



Regulatory Compliance Webinar Series

December 12, 2012



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Agenda

- CFPB Proposals
 - Discussion with Rod Alba of the American Bankers Association
 - Mortgage servicing proposals
 - Appraisal and mortgage loan originator compensation proposals
- Remittance Transfer Rule
 - Regulatory compliance issues to consider with the new remittance transfer rule
- Updates/reminders and hot topics/common violations

Discussion with Rod Alba of the ABA

Rod Alba

American Bankers Association

Vice President and Senior Regulatory Counsel, Office of Mortgage Finance, Risk Management and Public Policy

Rod is responsible for oversight on all residential real estate lending laws, regulations and other legal developments. Rod is the ABA staff liaison to the Mortgage Markets Committee, responsible for policy formulation on issues affecting real estate finance.

Mortgage Servicing Proposals



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CFPB's Mortgage Servicing Proposals

- Uniform servicing standards and transparency
- Cover nine major topics over two regulations - Truth in Lending and Real Estate Settlement Procedures Act
- Generally apply to closed-end mortgages, with some exceptions
- Expect final rules in January 2013

TILA Servicing Amendments: Periodic Billing Statements

- Minimum Requirements
 - Each billing cycle
 - Breakdown of payments by principal, interest, fees, and escrow
 - Amount and due date of next payment
 - Warnings about fees
- Exemptions – coupon books, reverse mortgages, small servicers
- CFPB expects to publish sample forms

TILA Servicing Amendments: Interest Rate Adjustment Notices

- Proposed changes to current requirements:
 - Initial Notice required 210 to 240 days before adjusted payment is due
 - Subsequent Notice required 60 to 120 days before adjusted payment is due
 - Eliminate requirement for notification when there is no change in payment
 - Specific requirements for contents
 - Model forms proposed

TILA Servicing Amendments: Payment Processing and Payoff Requests

- Codifies existing requirements for prompt crediting of payments and prohibitions against pyramiding late fees
- Provides exceptions for partial payments:
 - Permitted to be held in a suspense account until full contractual amount has been received
 - Balance of the suspense account must be disclosed on the borrower's periodic statement
 - Once full contractual amount is received, funds must be applied to the oldest outstanding payment due

TILA Servicing Amendments: Payment Processing & Payoff Requests

- Codifies existing requirements for providing payoff statements with 4 substantial changes:
 - Applies to both servicers and creditors
 - Expanded coverage of all consumer credit transactions secured by a dwelling
 - 5 business days to respond to a payoff request under “most circumstances,” with a maximum of 7 business days
 - Request from customer must be written

RESPA Servicing Amendments: Hazard Insurance

- Forced placed hazard insurance redefined:
 - Hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan
 - Does not include flood insurance
- Proposed requirements
 - Advance notice requirement similar to existing flood rules, 45 days
 - Servicers should continue to pay for a borrower's hazard insurance, when practical, if the borrower had escrowed
 - Open-end lines of credit exempt

RESPA Servicing Amendments: Error Resolution

- Notice of error – orally or in writing
- Tracking required
- 9 “covered errors”
- Establish dedicated address and phone number
- Acknowledgement within 5 days, response and notice within 30* days
 - * Shortened response times for certain errors*
- Fees or required minimum payments prohibited as a condition of responding to a notice of error

RESPA Servicing Amendments: Requests for Information

- Similarities to error resolution requirements:
 - Form of request
 - Designation of contact information
 - Acknowledgement and response time
 - Prohibition on fees or minimum payments
- Differences:
 - Shortened and extended resolution times
 - Designation of “non-covered requests”
 - No requirement to track requests

RESPA Servicing Amendments: Information Management

- Reasonable policies and procedures to ensure compliance with:
 - Record retention requirements
 - Identification of a servicing file
- Provides Safe Harbor from violations if the following objectives are met:
 - Accessing and providing accurate information
 - Evaluating loss mitigation options
 - Facilitating oversight of, and compliance by, service providers
 - Facilitating servicing transfers

RESPA Servicing Amendments: Record Retention and Identification

- For 1 year from the date a mortgage is paid in full, or the date a mortgage loan was transferred to a successor servicer:
 - Services must retain documentation and information related to the mortgage file, and
 - Must respond to notices of error and information requests received from the borrower

RESPA Servicing Amendments: Record Retention and Identification

- For the period of servicing and 1 year thereafter, a servicer must provide borrowers with a “servicing file” upon request
 - Schedule of all payments to and from the account, including:
 - Escrow transactions
 - Copy of the mortgage note
 - Copy of the deed of trust
 - Any and all collection notices, as applicable
 - Copies of certain communications from the borrower, and
 - Electronic collection records

RESPA Servicing Amendments: Early Intervention

- Two notices required for delinquent borrowers: oral and written.
 - Oral notice not later than 30 days delinquency to inform the borrower their payment is late and if loss mitigation options may be available;
 - Written notice not later than 40 days after payment due date, with information about:
 - The foreclosure process
 - Housing counselors and the borrower's State housing finance authority
 - Information about loss mitigation options that may be available to the borrower, if applicable

RESPA Servicing Amendments: Continuity of Contact

- Within 5 days of the oral notice, a servicer must assign personnel to:
 - Respond to the borrower's inquiries, and
 - Assist with loss mitigation option, as applicable
- Assigned personnel must:
 - Be available by telephone, live
 - If assigned personnel is unavailable, they must respond within 3 business days
 - Be able to perform all required functions
- For loans sold or transferred, the transferee has 30 days to assign dedicated personnel

RESPA Servicing Amendments: Continuity of Contact

- Required functions of dedicated personnel:
 - Provide accurate and complete information regarding loss mitigation options
 - Accessing borrower's complete records
 - Providing documents to persons authorized to evaluate the borrower for loss mitigation options
 - Respond to requests within a reasonable period of time

RESPA Servicing Amendments: Loss Mitigation

- Applies to servicers who make loss mitigation options available to borrowers in the ordinary course of business.
- Three main provisions:
 - Timely information about how to apply and timely evaluation of an application
 - Prohibits foreclosure sale during consideration of loss mitigation options
 - Sets timelines that are designed to be completed without requiring a suspension of the foreclosure sale

CFPB's Mortgage Servicing Proposals

- Required by Dodd-Frank
 - Periodic billing statements
 - Interest rate adjustment notices
 - Payment processing and payoff requests
 - Forced placed insurance
 - Error resolution
- Additional proposals outside of Dodd-Frank
 - Information management policies & procedures
 - Early delinquency intervention
 - Continuity of contact
 - Loss mitigation application procedures

Appraisal and Mortgage Loan Originator Compensation Proposals

Appraisal Proposals

- Higher-Risk Mortgage Loans Proposal
 - Amends Regulation Z
- Consumer Access to Appraisal Report Proposal
 - Amends Regulation B
- Both proposals issued on August 15th and comments were due on October 15th

Appraisal Proposals: Higher-Risk Mortgages

The Main Requirement:

- “A creditor shall not extend a higher-risk mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.”

Appraisal Proposals: Higher-Risk Mortgages

- A creditor shall not extend a **higher-risk mortgage** loan to a consumer without obtaining, prior to consummation, a written appraisal performed by a **certified or licensed** appraiser who conducts a physical visit of the interior of the property that will secure the transaction.
- Higher-risk mortgage
- Certified or licensed appraiser
- Safe harbor
- Other requirements

Appraisal Proposals: Higher-Risk Mortgages

Definition of Higher-Risk Mortgage Loan

- A closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the Average Prime Offer Rate for a comparable transaction as of the date the interest rate is set:
 - By 1.5 or more percentage points for a first lien residential mortgage loan
 - By 3.5 or more percentage points for a subordinate lien residential mortgage loan
 - By 2.5 or more percentage points for a first lien residential mortgage jumbo loan

Appraisal Proposals: Higher-Risk Mortgages

- Difference between a higher-risk mortgage loan and a higher-priced mortgage loan: the higher-risk mortgage loan:
 1. Excludes loans that meet the definition of qualified mortgage and loans secured solely by a residential structure (mobile home)
 2. Includes the 2.5 percentage point threshold for first-lien jumbo mortgages (the definition of higher-priced mortgage loan contains this threshold only for purposes of applying the requirement to establish escrow accounts for higher-priced mortgage loans)
- Just like the higher-priced mortgage loan, the higher-risk mortgage loan excludes reverse-mortgage transactions, construction and bridge loans and HELOCs

Appraisal Proposals: Higher-Risk Mortgages

- Proposal includes another option for a metric to use for comparison to the APOR in order to determine if the loan is a higher-risk mortgage loan
- **Why?** Because of changes in the APR calculation proposed as part of other mortgage proposals.
- **What changes?** Proposed APR to include additional creditor and third-party charges
- Transaction Coverage Rate: similar to APR except prepaid finance charge used in the calculation would only include charges retained by the creditor, mortgage broker or an affiliate of either

Appraisal Proposals: Higher-Risk Mortgages Certified or Licensed Appraiser

Certified or Licensed Appraiser

Definition: “A person who is certified or licensed by the state in which the property to be appraised is located, and performs each appraisal in conformity with USPAP and the requirements applicable to appraisers in FIRREA title XI, and the regulations prescribed under such title, as in effect on the date of the appraisal.”

- The proposal solicits comments on several questions such as: Should the rule address the issue of when a creditor must use a certified appraiser rather than a licensed appraiser?

Appraisal Proposals: Higher-Risk Mortgages

Safe Harbor

- The proposal includes a safe harbor for a written appraisal that meets the higher-risk mortgage loan requirements
- For the safe harbor, the creditor needs to:
 - Order the appraiser to perform the appraisal in conformity with USPAP and FIRREA
 - Verify through the National Registry the appraiser has a valid appraisal license or certification in the property state.
 - Confirm that nine elements are addressed in the written appraisal
 - Acknowledge there is nothing to the contrary in the facts or certifications contained in the written appraisal

Appraisal Proposals: Higher-Risk Mortgages

Other Requirements

- Additional appraisal
 - If the higher-risk mortgage loan will finance the purchase or acquisition of the mortgaged property from a seller within 180 days of the purchase or acquisition of such property by the seller at a price that was lower than the current sale price of the property
- Higher-risk mortgage loan appraisal disclosure
 - The disclosure, “we may order an appraisal to determine the property’s value and charge you for this appraisal”.
 - To be given no later than the third business day after application is received.
- Copy of appraisal
 - Creditor is to give a copy (free of charge) of the appraisal at least three business days before consummation

Appraisal Proposals: Consumer Access to Appraisal Report

- Currently Regulation B requires a creditor to provide a copy of the appraisal report (or a notice of the right to receive a copy) with an application for dwelling-secured credit
- The proposal amends this current provision and requires creditors to:
 - Provide copies of written appraisals **and** valuations for credit secured by a first lien on a dwelling no later than three business days prior to consummation
 - Notify applicants of within three business days of receiving an application of their right to receive a copy of written appraisals and valuations developed
 - Refrain from charging a fee for the appraisal/valuation copy

Mortgage Loan Originator (MLO) Compensation Proposal

- Restricts upfront points and/or fees (safe harbor: zero-zero alternative)
- Refines ban on loan originator compensation based on terms of the transaction
- Clarifies/revises restrictions on pooled compensation, profit-sharing, and bonus plans
- Refines ban on compensation by consumers and other parties
- Adds loan originator qualification requirements
- Implements other provisions

MLO Compensation Proposal

- Restricts of Upfront Points and/or Fees (zero-zero alternative)
 - Requires creditor to make available a comparable, alternative loan with no upfront discount points, origination points, or fees retained by the creditor in order to impose upfront points and/or fees on a consumer in a closed-end mortgage transaction
 - Safe Harbor: if any time prior to application the creditor provides a consumer an individualized quote for a loan that includes upfront points and/or fees, the creditor also provides a quote for a zero-zero alternative
- Refines Ban on Loan Originator Compensation Based on Terms of the Transaction
 - Clarifies compensation prohibited as a “proxy”
- Clarifies/Revises Restrictions on Pooled Compensation, Profit-Sharing, and Bonus Plans
 - Permits employers to make contributions derived from mortgages to 401(k) plans, stock plans and other qualified plans
 - Permits bonus payments/contributions to non-qualified plans from profits derived from mortgage activity if loan originator originated five or fewer mortgage transactions in past 12 months or if the company’s mortgage business revenues are limited

MLO Compensation Proposal

- Refines ban on compensation by consumers and other parties
 - Certain seller or similar party funds contributed toward closing costs when used to compensate a loan originator, are seen as direct payments to the loan originator by the consumer
- Adds loan originator qualification requirements
 - If a loan originator does not have to be registered under the SAFE Act, employer is required to ensure the loan originator meets certain standards
- Implements other provisions
 - Bans agreement requiring consumer to submit dispute to mandatory arbitration instead of filing a suit in court
 - Bans the financing of premiums for credit insurance

Regulation E Remittance Transfers Update

Regulation E Remittance Transfers – Companion Rule

- Final Rule and a Companion Proposal issued February 7, 2012. The companion proposal was designed to address:
 - Clarify “normal course of business”
 - Transfers scheduled in advance
- Companion proposal finalized in August 2012:
 - Provides a safe harbor to the rules disclosure provisions to those providers originating 100 or fewer remittance transfers in the current calendar year
 - Provides a 6 month transition period once the threshold is reached

Regulation E Remittance Transfers – Companion Rule

- Continued provisions of the companion rule:
 - Adds disclosure requirements for transfers scheduled at least 3 days in advance including:
 - Transfer date
 - Cancellation period
 - Exchange Rate available the day of scheduling
 - For transfers schedule 5 or more days in advance:
 - Exchange rate, amount received, and total to recipient can be estimated
 - For subsequent preauthorized transfers:
 - Eliminated prepayment disclosure for subsequent transfers
 - Added special disclosure requirements for subsequent transfers, including: future transfer date, cancellation rights, and provider information

Remittance Transfer Rules – Upcoming Changes

- Proposal is expected later this month to address:
 - Errors resulting from incorrect account numbers provided by senders of remittance transfers
 - Disclosure of certain foreign taxes and third-party fees
 - Disclosure of sub-national, foreign taxes
- Final Rule effective date expected to be delayed until Spring 2013



Updates and reminders

Hot topics and common violations

Updates and Reminders

- Law extends protections for servicemembers under the Servicemembers Civil Relief Act:
<http://www.infobytesblog.com/president-obama-expands-scr-protections-for-servicemembers/>
 - Continue with foreclosure protection into year 2013
 - Protection extended to one full year after period of active duty in 2013 (180 days after enactment of 2-7-13)
 - Expanded foreclosure protection will sunset January 1, 2015
- CFPB issues final rule to include larger consumer debt collectors under their nonbank supervision program effective January 2, 2013:
http://files.consumerfinance.gov/f/201210_cfpb_debt-collection-final-rule.pdf
- CFPB issues final rule delaying implementation of new requirements to coincide with finalization of the integrated TILA/RESPA rule:
http://files.consumerfinance.gov/f/201211_cfpb_final-rule_title-XIV-disclosures-extension.pdf

Updates and Reminders

- The Biggert-Waters Flood Insurance Reform and Modernization Act of 2012 was signed into law:
<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>
 - Three provisions are effective immediately:
 - Re-authorizes the NFIP for five years (section 100203)
 - Increases CMP for flood violations from \$350 to \$2,000 per violation and \$100,000 annual maximum removed (section 100208)
 - Establishes minimum deductibles for claims under the NFIP (section 100210)
- Threshold increases January 2013:
 - Exempting consumer credit and leases under Regulations Z and M will increase from \$51,800 to \$53,000
 - HOEPA fee trigger will increase from \$611 to \$625
 - HMDA and CRA thresholds yet to be announced

Updates and Reminders

- FinCEN issued guidance for filing SARs on third-party payment processors given the increase in certain criminal activity:
http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2012-A010.pdf
- Reminder: Unless a bill is passed and signed extending the unlimited deposit insurance for noninterest bearing transaction accounts under the Transaction Account Guarantee program, the program is set to expire on December 31, 2012
<http://www.fdic.gov/news/news/financial/2012/fil12045.html>

Hot Topics/Common Violations

Webcasts and Teleconferences:

■ FDIC

- Upcoming teleconference on December 18, 2012: Fair Lending: Go here to register: <https://fdicsurvey.inquisiteasp.com/fdic/cgi-bin/qwebcorporate.dll?idx=7Z9FF9>. Learn more about the teleconference here: <http://www.fdic.gov/news/news/financial/2012/fil12049.html?source=govdelivery#cont>
- December 3, 2012 teleconference on Flood: <http://fdic.gov/news/conferences/NY/2012-12-03.html> . The written transcript will be ready in a couple of weeks and you can find it here along with other past teleconference events: <http://fdic.gov/news/conferences/pastevents.html>

■ NCUA:

- Audio conferences on pressing credit union compliance issues <http://cuna.org/training-education/calendar.php?sortby=type&domain=allevents#Audio>

Hot Topics/Common Violations

Webcasts and Teleconferences (Continued):

- CFPB and Fed:

- SCRA recent webinar here: <http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2012/servicemember-financial-protection.cfm>
- Fed's December 4th webinar on Hot Topics 2012 in Review: <http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2012/hot-topics-year-in-review.cfm>

- FinCEN:

- FinCEN webinar on third-party payment processor risks on October 25th: http://www.fincen.gov/news_room/nr/pdf/20121022.pdf
- FinCEN's informational webinar on the new SAR and CTR forms: <http://www.fincen.gov/whatsnew/pdf/20120928.pdf> and <http://www.fincen.gov/whatsnew/pdf/20121005.pdf>

Hot Topics/Common Violations

- CFPB:

- Problems examiners discovered during its exams of nonbanks and banks with more than \$10 billion in assets from July 2011 through September 2012:

http://files.consumerfinance.gov/f/201210_cfpb_supervisor_y-highlights-fall-2012.pdf

- CFPB Warns About potentially misleading mortgage advertisements, particularly those targeting veterans and older consumers:

<http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-warns-companies-against-misleading-consumers-with-false-mortgage-advertisements/>

Hot Topics/Common Violations

- Federal Reserve:
 - 1st quarter 2012 newsletter article on most common violations in 2011: <http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/2012/first-quarter/view-from-the-field.cfm>:
- NCUA:
 - Released a public version of their supervision manual: <http://www.ncua.gov/News/Pages/NW20121102SuperPolManual.aspx>:
- FDIC:
 - The FDIC has revised the classification system for citing violations: <http://www.fdic.gov/news/news/financial/2012/fil12041.html?source=govdelivery>

Thank you!

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