



THE HABEMATOLEL POMO OF UPPER LAKE
TRIBAL FINANCIAL SERVICES REGULATORY CODE

(As amended on September 9, 2022)

CONTENTS

CHAPTER 1. ESTABLISHMENT	3
Sec. 1. SHORT TITLE.....	3
Sec. 2. DEFINITIONS.....	3
Sec. 3. AUTHORITY AND PURPOSE.....	6
Sec. 4. FINANCIAL SERVICES REGULATORY COMMISSION.....	8
CHAPTER 2. LICENSES AND REGULATION	13
Sec. 5. POWERS AND DUTIES OF THE COMMISSION	13
Sec. 6. LICENSING AND RENEWALS	16
CHAPTER 3. ENFORCEMENT AND SUPERVISION	19
Sec. 7. ADMINISTRATIVE PENALTY; RESTITUTION ORDER; ASSURANCE OF VOLUNTARY COMPLIANCE.....	19
Sec. 8. PROHIBITED ACTS; VIOLATIONS	25
Sec. 9. DEBT COLLECTIONS	26
CHAPTER 4. MISCELLANEOUS	30
Sec. 10. SAVINGS PROVISION	30
Sec. 11. EFFECTIVE DATE	30
CHAPTER 5. REGULATION OF CONSUMER DATA	30
Sec. 12. PERSONAL INFORMATION PROTECTED.....	30
CHAPTER 6. DEBT CANCELLATION AND DEBT SUSPENSION CONTRACTS.....	32
Sec. 13. DEFINITIONS	32
Sec. 14. PROHIBITED PRACTICES	33
Sec. 15. REFUND OF FEES IN THE EVENT OF TERMINATION OR PREPAYMENT OF THE COVERED LOAN.....	33
Sec. 16. METHOD OF PAYMENT OF FEES.....	33
Sec. 17. DISCLOSURES.....	34

Sec. 18. AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF
RECEIPT OF DISCLOSURES REQUIRED 34
Sec. 19. GAIN OR ADVANTAGE FROM CONTRACT NOT PROHIBITED CHARGE..... 35

TITLE 1. TRIBAL FINANCIAL SERVICES
CHAPTER 1. ESTABLISHMENT

SEC. 1. SHORT TITLE.

This Title may be cited as the “Tribal Financial Services Code”.

SEC. 2. DEFINITIONS.

For purposes of the Tribal Financial Services Code, the following definitions shall apply:

(a) **COMMISSION.**—The term “Commission” means the Habematolel Pomo Tribe of Upper Lake Tribal Financial Services Regulatory Commission.

(b) **COMMISSION RECORD.**—The term “Commission Record” means Confidential Consumer Complaint Information, Confidential Investigative Information, Confidential Supervisory Information, or information designated as a Commission Record by regulation or a memorandum of understanding with a government agency. But the term does not include documents prepared by a Licensee for its own business purposes and that the Commission does not possess, information contained in records that have been made publicly available by the Commission, or information that has otherwise been publicly disclosed by a Commission employee with the authority to do so.

(1) **CONFIDENTIAL CONSUMER COMPLAINT INFORMATION.**—The term “Confidential Consumer Complaint Information” means information received or generated by the Commission that comprises or documents consumer complaints or inquiries concerning financial services or covered products and responses thereto;

(2) **CONFIDENTIAL INVESTIGATIVE INFORMATION.** —The term “Confidential Investigative Information” means material produced to the Commission when the Commission is exercising its powers under Chapter 4 of this Title; and any documentary material prepared by, on behalf of, received by, or for the use by the Commission in the conduct of an investigation of or enforcement action against a person, and any information derived from such documents.

(3) **CONFIDENTIAL SUPERVISORY INFORMATION.**—The term “Confidential Supervisory Information” means (i) reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports; (ii) any documents, including reports of examination, prepared by, or on behalf

of, or for the use of the Commission in the exercise of supervisory authority over a Licensee, and any information derived from such documents; (iii) any communications between the Commission and a supervised Licensee related to the Commission’s supervision of the institution; (iv) any information provided to the Commission by a Licensee to enable the Commission to monitor for risks to consumers in the offering or provision of financial services; and (v) any other information deemed by the Commission to be confidential for any reason.

(c) COVERED.—The term “Covered”—means (i) any loan or financial services product originated or serviced by a Licensee; (ii) any loan or financial services product originated or serviced by a Tribal Entity; (iii) any loan or financial services product originated or serviced from Tribal Land.

(d) EXECUTIVE COUNCIL.—The term “Executive Council” means the governing body of the Habematolel Pomo Tribe of Upper Lake, which is constitutionally vested with the day-to-day governance of the Tribe including the Article X powers to regulate Tribal commerce.

(e) FAMILY MEMBER.—The term means any person living with or who is otherwise a dependent of another person.

(f) FINANCIAL SERVICES.—The term means services that relate to marketing, servicing, collection, or acquisition of any of the following: deposits, loans, customer information in connection with making loans, insurance, currency, securitized loans, or payments; any “financial product or service,” as defined in the Consumer Financial Protection Act (12 U.S.C. 5481(15)); or a “financial activity” as defined in U.S. Treasury Regulations (12 C.F.R. 225.28(b)).

(g) LICENSE.—The term means permission granted by the Commission to a Licensee for the purpose of engaging in Financial Services.

(h) LICENSEE.—The term means Tribal Entity holding a License granted by the Commission under this Title for the purpose of providing Financial Services.

(i) OFFICER.—The term means any employee of a Tribal Entity regulated under this Title that receives a direct delegation of authority from that Tribal Entity’s Board of Directors.

(j) PERSON.—The term means any individual, entity, firm, partnership, corporation, company, or association and may denote the singular or plural.

(k) PERSONAL INFORMATION.—The term means information that can be used to uniquely identify an individual or otherwise distinguish or trace an individual’s identity. This

includes information that is collected by any Regulated Entity acting in connection with the provision of Financial Services. Information received from a consumer reporting agency may constitute “Personal Information.”

(l) **REGULATED ENTITY.**—The term means any person who is a Licensee or—

(1) Any Licensee Officer;

(2) Any Service Provider;

(3) Any employee of a Service Provider or Licensee;

(4) Any person who offers any loan or financial services product that purports to be originated or serviced by a Licensee, by a Tribal Entity, or from Tribal Land, or

(5) Any person who by agreement, action, or operation of this Title consents to the Commission’s jurisdiction.

(m) **SERVICE PROVIDER.**—The term means any Person, excluding those Persons set forth in Section 6.1(b) of this Title, who provides Financial Services in the name of or as an agent of any Licensee, who underwrites or originates Financial Services on the behalf of any Licensee, or who services performing or delinquent accounts on behalf of any Licensee.

(n) **TRIBAL CONSUMER PROTECTION LAWS.**—For purposes of this Code, the term means the consumer protections set forth Chapter 3 of this Title and the substantive provisions of the enumerated federal consumer laws below, as interpreted and implemented by the Commission, as well as Commission regulations and guidance:

(1) the Electronic Fund Transfer Act (“EFTA”) (15 U.S.C. §§ 1693 et seq.);

(2) the Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.) and its implementing Regulation B (12 C.F.R. Pt. 1002) (collectively “ECOA”);

(3) the Fair and Accurate Credit Transactions Act (15 U.S.C. §1681m(e)) and its implementing Red Flags Rule (16 C.F.R. § 681.1) (collectively “Red Flags Rule”);

(4) the Fair Credit Reporting Act (15 U.S.C. §§ 1681 et seq.) and its implementing Regulation V, Subpart E (12 C.F.R. §§ 1022.40-1022.43) (collectively “FCRA”);

(5) the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 et seq.) (“FDCPA”);

(6) the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6802 et seq.) and its implementing Regulation P (12 C.F.R. 1016) (collectively “GLBA”);

(7) the Servicemembers Civil Relief Act (50 U.S.C. §§ 501 et seq.) (“SCRA”);

(8) the Telephone Consumer Protection Act (47 U.S. Code § 227) and its implementing regulations (47 C.F.R. Part 64);

(9) the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.) and its implementing Regulation Z (12 C.F.R. Pt. 1026) (collectively “TILA”); and

(10) the Military Lending Act (10 U.S.C. § 987) and its implementing DoD Regulation (32 C.F.R. Pt. 232) (collectively “MLA”).

(o) TRIBAL ENTITY.—The term “Tribal Entity” means an arm of the Tribe formed under Tribal Law as an instrumentality, agency, unincorporated department or division, or business entity that is wholly owned by the Tribe or Tribal subsidiaries.

(p) TRIBAL LANDS.—The term “Tribal Lands” means all lands within the limits of the Habematolel Pomo Tribe of Upper Lake Indian reservation, and any lands title to which is either held in trust by the United States for the benefit of the Tribe or a member of the Tribe, or held by the United States for the benefit of the Tribe or a member of the Tribe subject to restriction by the United States, against alienation and over which the Tribe exercises governmental power.

(q) TRIBAL LAW.—The term “Tribal Law” means all laws of the Tribe, including this Title and any implementing regulations and orders of the Commission.

(r) TRIBE.—The term “Tribe” means the Habematolel Pomo Tribe of Upper Lake, a federally recognized Indian Tribe.

SEC. 3. AUTHORITY AND PURPOSE.

3.1. AUTHORITY.—The Habematolel Pomo Tribe of Upper Lake is a federally recognized sovereign American Indian Tribe empowered by its Constitution to enact laws and hereby enacts this Title to regulate certain commerce conducted from Tribal lands and to establish the Habematolel Pomo Tribe of Upper Lake Tribal Financial Services Regulatory Commission to regulate Financial Services originated in and from the Tribal Lands by the Tribe and Licensees.

3.2. PURPOSE.—The purpose of this Title is to ensure that all financial services operations by the Tribe and Tribal Entities:

(a) are conducted in a manner that is safe, sound, fair, equitable, and transparent with proper regulatory oversight on all financial services products offered from the Tribe’s jurisdiction; and

(b) are regulated in accordance with this Title and applicable Tribal Consumer Protection Laws; and

(c) that operations under this Title raise revenue for the Tribe, provide job opportunities and provide resources to build a sustainable Tribal economy dedicated to self-determination and self-reliance.

3.3. PROCLAMATION.—The Tribe hereby directs and proclaims that:

(a) The United States Congress has recognized and enacted legislation such as the Native American Business Development, Trade Promotion and Tourism Act (25 U.S.C. §§ 4301 et seq.) and other legislation which recognizes the federal policy and congressional intent “to promote economic self-sufficiency and political self-determination for Indian tribes” through offering services from Indian Country;

(b) The Tribe desires to expedite the development of the economy of the Tribe in order to improve the Tribe’s economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors, and to provides its members with opportunities to improve their own economic circumstances;

(c) Due to its remote location, the Tribe has determined that it can best meet its members’ needs through offering goods and services by participating in electronic commerce. Electronic commerce (or e-commerce) is defined by the Tribe as the purchase of goods or services from Tribal Trust Land and the Tribe’s jurisdiction by customers that freely choose to access the such goods or services on such lands and who consent to such jurisdiction via the internet;

(d) Specifically, the Tribe has determined that it can offer financial services from its Tribal Land, which will constitute a legitimate means of generating revenue to address the aforementioned pressing needs of Tribal members and furthering the Tribe’s goal of self-sufficiency and self-determination as endorsed by the United States Congress;

(e) The Tribe wishes to ensure that any financial service offered from the Tribe’s Trust Land is conducted in a fair and equitable fashion and therefore should be regulated by a Tribal governmental authority with the legal authority to license and regulate such services within its jurisdiction;

(f) Tribal regulation and control of financial services offered from within the jurisdiction of the Tribe is essential for the protection of the public welfare and the integrity of the Tribe’s financial services operations.

(g) In furtherance of the Tribal findings above, the Tribe owns and operates financial services operations to generate governmental revenue for the Tribe that shall be used solely to

(i) provide for the health, education, and general welfare of Tribal members; (ii) promote tribal economic development and self-sufficiency and self-determination; (iii) fund Tribal government operations; and (iv) to protect, preserve and promote the culture and language of the Tribe for future generations; and

(h) Each Licensee shall be wholly owned and operated by the Tribe or a Tribal Entity and conducted in accordance with Tribal Law.

3.4. INTENT.—The Executive Council, on behalf of the Tribe, declares that the intent of this Title is to:

(a) Fund the Tribe’s government operations, programs, or property;

(b) Provide for the public health and general welfare of the Tribe and its members and visitors, including by diversifying and expediting the development of the Tribe’s economy and contributing to social fabric of the general community through grants or charitable donations;

(c) Promote Tribal economic development and self-sufficiency;

(d) Offer fair and needed financial services to customers choosing to access services from the Tribe’s jurisdiction; and

(e) Achieve the goals set forth in Section 3.3.

3.5. DIRECTIVES.

(a) The provision of Covered Loans from Tribal Lands shall be conducted strictly in accordance with this Title;

(b) All Covered Loans, Licensees, and Service Providers are subject to regulation by the Commission as set forth in this Title.

SEC. 4. FINANCIAL SERVICES REGULATORY COMMISSION

4.1. ESTABLISHMENT.—The Tribe hereby establishes the Commission to regulate Covered Loans, financial services operations, and covered products. The Commission shall act independently and autonomously from the business enterprises of the Tribe.

4.2. COMPOSITION.—The Commission shall consist of at minimum one Commissioner and a maximum of three Commissioners.

4.3. STAFF. The Executive Council directs the Commission to engage qualified staff to support the Commission in its regulatory, enforcement and advisory capacities. Collectively, Commission staff must possess significant experience in law enforcement, such as experience working in the U.S. Department of Justice, a state Attorney General’s office or other similar law enforcement role, and

regulatory enforcement experience at a federal, tribal, or state agency charged with protecting consumers in the financial services area. At least one staff member must be an attorney in good standing in a jurisdiction of the United States. Staff member positions may be filled by consultants in the discretion of the Commission.

4.4. PROCEDURE.—The Executive Council shall make nominations by motion for each open Commissioner position at either a regularly scheduled meeting or a special meeting of the Executive Council. The Executive Council shall, by majority vote, either approve by resolution or motion the appointment of a Commissioner or disapprove the candidate.

4.5. QUALIFICATIONS.—Any Person appointed as a Commissioner must be at least 21 years of age; possess expertise, experience, education, or a combination thereof in lending, finance, management, business, governmental regulation, law, and/or Tribal policy; and, in the Executive Council's sole opinion, the organizational abilities to effectively manage the business of the Commission and make decisions on behalf of the Commission. The Executive Council shall endeavor to appoint a Person who, in its sole discretion, does not have the reputation, habits, or associations that could undermine the integrity of the Commission or its role in protecting Consumers and is empowered to investigate the backgrounds of Commissioner candidates.

4.6. DISQUALIFICATIONS.—A member of the Commission may not:

- (a) be an Executive Council member, while serving as such;
- (b) possess, directly or indirectly, any financial or managerial interest in any entity which provides goods or services to a Licensee, except for any interest that derives solely from being a member of the Tribe;
- (c) apply for or obtain Covered Loans with a Licensee;
- (d) receive from any Licensee, directly or indirectly, any salary, compensation, or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise (excluding any item with a *de minimis* dollar value that is less than \$100 and meals in conjunction with business or business travel);
- (e) have any Family Member that is an Officer of a Licensee; or
- (f) be convicted of or have entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction.

4.7. TERM.—Commissioners shall serve a term of three (3) years from their appointment date. The Executive Council may only remove a Commissioner prior to the expiration of that term upon

clear and convincing evidence presented that the Commissioner has knowingly and willfully providing materially false statements to the Executive Council; knowingly and willfully refused to fulfill his or her responsibilities under this Title; or become disqualified under Section 4.6.

4.8. VACANCY.—At the end of any term or if any Commissioner dies, resigns, or is removed during his or her term, the Executive Council shall appoint a successor Commissioner within 15 days using the procedures set forth in Section 4.4.

4.9. COMPENSATION AND BUDGET.—Commissioner compensation and the Commission budget shall be established from time to time by the Executive Council. The Commission shall prepare an annual operating budget for all Commission activities, including required staff compensation, and present it to the Executive Council no less than sixty (60) days prior to the commencement of each operating year or part thereof. To ensure the independence of the Commission, the Executive Council shall not reduce any annual operating budget or Commissioner salaries to less than 95% of the previous years' annual operating budget.

4.10. COMMISSION RECORDS.—No Person in possession of a Commission Record that the Commission has not already made public, shall disclose such records or duplicates thereof without authorization to any Person who is not an employee of the Commission, except that Commissioners may disclose Commission Records to the Executive Council in the ordinary course of business. All Commission Records authorized for disclosure shall remain the Commission's property unless the Commission provides otherwise.

4.11. IMMUNITY.—As an integrated subdivision and independent agency of the Tribal government, the Tribe intends and ordains that:

(a) Nothing in this Title shall be deemed or construed to be consent of the Commission or the Tribe to the jurisdiction of the United States or any state or local government or other tribe.

(b) Nothing in this Title shall be construed to be a waiver of sovereign immunity of the Commission.

(c) The Commission shall have only those assets specifically assigned to it by the Executive Council, acquired in its name by the Tribe, or acquired by the Commission on its own behalf. No activity of the Commission or any indebtedness incurred by it shall implicate, extend to, or involve in any way any assets of tribal members or the Tribe itself.

4.12. OATH OF OFFICE.—Before assuming the duties of office, the Commissioner and each assistant Commissioner, examiner, and other employee of the office must take an oath of office.

4.13. LIABILITY.

(a) Commissioners, Commission staff including consultants, or other Commission employees are not personally liable for damages arising from the Person's official act or omission unless the act or omission is corrupt or malicious.

(b) The Tribe shall defend an action brought against a Person because of an official act or omission under Subsection (a) regardless of whether the Person has terminated service with the office when the action is instituted.

4.14. CONSUMER INFORMATION AND COMPLAINTS.

(a) The Commission shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The Commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The Commission shall periodically notify the complaint parties of the status of the complaint until final disposition.

(d) The Commission shall communicate information it deems appropriate with any federal, state, local, or tribal agency which has indicated an interest in a specific complaint. The Commission will comply with all requirements of any applicable memorandums of understanding between the Tribe and other sovereigns.

4.15. OFFICE EMPLOYEES.—The Commissioner may appoint, remove, and prescribe the duties of assistant commissioners, examiners, and other employees as necessary to maintain and operate the office, including the division of consumer protection. Any positions may be filled by using consultants for such roles rather than employees.

4.16. ADVISORY COMMITTEES.

(a) The Commission may appoint advisory committees to assist the office and Commission in performing their duties.

(b) The Commission shall specify each committee's purpose, powers, and duties and shall require each committee to report to the Commission or office in the manner specified by the Commission concerning the committee's activities and the results of its work.

4.17. MEETINGS. The Commission shall meet as needed or upon the request of the Executive Council with at least ten (10) days written notice to all Commissioners and staff. Notice requirements can be waived by a unanimous vote of the Commissioners. At least

half of the Commissioners present shall represent a quorum and all decisions must be made by simple majority vote. In the event of a tie vote, the Commissioners shall present the issue to senior Staff for a recommendation. If the vote remains tied, the Commissioners shall agree on an independent expert in financial services who shall arbitrate the tie and cast the deciding vote.

**HABEMATOLEL POMO TRIBE OF UPPER LAKE
FINANCE CODE**

**TITLE 1. TRIBAL FINANCIAL SERVICES
CHAPTER 2. LICENSES AND REGULATION**

**SEC. 5. POWERS AND DUTIES OF THE
COMMISSION**

5.1. GENERAL DUTIES OF COMMISSION.

(a) The Commission shall enforce this Title.

(b) No other agency or government shall have the right to license, examine, or supervise any Licensee's provision of Financial Services under this Title;

(c) The Commission shall monitor and examine all activities of each Licensee to ensure compliance with this Title and federal law and shall have unrestricted access to all areas and records of any Licensee with regard to all Covered Loan and Covered Product records;

(d) The Commission shall provide guidance to Licensees regarding compliance with this Title and all Commission orders including but not limited to safe harbor letters and other guidance methods;

(e) The Commission shall endeavor to coordinate with federal and state agencies regarding best practices and cooperative relationships and shall meet any requirements of any applicable memorandums of understanding between the Tribe and other sovereigns;

(f) The Commission shall ensure that consumers have adequate and accessible opportunities to assert their rights under this Title and Tribal Consumer Protection Laws including the opportunity to present any complaint or concern directly to the Commission;

(g) The Commission shall ensure compliance with Commission orders and arbitration orders; perform all other duties the Commission deems appropriate for the proper regulation of Licensees, Financial Services, Covered Loans and Covered Products;

(h) The Commission may exert regulatory authority including registration or licensing over all or any class of Service Provider pursuant to regulations issued pursuant to Section 5.2 of this Title;

(i) The Commission may cooperate with another law enforcement agency in the investigation of any matter related to

this Title, including by sharing confidential Commission Records;

(j) The Commission shall take any other action as may be reasonably necessary to perform the Commission's functions under this Title.

5.2. RULEMAKING AUTHORITY.—The Commission shall promulgate rules, regulations, policies, and guidelines as needed to implement this Title provided that the Commission shall provide an adequate review and comment period (no less than thirty (30) days) for each promulgation to Persons affected and a reasonable implementation period. Promulgations shall include:

(a) standards and procedures for inspection and enforcement of this Title;

(b) standards and procedures for the safe and sound operation of financial services operations licensed under this Title and their Service Providers;

(c) a procedure to request supervisory guidance and safe harbors from the Commission regarding any (A) proposed or new promulgation; (B) new or emerging issues; (C) interpretation of rule or regulation; (D) violations of this Title; (E) or other topics as designated by the Commission; and

(d) a schedule for civil penalties for violations of this Title.

5.3. CONFIDENTIALITY OF CERTAIN INFORMATION.

(a) Except as provided by Subsection (b), information or material obtained or compiled by the Commission in relation to an examination or investigation by the Commission or the Commission's representative of a Licensee, registrant, applicant, Service Provider, or other Person under this Title is confidential and may not be disclosed by the Commission or an officer, employee, consultant, or contractor of the Commission, including:

(1) information obtained from a Licensee, registrant, applicant, or other Person examined or investigated under this Title;

(2) work performed by the Commission or the Commission's representative on information obtained from a Licensee, registrant, applicant, or other Person for the purposes of an examination or investigation conducted under this Title;

(3) a report on an examination or investigation of a Licensee, registrant, applicant, or other Person conducted under this Title; and

(4) any written communications between the Licensee, registrant, applicant, or other Person, as applicable, and the Commission or the Commission's representative relating to

or referencing an examination or investigation conducted under this Title.

(b) The Commission or the Commission's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of the Tribe or the other sovereign if the Commission considers disclosure to be necessary or proper to the enforcement of the applicable laws of the Tribe or the United States and in the best interest of the public;

(2) if the information was previously provided to or provided by the Licensee, registrant, applicant, or other Person, and the Person consents to the release of the information or has published the information contained in the release;

(3) if the Commission determines that release of the information is required for an administrative hearing; or

(4) to provide a summary of investigation information to the Person who filed the complaint with the office.

(c) Information otherwise confidential remains confidential after the information is shared under this section.

5.4. REQUEST FOR INFORMATION; INVESTIGATION AUTHORITY.—The Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine operations and facilities related to Covered Products. The Commission may: (a) require the relevant Person(s) to furnish information regarding a specific loan, retail transaction, or business practice to which the investigation relates; and (b) conduct an investigation to determine whether a violation exists.

5.5. ISSUANCE OF CIVIL INVESTIGATIVE DEMAND.

(a) During an investigation, the Commission may issue a civil investigative demand that requires the production of information, documents, written reports or the attendance and testimony of a witness.

(b) A document that is necessary to continue the business of a Person under investigation may not be removed from the office or place of business of that Person, but the Commission may:

(1) examine, or cause to be examined, the document at the office or place of business; and

(2) require a copy to be made of a part of the document related to a matter under investigation.

(c) To implement this section, the Commission may sign a subpoena, administer an oath or affirmation, examine a witness, or receive evidence.

5.6. ENFORCEMENT OF CIVIL INVESTIGATIVE DEMAND; CONTEMPT.

(a) If a person disobeys a civil investigative demand or if a witness appearing before the Commission refuses to testify, the Commission may petition any venue available in which the person or witness may be found, and the court on this petition may issue an order requiring the person or witness to obey the civil investigative demand, testify, or produce a document relating to the matter in issue, as applicable. The court shall treat the application in the same manner as a motion in a civil suit.

(b) The court shall promptly set an application to enforce a civil investigative demand under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed. Notice may be served by any means authorized under federal rules of procedure.

5.7. FEES AND EXPENSES.

(a) The fee to be paid under this subchapter is the same as that paid under the Federal Rules of Civil Procedure for performing a similar service, or in the absence of direction thereunder, fees established by Commission rule.

(b) A witness required to attend a hearing before the Commission shall receive for each day's attendance a fee and a travel and transportation allowance as authorized by law or a rule adopted by the Commission.

(c) A fee under Subsection (b) is not payable until the witness appears at the hearing.

(d) A disbursement made in payment of a fee under this section shall be included in, and paid in the same manner that is provided for, other expenses incurred in the administration and enforcement of the statutes to which this subchapter applies.

5.8. IMPOSITION OF COSTS ON PARTIES.—The Commission may impose on a party fees, expenses, or costs incurred in connection with a hearing or may divide the fee or expense among any or all interested parties as determined by the Commission.

SEC. 6. LICENSING AND RENEWALS

6.1. APPLICABILITY. Except as otherwise provided by this code, this chapter applies to all covered financial services.

(a) This Title does not apply to:

(1) any person or third-party provider of products or services who is not a Licensee to the extent the products or services the party provides is:

i. A service not specific to financial services and the same service the party provides to the

general public, including but not limited to:
providing utilities; telecommunications; clerical,
maintenance, or janitorial services; leasing or
sale of land, goods, or fixtures; general
accounting; or retail merchants;

- ii. a funding source or access to a revolving
commercial credit line to a Licensee;
- iii. software or intellectual property licensed to a
Licensee;
- iv. credit reporting;
- v. the business of insurance; or
- vi. taking deposits.

(2) Banks, savings banks, savings and loan associations,
credit unions, and insurance companies organized,
chartered, or holding a certificate of authority to do business
under the laws of the Tribe or of any state or under the laws
of the United States are exempt from the provisions of this
Act;

(3) any employee of the above is exempt from the
provisions of this Act; or

(4) any person the Commission designates by regulation
as providing a product or service to a Licensee that poses no
or attenuated risk of causing consumer harm is exempt from
the provisions of this Act.

6.2. LICENSE OR CERTIFICATE OF AUTHORITY REQUIRED; DESIGNATED PRODUCT CERTIFICATE.

(a) A License or certificate of authority issued by the
Commission is required to perform the following:

(1) receive an application for, offer, provide, or service
a Financial Services Product; or

(2) act as a Service Provider to any Person under the
foregoing subsection 6.2(a)(1).

(b) all Persons who perform any material services to a
Licensee or acquire any interest in a Financial Services Product
must register with the Commission.

6.3. LICENSING AND REGISTRATION TERMS.

6.4. The Commission by rule shall prescribe the licensing or
registration period for Licenses and registrations issued under this
Title.

6.5. APPLICATION FOR AND ISSUANCE OF
TEMPORARY LICENSE.—The Commission may issue a
temporary License immediately on receipt of a properly completed
application executed by the applicant in the form required.

6.6. TERM OF TEMPORARY LICENSE.—A temporary
License is valid for 90 days after the date of issuance.

6.7. RESTRICTION ON ISSUANCE OR RENEWAL OF TEMPORARY LICENSE.—A temporary License may be renewed at the Commission’s discretion provided that the recipient of a temporary License must be making a good faith attempt to secure a full License.

6.8. NON-TRANSFERABILITY.—A License may not be assigned or transferred and is only valid for use by the Person in whose name it is issued.

6.9. CONSENT TO JURISDICTION.—Every Person that applies for a License and accepts that License, and all employees, Service Providers, and contractors thereof, acknowledge the civil enforcement jurisdiction and authority of the Commission and consent to that authority and jurisdiction.

6.10. RIGHT OF REVIEW.—The Commission shall make the final administrative decision as to whether a License shall be issued, suspended, or revoked. Denial or termination licensing decisions may be subject to review pursuant to regulations promulgated under this Code.

6.11. OBTAINING INFORMATION.

(a) The Commission, or an employee, contractor, or consultant thereof, may obtain criminal history record information of any person involved in any way in the financial services operations of the Tribe that is maintained by a consumer reporting agency in compliance with the Fair Credit Reporting Act, 15 U.S.C. §1681 or other such information from credible sources as the Commission may deem required in compliance with all applicable Tribal and federal laws.

(b) Criminal history record and other information received by the Commission is confidential and is for the exclusive use of the Commission in fulfilling its duties under this Title.

6.12. RECOVERY OF COSTS.—In addition to an investigation fee paid to the Commission by an applicant for a License or registration, the Commission is entitled to recover from an applicant, Licensee, or registrant the cost of processing obtaining any information regarding whether the person has a criminal history record or other information deemed required by the Commission.

6.13. RULES.— The Commission shall adopt rules governing the custody and use of information obtained under this subchapter.

**HABEMATOLEL POMO TRIBE OF UPPER LAKE
FINANCE CODE
TITLE __. TRIBAL FINANCIAL SERVICES
CHAPTER 3. ENFORCEMENT AND SUPERVISION**

**SEC. 7. ADMINISTRATIVE PENALTY;
RESTITUTION ORDER; ASSURANCE OF
VOLUNTARY COMPLIANCE**

7.1. ASSESSMENT OF PENALTY; RESTITUTION ORDER.

(a) The Commission may assess an administrative penalty against a person who knowingly and willfully violates or causes a violation of this Title.

(b) The Commission may order a Person who violates or causes a violation of this Title to:

- (1) forfeit any license issued by the Commission;
- (2) pay restitution to an identifiable Person;
- (3) discontinue doing business with any Person if such Person poses a risk of continued violation of this Title.

(c) The Commission may order any remedy available at law or equity.

(d) The Commission may report any violation of this Title to another law enforcement agency. In such event, the Commission may provide Commission Records at the Commission's discretion.

7.2. AMOUNT OF PENALTY.

(a) The Commission may assess an administrative penalty for a violation in an amount not to exceed \$1,000 for each day of the violation.

(b) The aggregate amount of penalties under this subchapter that the Commission may assess against a Person during one calendar year may not exceed the lesser of:

- (1) \$100,000; or
- (2) an amount that is equal to the greater of five percent of the Person's net worth.

(c) In determining the amount of an administrative penalty, the Commission shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act;
- (2) the extent of actual or potential harm to a third party;
- (3) the history of violations;
- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation;

(6) any self-reporting and/or remedial actions taken by the violator; and

(7) any other matter that justice may require.

7.3. NOTICE OF VIOLATION.—(a) If the Commission staff determines that a violation occurred, the Commission staff may draft a notice of violation that states:

(1) the facts on which the determination is based;

(2) the law that the Person violated;

(3) any remedies or damages to be paid;

(4) any conduct to be ceased or carried out; and

(5) the Commission staff's recommendation on imposition of a penalty, including a recommendation on the amount of the penalty.

(b) Only on the basis of the Commission staff's draft Notice of Violation, the Commission shall determine whether the Notice of Violation shall issue.

7.4. NOTICE OF REPORT ON VIOLATION AND PENALTY RECOMMENDATION.

(a) Not later than the 14th day after the date on which the Commission issues a Notice of Violation, the Commission shall give written notice of the Notice by certified mail or a validated email address to the Person charged with committing or causing the violation.

(b) The Notice must:

(1) include a brief summary of the alleged violation;

(2) the law that the Person violated;

(3) any remedies or damages to be paid;

(4) any conduct to be ceased or carried out; and include a statement of the amount of the recommended penalty; and

(5) inform the Person that the Person has a right to an arbitral hearing on the occurrence of the violation, the amount of the penalty, or both.

7.5. RESPONSE OF PERSON RECEIVING NOTICE.—Not later than the 20th day after the date on which a Person receives notice under Section 7.4, the Person may:

(1) accept in writing the determination and penalty issued by the Commission; or

(2) make a written request for a hearing before an arbitrator on the occurrence of the violation, remedies, and damages, conduct to be ceased or carried out, or the amount of the penalty, or all.

7.6. ACCEPTANCE OF PENALTY; DEFAULT.—If a Person accepts the determination and recommended penalty of the Commission or fails to make a timely written request for a hearing,

the Commission by order shall approve the determination and impose the recommended penalty.

7.7. HEARING ON PENALTY; ORDER.

(a) If a Person makes a timely written request for a hearing, the Commission shall initiate an arbitration hearing by filing a notice and request for hearing with a qualified arbitrator.

(b) The hearing shall be held by an arbitrator with experience in the subject matter of the hearing who shall make findings of fact and conclusions of law and promptly issue a decision about the occurrence of the violation, legal and equitable remedies, and a penalty.

(c) According to the findings of fact, conclusions of law, and decision, the Commission by order may find:

(1) that a violation has occurred and impose a remedy or penalty; or

(2) a violation has not occurred.

(d) If the arbitrator sustains the occurrence of a violation, the arbitrator may uphold or reduce the amount of the administrative penalty and order the Person to pay that amount.

(e) If the arbitrator does not sustain the occurrence of a violation, the arbitrator shall order that no penalty is owed.

(f) If a Person has paid a penalty and the arbitrator reduces or does not uphold the amount, the Commission shall order that the appropriate amount plus accrued interest be remitted to the Person. The interest rate is the rate authorized by regulation, and interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

7.8. ENFORCEMENT SUIT. The Commission may sue to enforce the arbitration order in courts of the Tribe or any venue within 50 miles of the residence of the Person so ordered.

7.9. RECOVERY OF COSTS.—In addition to the administrative penalty or restitution amount, the arbitrator may authorize the Commission or Tribe to recover from a Person who pays an administrative penalty or restitution amount, or both, reasonable expenses incurred in obtaining the ordered amount, including the cost of investigation, witness fees, and deposition expenses.

7.10. ACCEPTANCE OF ASSURANCE.

(a) In administering this chapter, the Commission may accept assurance of voluntary compliance from a Person who is engaging in or has engaged in an act or practice in violation of this Title or a rule adopted under this Title.

(b) The assurance must be in writing and be filed with the Commission.

(c) The Commission may condition acceptance of an assurance of voluntary compliance on the stipulation that the Person offering the assurance restore to a person in interest money that may have been acquired by violation of this Title or a rule adopted under this Title.

(d) The Commission may adopt rules to establish the form of the assurance or require certain information be contained in an assurance.

7.11. REOPENING.—A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

7.12. COMITY AND ENFORCEMENT OF PRIOR ORDERS AND AGREEMENTS.—The Commission is empowered without a resolution from the Executive Council to seek comity and enforcement by any court of competent jurisdiction whose assistance may be required to give effect to: (1) orders achieved pursuant to this Chapter; (2) arbitration awards; (3) mediated agreements; (4) assurances of voluntary compliance; or (5) court orders. Filing such a claim or initiating such a proceeding does not waive sovereign immunity or admit to the jurisdiction of any court for purposes other than the proceeding filed. No such claim or proceeding shall be deemed a waiver of the Tribe's sovereign immunity.

7.13. COMPLIANCE.—Each Licensee shall:

(a) be authorized and licensed in accordance with this Title;

(b) comply with Tribal Law, including this Title and applicable Tribal Consumer Protection Laws and applicable federal laws;

(c) Maintain a compliance management system designed to ensure that all Financial Services and associated functions are carried out in full compliance with Tribal law and Tribal Consumer Protection Laws. The compliance management system shall include, at a minimum:

(1) the designation of an individual responsible for day-to-day compliance with this Title to be designated as the Chief Compliance Officer by the Licensee;

(2) compliance policies and procedures, risk-focused internal controls, and a Service Provider management program for compliance with this Title;

(3) ongoing oversight, testing, and auditing of compliance procedures, recording of results, and reporting of results to management and the Commission;

(4) initial and ongoing training in Title compliance for all employees and managers, consistent with respective positions;

(5) a consumer complaint response protocol that allows for recording of complaints, prompt resolution, and the incorporation of information gathered from complaints into compliance program revisions; and

(6) risk-based transaction testing and recording of results, and reporting of results to management and the Commission.

7.14. DISTRIBUTIONS.—Distributions from lending operations shall be used only for the purposes set forth in Section 3.4.

7.15. COVERED PRODUCTS.—All covered products shall adhere to this Title and the Tribal Consumer Protection Laws. Licensees may offer Covered products under this Title to any U.S. person of majority and Covered products shall not be void under the law of any other jurisdiction. Without limiting the general application of the foregoing, the following conduct is required of each Licensee under this Title:

(a) all Covered product terms and conditions must be presented clearly and conspicuously in a manner that is readily understandable to a reasonable person;

(b) each Covered product marketed to a consumer shall be subject to a written agreement between the Licensee and the consumer that clearly and conspicuously contains each of the following:

(1) a clause allowing binding arbitration and which provides consumers the instructions for filing an arbitration claim and does not waive any protections afforded under applicable federal laws;

(2) a choice of law provision that expressly states that the covered product and any disputes arising thereunder shall be interpreted in accordance with this Title and applicable federal laws;

(3) a notification to the consumer of their rights under Tribal Consumer Protection Laws including contact information for the Commission; and

(4) an acknowledgement by the consumer that the loan originates on Tribal land, therefore the loan and the borrower—with respect to the loan—are subject to Tribal Law. By signing the written agreement, the borrower shall expressly consent thereto and submit to the jurisdiction of this Commission and the Tribe.

7.16. CONTRACTING.—Nothing in this Title shall prohibit Licensees from entering into contracts with financial service operations or Service Providers, including contracts for marketing,

operations consulting, data, customer acquisition, or other services related to the provision of covered products.

7.17. EXCLUSIVE JURISDICTION.—No act or omission on the part of a Licensee shall be construed to waive the Commission’s exclusive jurisdiction over all Covered products and Licensees.

SEC. 8. PROHIBITED ACTS; VIOLATIONS

8.1. PROHIBITED ACTS:

(a) No Person other than a Licensee may engage in providing financial services from Tribal Lands;

(b) No Person shall provide Covered products without a License issued by the Commission in accordance with this Title;

(c) No Person shall knowingly submit misleading information, or make false statements to the Commission or the Tribe, or make an omission of data or facts in an attempt to mislead the Commission;

(d) No Person shall falsely attribute any Financial Product or service to the Tribe or Tribal Lands;

(e) No Licensee shall offer a Covered product that fails to comply with this Title and Tribal Consumer Protection Law;

(f) No Person shall apply for or receive the benefits of a Covered Loan without a present intent to repay the loan;

(g) No Licensee shall make a Covered Loan without a present reasonable belief that the borrower has the ability to repay the loan on its terms without refinancing the loan.

8.2. UNFAIR, DECEPTIVE, OR ABUSIVE ACTS AND PRACTICES ARE PROHIBITED.—The Commission may take any action authorized under this Title to remedy or prevent a Licensee or other Regulated Entity from committing or engaging in an unfair, deceptive, or abusive act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(a) An unfair act or practice is one that: (1) causes or will cause substantial injury to consumers; (2) those consumers cannot avoid the injury without taking unreasonable actions; and (3) the benefits to consumers or to competition of those same acts or practices do not outweigh the substantial injury to consumers.

(b) A representation, omission, act, or practice is deceptive when: (1) it misleads or is likely to mislead the consumer or another; (2) the interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material and affects the consumer to the consumer's detriment.

(c) An abusive act or practice is one that: (1) materially interferes with a consumer's ability to understand a term or condition of a covered loan or loan product, or (2) takes unreasonable advantage of any of the following: (A) the consumer's lack of understanding of the material risks, costs, or conditions of a covered loan or loan product; (B) the consumer's

inability to protect the consumers' interests in selecting or using a covered loan or loan product; or (C) the reasonable reliance by the consumer on a Licensee to act in the consumer's interest.

SEC. 9. DEBT COLLECTIONS

9.1. ACCOUNT COLLECTORS ARE REGULATED ENTITIES.—All Persons who agree by contract with or employment by a Licensee to collect current or past-due covered loan accounts consent to the Commission's jurisdiction and supervision and are Regulated Entities.

9.2. DEFINITION OF COMMUNICATION.—For purposes of this Section only, "Communicate" means without the prior consent of the consumer given directly to the Regulated Entity or as otherwise authorized by Commission regulation, to disclose to any Person that an identified consumer owes a past-due amount on any covered product.

9.3. The Tribe hereby directs and proclaims that current and past-due accounts be collected in a manner that is fair, honest, and convenient for Covered Loan borrowers. Regulated Entities under this Title shall include fair and honest debt collection practices as part of its compliance management system and shall:

- (a) implement a debt collection compliance policy consistent with this Title;
- (b) review the performance of employees who interact with borrowers;
- (c) monitor collection activities for both incoming and outgoing communications;
- (d) provide debt collection compliance training to all employees and contractors involved with debt collection;
- (e) evaluate compensation practices to ensure they do not incentivize behavior that would result in a heightened risk to borrowers;
- (f) ensure that any Person involved in debt collection on behalf of the lending operation complies with this Title.

9.4. DECEPTIVE PRACTICES.—Licensees and regulated entities, in connection with the collection of any debt or to obtain information about a borrower in connection with the collection of any account, shall not:

- (a) Represent without a basis in fact that the debt collector is, or is vouched for, bonded by, employed by, contracted by, or affiliated with: a government; an attorney or law firm; any government's court, official, or agency; a credit reporting agency; an individual; or a business, company, or organization

that does not, in fact, have the relationship with the Licensee that is represented;

(b) Represent without a basis in fact that the nonpayment of any debt will result in an action: (1) that is improbable in light of the debt's status, amount, or character; (2) that cannot be lawfully taken; (3) where legal conditions or prerequisites to that action have not occurred; or (4) that is a violation of this Code;

(c) Communicate or threaten to communicate to any Person: (1) credit information that is known to be false, that does not accurately represent the debt obligation or actions taken on the account, including the failure to report that a disputed debt is disputed; or (2) that the consumer committed any crime or other conduct that might disgrace the consumer.

9.5. UNFAIR PRACTICES.—The following conduct is an unfair means to collect or attempt to collect an account and is a violation of this Section:

(a) obfuscating or otherwise preventing any Person from understanding the legal enforceability of a covered loan;

(b) collecting or attempting to collect any amount that is not authorized by the agreement creating the debt or permitted by this Title;

(c) chicanery involving postdated checks, postdated monetary instruments, electronic payments, automated clearinghouse transactions, or other payment methods, including:

(1) taking any action to debit a deposit account prior to the date authorized by agreement with the consumer;

(2) taking any action to debit a deposit account more than one time in any 24-hour period absent express permission from the consumer;

(3) taking any action to debit a deposit account when the Licensee knows or has reason to know that the debit will not be honored or will cause the deposit account owner to incur non-sufficient fund fees;

(4) taking any action to debit a deposit account for an amount greater than an amount authorized by the agreement creating the debt or permitted by this Title; or

(5) taking any action to debit a deposit account when such debit was not authorized by an agreement with a holder of that deposit account.

(d) Communicating with a consumer in a method that the Licensee knows will cause the consumer to incur fees; however, it is not a violation of this subsection to communicate with the consumer using the method, number, or address that the consumer provided in connection with making the covered loan;

(e) taking or threatening to take any action to effect dispossession or disablement of property if: (1) there is no present right to possession of the property; (2) the legal conditions or other prerequisites to taking such action have not occurred; or (3) the property is exempt by law from dispossession or disablement;

(f) Communicating regarding a debt using a method that the Licensee knows or has reason to know will be observed by a member of the general public;

(g) Communicating with a consumer outside the hours of 8:00 a.m. through 9:00 p.m. in that consumer's respective time zone as identified by the consumer's address of record; or

(h) failing to credit a debt payment consistent with the terms of the agreement creating the debt.

9.6. CEASE AND DESIST.—Consumer requests regarding the time and method of communications shall be honored at the time of notice, consistent with the following:

(a) Verbal requests to limit communications to certain days or hours shall be honored;

(b) Verbal requests to cease communications shall be honored;

(c) Written requests to limit communications to certain days or hours or to cease communications shall be valid as to the Person in receipt of the written request indefinitely or for the period specified by the consumer;

(d) Licensees shall provide clearly and conspicuously to consumers the address for receipt of written requests to cease communications, which may be electronic; and

(e) Upon sale or transfer of any past due account, the Licensee will identify to the transferee the Covered Loans for which a consumer has requested that communications cease.

9.7. DEBT COLLECTION SAFE HARBORS.—It is not a violation of this Section or this Title for Licensees to do the following:

(a) Communicate about a debt with the consumer by recorded voice message or written message at a number or address provided by the consumer, unless the Licensee knows that the number or address is incorrect;

(b) Communicate to an authorized representative or spouse of a decedent debtor the existence of the debt, that the decedent's estate is responsible for the debt, and to truthfully answer the representative's questions about the account or debt;

(c) File a proof of claim or other claim in a bankruptcy court for an obligation that arose directly or indirectly from a covered loan, provided that the claim is substantiated; or

(d) File a claim for payment or for enforcement of an arbitration award in any state court for an obligation that arose directly or indirectly from a covered loan, provided that the claim is substantiated.

9.8. SAFE HARBOR FOR REMEDIATED VIOLATIONS.

(a) In the event that a Person violates or allegedly violates any provision of this Section and reverses, corrects, and remediates fully the effects of such violation, no Person may initiate an administrative or civil proceeding for penalties or damages against the Person for violations of the Title provided that:

(1) the Person fully remediates any harm within a reasonable time after discovering the harm, including reimbursing borrowers for non-sufficient fund fees proximately caused by the violation;

(2) the Person performs an investigation into the cause of the violation or alleged violation and takes reasonable measures to prevent such violation from reoccurring;

(3) the act or omission was not due to willful, knowing, reckless, or grossly negligent conduct; and

(4) the Person informs the Commission within five business days of the violation or alleged violation's discovery, informs the Commission of the remediating measures taken under this Section, as applicable, and cooperates in any special examination arising from the violation or alleged violation.

HABEMATOLEL POMO TRIBE OF UPPER LAKE
FINANCE CODE
TITLE 1. TRIBAL FINANCIAL SERVICES
CHAPTER 4. MISCELLANEOUS

SEC. 10. SAVINGS PROVISION

10.1. If any provision of this Title or the application thereof to any Person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Title, which can be given effect without the invalid provisions or application, and, to this end, the provisions of this Title are severable.

10.2. In interpreting the provisions of this Title, unless otherwise plainly declared or clearly apparent from the context:

- (a) Words in the present tense shall include the future tense;
- (b) Words in masculine, feminine, and neuter genders shall include all genders; and
- (c) Words in the singular shall include the plural, and words in the plural shall include the singular.

SEC. 11. EFFECTIVE DATE

11.1. EFFECTIVE DATE.—The Title shall be in full force and effect upon adoption by appropriate resolution by the Executive Council and shall replace in full the then existing Tribal Consumer Financial Services Regulatory Code, adopted as amended by Executive Council Resolution 12-15-02 on December 29, 2015, provided that:

- (a) All existing Licenses issued under all prior versions of this Code shall maintain their validity and shall be granted new Licenses pursuant to this Title; and
- (b) All Licensees not currently maintaining a License shall apply for such within thirty (30) days after the Commission's issuance of an application for such License;
- (c) All Licensees shall have ninety (90) days after the Executive Council's adoption of this Title to comply with any new provisions.
- (d) This Title shall not be retroactive; therefore, contracts executed prior to the Title's effective date shall be grandfathered until their term expires.

CHAPTER 5. REGULATION OF CONSUMER DATA

SEC. 12. PERSONAL INFORMATION PROTECTED

12.1. JURISDICTION OF THE TRIBE.—All personal information that is collected or received by any Regulated Entity shall be deemed to have entered into Tribal Lands and is protected

by this Title, Tribal Consumer Protection Laws, and within the regulation of the Commission. All persons who retain such personal information consent to the Commission's jurisdiction and are a Regulated Entity with regard to any use, retention, or transfer of personal information.

12.2. PROPERTY OF TRIBAL ENTITIES.—All personal information that is collected or received by any Regulated Entity related to covered products is the exclusive property of the respective Licensee for whom the regulated entity performs services. All Personal Information shall be protected using physical, contractual, electronic, and other technical security measures appropriate for the nature of the data and in compliance with this Title.

12.3. REGULATIONS REQUIRED.—The Commission shall promulgate regulations concerning Personal Information protections, which shall include provisions regarding limiting access, monitoring use and access, data destruction, data breach response and remediation planning, reporting security breaches, and complying with the principles of federal and foreign data protection and access laws.

12.4. MANDATORY DISCLOSURES.—Licensees must disclose clearly and conspicuously to consumers of a covered product that Personal Information is protected by this Title, Tribal Consumer Protection Laws, and any regulations promulgated hereunder, as set forth below.

(a) Covered product consumers must receive or be able to access within five (5) days of receiving the covered product, when applicable, the Licensee's privacy policies and practices regarding:

- i. disclosure of Personal Information to affiliated and nonaffiliated third parties for any purpose, including: marketing; furnishing information to consumer reporting agencies; servicing Covered products; first or third-party collecting of Covered products; sales or transfers of covered products; in response to a duly authorized regulatory or judicial request; or for any other purpose; and
- ii. consumers' ability to opt-out of personal information disclosures to third parties; and
- iii. the process for communicating the preference to opt-out of such disclosures.

(b) Contracts for a Covered product executed after the effective date of this Title shall warrant the Licensee's privacy policies and practices, such policies and practices shall be

disclosed on any public internet site or other electronic media portal operated by applicable persons, and shall be made available by electronic linking on any email communications to consumers of covered products.

(c) absent an express agreement providing otherwise with the Licensee, a Regulated Entity's or Service Provider's license to use personal information shall be rescinded by the applicable Licensee upon the termination of any contract with a Licensee related to the provision of Covered Loans. It is not a violation of this Title for a person to keep data that cannot be reasonably returned or destroyed, so long as the data is protected by sufficient security and is not used or transferred to any person.

(d) any person in privity of contract with a Licensee who is harmed by a failure to follow the policies and practices warranted under this section on any contract for a covered loan may file an arbitration claim for contractual damages or the face value of the covered loan, whichever is greater. The arbitration shall be governed by the contract between the parties and resolve any claims pursuant to Tribal Law.

12.5. LITIGATION HOLD.—In the event (a) any Licensee is served with any non-routine subpoena or request for documents, (b) any employee of a Licensee becomes aware of any non-tribal governmental investigation or proceeding, (c) any litigation is commenced against a Licensee, or (d) a Licensee intends to institute litigation against any third party, the Licensee shall immediately inform the Commission of such event and will cease any routine destruction of records related to the matter.

CHAPTER 6. DEBT CANCELLATION AND DEBT SUSPENSION CONTRACTS

Licensees may offer credit insurance in the form of a "Debt cancellation contract" or a "Debt suspension agreement", as defined below.

SEC. 13. DEFINITIONS

13.1. In this chapter:

(a) "Debt cancellation contract" means a loan term or contractual arrangement modifying Covered Loan terms under which a Licensee agrees to cancel all or part of a customer's obligation to repay a Covered Loan from that Licensee upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents.

(b) "Debt suspension agreement" means a Covered Loan term or contractual arrangement modifying loan terms under which a Licensee agrees to suspend all or part of a customer's obligation to repay a covered loan from the Licensee upon the

occurrence of a specified event. The agreement may be separate from or a part of other loan documents. The term debt suspension agreement does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the Licensee's unilateral decision to allow a deferral of repayment.

(c) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

SEC. 14. PROHIBITED PRACTICES

14.1. A Licensee may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.

14.2. A Licensee may not offer debt cancellation contracts or debt suspension agreements that contain terms giving the Licensee the right to unilaterally to modify the contract unless:

(a) the modification is favorable to the customer and is made without additional charge to the customer; or

(b) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.

SEC. 15. REFUND OF FEES IN THE EVENT OF TERMINATION OR PREPAYMENT OF THE COVERED LOAN

15.1. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the Licensee shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A Licensee may offer a customer a contract that does not provide for a refund only if the Licensee also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

15.2. The Licensee shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

SEC. 16. METHOD OF PAYMENT OF FEES

16.1. A Licensee may offer a customer the option of paying the fee for a contract in a single payment, provided the Licensee also offers the customer a bona fide option of paying the fee for that

contract in monthly or other periodic payments. If the Licensee offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the Licensee must also disclose to the customer, in accordance with Section 17 whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

SEC. 17. DISCLOSURES

17.1. The Commission shall promulgate regulations concerning long form and short form disclosures as follows.

(a) **Long form disclosures.** The Licensee shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the Licensee shall provide the long form disclosures in writing at that time.

(b) **Short form disclosures.** The Licensee shall make the short form disclosures orally or in writing at the time the Licensee first solicits the purchase of a contract. The short form disclosures need not comply with the E-SIGN Act.

(c) **Transactions by telephone.** If the contract is solicited by telephone, the Licensee shall provide the short form disclosures orally and shall send the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(d) **Special rule for electronic transactions.** The disclosures described in this section may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

17.2. **ADVERTISEMENTS AND OTHER PROMOTIONAL MATERIAL FOR DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS.** The short form disclosures are required in the Licensee's advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the Licensee.

SEC. 18. AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES REQUIRED

18.1. **AFFIRMATIVE ELECTION AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES.** Before entering into a Debt cancellation or suspension contract, the Licensee must obtain a customer's written affirmative election to

purchase a contract. The election must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance. The election and acknowledgment satisfy these standards if they conform with the requirements in regulations promulgated under this chapter.

18.2. SPECIAL RULE FOR TELEPHONE SOLICITATIONS.

If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the Licensee:

(a) Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract;

(b) Sends the affirmative written election and written acknowledgment, together with the long form disclosures required by Section 17.1 of this part, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(c) Permits the customer to cancel the purchase of the contract without penalty within 30 days after the Licensee has mailed the long form disclosures to the customer.

SEC. 19. GAIN OR ADVANTAGE FROM CONTRACT NOT PROHIBITED CHARGE

19.1. Additional charges to the customer for a debt cancellation or debt suspension agreement authorized under this chapter are not considered to be interest, a charge, consideration, or an amount in excess of permitted charges in connection with the underlying credit transaction.

19.2. Any benefit, return, or other gain or advantage to the Licensee arising out of the sale or provision of a debt cancellation agreement or debt suspension agreement under this chapter is not a violation of Tribal law.