activities?~~
 - v. ~~barred the organization from association with an entity regulated by such commissions, authority, agency, or office, or from engaging in a financial services business?~~
 - vi. ~~taken a regulatory action, whether administrative or civil including entering an order or dismissing an action pursuant to a settlement agreement against the entity or a control affiliate in connection with a financial services activity?~~
 - b. ~~are there any pending regulatory action proceedings against the any organization that allege the organization:for any alleged violation described in items 15-21 above?~~
 - i. ~~made a false statement or omission or had been dishonest, unfair or unethical?~~
 - ii. ~~was involved in a violation of a financial services statute or regulation?~~
 - c. ~~are there any pending regulatory action proceedings against the organization that allege the organization caused another financial services business to have its license or other authorization to conduct a business activity denied, suspended, revoked or restricted?~~
29. Based on activities that occurred while you exercised control over an organization, has any ~~State or~~ federal, ~~state or local~~ regulatory agency, ~~or~~ foreign financial regulatory authority, ~~or~~ self-regulatory organization (SRO) ~~or any consumer protection authority ever taken any of the action listed in question 18~~ restricted, revoked or suspended the organization's financial services license or any other professional license or the organization's ability to act as a contractor on behalf of a federal, state or local government entity?
30. Based ~~upon~~ activities that occurred while you exercised control over an organization, ~~is~~ are there any pending regulatory action proceedings against such organization whereby the remedy being sought is described in question ~~item~~ 29?

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Control Questions, Regulatory Action Disclosure – Guidance

In addition to those items noted on page 1 herein, respondents should consider the following in completing these questions.

1. In Question 27 language was added so the inquiry extends to a regulatory action brought by a local regulatory agency or by any consumer protection authority.
2. In Question 28 language was added so the inquiry extends to a regulatory action brought by a local regulatory agency or by any consumer protection authority. This will entail going back to determine if there were any regulatory actions brought by these additional authorities for all six items under 28 a (28a i-vi).
3. Questions 29 and 30 capture current questions M and O and extends the inquiry to a regulatory action brought by a local regulatory agency or by any consumer protection authority.

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Definition of Found

Revised Definition

FOUND – A determination that led to the issuance of one or more of the following:

- adverse final actions
- consent decrees/orders, including those in which the respondent has neither admitted nor denied the findings
- agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.

Does not include the issuance or imposition of:

- agreements or settlements that are not a matter of public record
- late fees
- deficiency letters
- examination reports
- memoranda of understanding
- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, unless the agreement was a matter of public record.

Revised Definition Redlined

FOUND –

~~Includes:~~

~~A determination that led to the issuance of one or more of the following:~~

- adverse final actions
- consent decrees/orders, ~~including those~~ in which the respondent has neither admitted nor denied the findings
- ~~agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.~~

Does not include ~~the issuance or imposition of:~~

- ~~agreements or settlements that are not a matter of public record~~
- late fees
- deficiency letters
- examination reports

- memoranda of understanding

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- letters of caution
- admonishments, or
- similar informal resolutions of matters.

“Settlement” often falls under the “included” category like consent decrees and final actions. However, in jurisdictions that use “settlement” to be synonymous with “agreement” such settlements would fall under the “not included” batch with other agreements, **unless the agreement was a matter of public record. One possibility that may be relevant in determining where a “settlement” fits in your jurisdiction is to the determination of whether it is a public record or not. In this analysis, if it is a public record then it should be included and if it is not a public record, it should not be included.**

Retroactive Analysis

1. The change to the definition of found is not material.
2. Currently all consent decrees/orders must be disclosed. The addition of “including those” merely clarifies the existing disclosure obligation. When a consent decree/order does not state the respondent has neither admitted nor denied the findings, it is deemed an adverse final action.
3. The revision adds to the definition of found “agreements or settlements that are a matter of public record, including agreements or settlements in which the respondent has neither admitted nor denied the findings.” Currently one must disclose settlements that are public, so the revised definition of found adds a requirement to disclose agreements that are public.

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