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Inside

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RESPA Part Two: Changes to the HUD-1 Form

By Kenneth J. Benton, Senior Consumer Regulations Specialist, and Michael F. Bolos, Research Assistant, Federal Reserve Bank of Philadelphia

Congress enacted the Real Estate Settlement Procedures Act (RESPA) in 1974 "to ensure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country."[1] In November 2008, the United States Department of Housing and Urban Development (HUD) published a final rule[2] to amend Regulation X, RESPA's implementing regulation, to ensure more timely and effective disclosures of the settlement costs of residential mortgage loans.[3] The amendment significantly changed RESPA's two primary disclosure forms: the Good Faith Estimate (GFE) and the HUD-1 settlement statement. The changes were effective January 1, 2010.

HUD revised the HUD-1 disclosures to facilitate comparison between the GFE, which loan originators must provide to borrowers within three business days after application, and the HUD-1, which settlement agents must provide to borrowers at or before closing. To accomplish this objective, HUD-1's terminology was modified to conform to the GFE's terminology. Also, a final page was added to the HUD-1 that provides a summary of the loan terms and a Comparison Chart that displays the settlement charges from the GFE and the HUD-1 in a tabular format. The Comparison Chart allows the borrower to easily determine whether the estimate of settlement charges disclosed at application in the GFE exceed the actual charges disclosed on the HUD-1 at closing by more than the permitted tolerances.

This article is the second in a two-part series dealing with HUD's amendments to Regulation X. Part one, "RESPA Changes to the Good Faith Estimate Form," which was published in the Second Quarter 2010 issue of *Consumer Compliance Outlook*, reviewed two important changes to the GFE: (1) changed circumstances and (2) tolerance and cure.[4] Part two addresses

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[1] 12 U.S.C. §2601(a)
[2] 73 Fed. Reg. 68,203 (November 17, 2008)
[3] RESPA applies to all "federally related mortgage loans," as defined in 24 C.F.R. §3500.2(a). This definition covers almost all transactions involving mortgages securing loans on one- to four-family residential properties.
[4] http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/2010/second-quarter/respa-changes-to-good-faith-estimate-form.cfm

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Suggestions, comments, and requests for back issues are welcome in writing, by telephone (215-574-6500), or by e-mail (Outlook@phil.frb.org). Please address all correspondence to:

Kenneth Benton, Editor
Consumer Compliance Outlook
Federal Reserve Bank of Philadelphia
Ten Independence Mall
SRC 7th Floor NE
Philadelphia, PA 19106

Furnisher Requirements Under the FACT Act "Accuracy and Integrity" Implementing Regulations

By Kenneth J. Benton, Senior Consumer Regulations Specialist, and Michael F. Bolos, Research Assistant, Federal Reserve Bank of Philadelphia

The Senate Conference report for the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) noted that approximately 30,000 data furnishers report, on average, 2 billion updates to consumer credit reports every month.[1] Complaints about the accuracy of consumer reports consistently rank among the most common consumer complaints received by the Federal Trade Commission (FTC).[2] Because consumer reports have become an indispensable tool for lenders to use in evaluating consumer credit applications, the potential harm caused by such reporting errors can be significant for consumers.

To address this issue, §312 of the FACT Act directed the federal banking agencies, the National Credit Union Administration, and the FTC (the agencies) to jointly write regulations establishing guidelines for furnishers to ensure the accuracy and integrity of information they furnish to consumer reporting agencies (CRAs) and identifying the circumstances under which a consumer can file a direct dispute with a furnisher about the accuracy of information in a consumer report. In response, the agencies jointly issued regulations that became effective July 1, 2010.[3] The regulations require furnishers of information to CRAs to establish and implement reasonable written policies and procedures to ensure the accuracy and integrity of the information provided. The regulations also require furnishers to conduct a reasonable investigation of direct disputes filed by a consumer concerning information in the consumer's credit report relating to the consumer's account or other relationship with the furnisher. The goal of these new requirements is to ensure that accurate information is furnished to CRAs, thereby promoting fairness and efficiency in credit markets.[4]

ACCURACY AND INTEGRITY RULE: §222.42

Section 222.42 requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information furnished to CRAs. The agencies carefully defined accuracy and integrity. "Accuracy" means that the information provided by a furnisher correctly: (1) identifies the appropriate consumer; (2) reflects the terms of and liability for the account; and (3) reflects the consumer's performance with respect to the account.[5] "Integrity" means the information provided by a furnisher: (1) is substantiated by the furnisher's records;

[1] S.REP. 108-166, p. 6. The conference report is available at: http://www.glin.gov/download.action?fulltextId=97194&documentId=176079&glinID=176079.
[2] S. REP. 108-166. See, for example, "FTC Issues Report of 2009 Top Consumer Complaints," Federal Trade Commission (February 24, 2010); http://www.ftc.gov/opa/2010/02/2009fraud.shtm.
[3] Each agency codified the rules in its own regulations. The Federal Reserve Board codified the rules at 12 C.F.R. §§222.40-43.
[4] S.REP. 108-166, p.2
[5] §222.41(a)

(2) is in a form designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and (3) includes information in the furnisher's possession that the agency has determined would likely be materially misleading in evaluating a consumer's qualifications if absent.[6] The credit limit, if any, is the one item of information the agencies have determined would likely be materially misleading if omitted.[7]

The agencies placed particular emphasis on the duties of furnishers to report credit limits. A credit limit typically applies only to open-end credit products, such as a credit card or home equity line of credit. The agencies explained that a key factor in evaluating the creditworthiness of an individual is credit utilization, for which the credit limit is necessary to calculate.[8] Credit utilization measures the percentage of a credit line a consumer is currently using. For example, if a consumer has a credit card balance of $4,000 and the credit limit for the card is $10,000, the credit utilization rate is 40 percent. Credit scoring models treat high utilization rates as a negative factor and low utilization rates as a positive factor when computing a credit score.

Without the credit limit, credit evaluators must either ignore credit utilization data or resort to inferior proxies to estimate credit utilization, such as using the highest balance ever owed on the account as the credit limit.[9] These substitute measures frequently overestimate the consumer's credit utilization, potentially resulting in higher perceived credit risk, worse credit terms for the consumer, and lower credit scores. Requiring furnishers to disclose the credit limit eliminates the need to rely on substitute measures, allowing credit evaluators to gain a more accurate picture of the consumer's creditworthiness. The regulation contains an exception to the disclosure requirement when the credit limit is not in the furnisher's possession and when it is not applicable, such as when a credit product does not have a credit limit.[10]

The agencies included guidelines for designing and implementing policies and procedures in Appendix E of Regulation V, 12 C.F.R. §222.[11] Under §222.42(b), furnishers must consider the guidelines in developing policies and procedures and incorporate them as appropriate in light of the nature, size, complexity, and scope of the furnisher's activities.

DIRECT DISPUTES RULE: §222.43

Prior to the rule change, consumers who wanted to dispute information in their credit report had to request an investigation through a CRA, which, in turn, would ask the furnisher to investigate the issue. The final rule allows a consumer to dispute information in a consumer report directly with the furnisher of the disputed information and requires the furnisher to conduct a reasonable investigation if the dispute relates to: (1) the consumer's liability for a credit account or other debt with the furnisher; (2) the terms of a credit account or other debt with the furnisher; (3) the consumer's performance or other conduct concerning an account or other relationship with the furnisher; and (4) any other information contained in a consumer report for an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.[12] The direct dispute rule does not apply if the dispute relates to the consumer's identifying information, the identity of past or present employers, inquiries or requests for consumer report information derived from public records or provided to a CRA by another furnisher, requests for a consumer report, or information related to fraud alerts or active duty alerts.[13]

The final rule specifies that a furnisher is required to investigate the dispute only if the consumer has submitted the dispute notice to one of the following addresses: (1) an address the furnisher has provided and is listed on the consumer report; (2) an address the furnisher has clearly and conspicuously identified for submitting direct disputes; or (3) if no address is specified, any business address of the furnisher. The dispute notice must contain sufficient information to

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[6] §222.41(e)
[7] Appendix E, §I.(b)(2)(iii)
[8] 74 Fed. Reg. 31483, 31490 (July 1, 2009).
[9] 74 Fed. Reg. at 31490
[10] Appendix E, §I.(b)(2)(iii)
[11] Appendix E is available at: http://edocket.access.gpo.gov/cfr_2010/janqtr/12cfr222AppE.htm.
[12] §222.43(a)
[13] §222.43(b)(1)

Mortgage Disclosure Improvement Act (MDIA): Examples and Explanations

*By Micah Spector, Assistant Examiner, Federal Reserve Bank of Philadelphia**

Congress enacted the MDIA, which is implemented through Regulation Z, to ensure that consumers receive good faith estimates of Truth in Lending Act (TILA) disclosures at the beginning of the application process and to provide sufficient time for consumers to review the disclosures before consummation can take place.[1] The Third Quarter 2009 issue of *Outlook* contained an article titled "Mortgage Disclosure Improvement Act of 2008 – Amendments to Regulation Z" that addressed a series of questions that creditors have raised about this law since it became effective on July 30, 2009.[2] To further aid creditors in understanding the MDIA's timing requirements, this article illustrates these requirements for two hypothetical loans. The first example illustrates the MDIA's timing requirements when a creditor mails the disclosures, and the second example illustrates the requirements when the creditor delivers them in person.

Business days rather than calendar days are used for purposes of the MDIA's timing requirements. To understand those timing requirements, it is important to understand the two definitions of business days under §226.2(a)(6) of Regulation Z: the general definition, which is "days on which the creditor's offices are open to the public for carrying on 'substantially all' of its business functions"; and a more precise definition, which is "all calendar days except Sundays and specified legal holidays." Both definitions are relevant to the early disclosures required under the MDIA.

The MDIA contains four primary requirements subject to timing rules:

1. A creditor must mail or deliver good faith estimates of the TILA disclosures for all dwelling-secured mortgage loans subject to the Real Estate Settlement Procedures Act no later than three business days (general definition) after the day on which the creditor receives a consumer's application.[3]

2. A creditor may not impose a fee (other than for obtaining a consumer's credit history) before the consumer receives the early disclosures. If a creditor places early disclosures in the mail, the consumer is deemed to receive them three business days (precise definition) after they are mailed, and the creditor may impose the fee after the end of the third business day. The creditor need not rely on this presumption if the consumer actually received the disclosures earlier.[4]

3. A creditor must deliver the early disclosures or place them in the mail no later than the seventh business day (precise definition) before consummation. The seven business days run from the date the early disclosures are mailed or delivered in person.[5]

4. A creditor must issue revised disclosures if the annual percentage rate (APR) in the initial disclosures becomes inaccurate, as determined under §226.22.[6] Consummation may not occur until the third business day (precise definition) after the consumer receives the corrected disclosures. If a creditor places corrected disclosures in the mail, the consumer is deemed to receive them on the third business day (precise definition) after they are mailed.[7]

EXAMPLE 1 –TIMING REQUIREMENTS FOR MAILED DISCLOSURES

The following example illustrates the rules when TILA early disclosures are mailed and the creditor uses the presumption of receipt. In this particular example, the creditor's offices are open Monday through Friday

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* Thanks to Jeff Paul and Bill Beall of the Federal Reserve Bank of Atlanta, who developed a MDIA learning tool that was used extensively in preparing this article.

[1] The MDIA applies to closed-end loans secured by a consumer's dwelling, other than a home equity line of credit or timeshare plan.

[2] http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/2009/third-quarter/q3_03.cfm

[3] §226.19(a)(1)(i)

[4] §226.19(a)(1)(ii)

[5] §226.19(a)(2)(i)

[6] §226.19(a)(2)

and closed on Saturdays and Sundays. The application was received by the creditor on Tuesday, December 1.

Timing for Delivering Application Disclosures

Because the creditor received the application on December 1, it had three business days (general definition) to mail or deliver the early disclosures. In this hypothetical, the early disclosures must be mailed on or before Friday, December 4.

Suppose the facts change, and the application was not received until Wednesday, December 2. In this case, the last day to mail or deliver the early disclosures is Monday, December 7, because the bank is closed on Saturdays, and under the general definition, only days the creditor is open to the public for substantially all of its business functions are counted. Business day 3 is Monday, December 7.

Timing for Assessing Fees

When disclosures are mailed, the creditor cannot begin charging fees (except a fee to obtain the consumer's credit history, provided it is bona fide and reasonable) until the consumer receives the early disclosures. The creditor may, but need not, rely on the presumption that the consumer receives the early disclosures on the third business day after the mailing date. In our hypothetical, the early disclosures are mailed on December 4. So if the creditor uses the presumption of receipt, the consumer is deemed to have received the early disclosures three business days later (precise definition), which is Tuesday, December 8. Even though the bank is closed on Saturday, that day still counts as a business day under the precise definition of business days. Sunday never counts as a business day under the precise definition. Therefore, if the creditor relies on the presumption of receipt, fees cannot be assessed until after the end of the third business day, pushing the actual date fees can be collected to Wednesday, December 9.

Timing for Consummation

Under §226.19(a)(2), consummation cannot occur earlier than the seventh business day (precise definition) after the early disclosures are mailed. For purposes of the earliest consummation date, the seven-business-day clock begins to run from the date the early disclosures are mailed *or* delivered in person. In this example, the early disclosures were mailed on Friday, December 4, and the earliest date of consummation is seven business days after December 4, which is Saturday, December 12. However, the bank is not open on Saturday, so the earliest date of consummation is Monday, December 14. The only day not counted as a business day is Sunday, December 6, because Sunday never counts as a business day under the precise definition.

Timing for Revised Disclosures

In this example, suppose the revised disclosures were mailed on Friday, December 11. If corrected disclosures are mailed and the creditor uses the presumption of receipt, the date of receipt is presumed to be the third business day (precise definition) after Friday, December 11, which is Tuesday, December 15, and the earliest date of consummation would be the third business day (precise definition) after receipt, which is Friday, December 18.

If revised disclosures were required because of an inaccurate APR, but the consumer wanted to keep the consummation date of December 12, the consumer must receive the revised disclosures by Wednesday, December 9, which is three business days (precise definition) before the consummation date of December 12.

EXAMPLE 2 —TIMING REQUIREMENTS FOR DELIVERED DISCLOSURES

This example illustrates the timing requirements when early disclosures are delivered in person. The creditor is open on Saturdays and is closed on Sundays, even though a drive-up window is open for teller transactions but is not open for substantially all of the bank's business functions. The loan application was received on Thursday, November 19. The creditor delivers a revised disclosure on November 28. The hypothetical also involves the legal holiday of Thanksgiving, Thursday, November 26.

Timing for Delivering Application Disclosures

The creditor has three business days after receiving the loan application on November 19 to deliver the early disclosures, which must be mailed or delivered on or before November 23. The early disclosures were delivered in person on Monday, November 23. The general definition of business days includes Saturdays in this instance because the creditor is open on Saturdays. On Sundays, the creditor is closed except for limited business functions through drive-up windows,

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RULEMAKINGS AFFECTING RESIDENTIAL MORTGAGE LOANS

On August 16, 2010, the Board of Governors of the Federal Reserve System (Board) announced five rulemakings (proposed, interim, and final rules) affecting residential mortgage loans. The rulemakings are summarized below.

Board proposes enhanced consumer protections and disclosures for home mortgage transactions, including reverse mortgages.
The proposal would:

- Improve the disclosures consumers receive for reverse mortgages and impose rules for reverse mortgage advertising to ensure that advertisements contain accurate and balanced information;
- Prohibit creditors from conditioning a reverse mortgage on the consumer's purchase of another financial or insurance product;
- Require a consumer to receive counseling about reverse mortgages before a creditor can impose nonrefundable fees for a reverse mortgage or close the loan;
- Improve the disclosures that explain a consumer's right to rescind certain mortgage transactions and clarify the responsibilities of the creditor if a consumer exercises the right;
- Ensure that consumers receive new disclosures when the parties agree to modify the key terms of an existing closed-end mortgage loan;
- Ensure that for all mortgage loans, consumers have time to review their loan cost disclosures before they become obligated for fees, by requiring lenders to refund the fees if the consumer decides to withdraw the application within three days after they receive the disclosures; and
- Clarify that when a consumer requests information from his or her loan servicer about the owner of the loan, the servicer must provide the information within a reasonable time, which generally would be 10 business days.

Comments are due by December 23, 2010. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/ 20100816e.htm.

Board announces final rule to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices.
The final rule applies to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders. Under the final rule, which is effective April 1, 2011, a loan originator may not receive compensation based on the interest rate or other loan terms. This will prevent loan originators from increasing their own compensation by raising the consumers' loan costs, such as by increasing the interest rate or points. Loan originators can continue to receive compensation that is based on a percentage of the loan amount. The final rule also prohibits a loan originator that receives compensation directly from the consumer from also receiving compensation from the lender or another party. Additionally, the final rule prohibits loan originators from directing or "steering" a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the originator's compensation. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100816d.htm.

Board announces final rule regarding consumer notification of mortgage loan sales or transfers.
The Board announced a final rule to implement a statutory amendment to the Truth in Lending Act requiring that consumers receive notice when their mortgage loan has been sold or transferred. The new disclosure requirement became effective in May 2009, upon enactment of the Helping Families Save Their Homes Act. Under the act, a purchaser or assignee that acquires a mortgage loan must provide the required disclosures in writing within 30 days. The Board published interim rules in November 2009 that were effective immediately. To allow covered parties time to make any necessary operational changes, they may

continue to follow the November 2009 interim rules until the mandatory compliance date for the final rules, which is January 1, 2011. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100816c.htm.

Board issues interim rule revising disclosure requirements for closed-end mortgages.
The interim rule under Regulation Z implements provisions of the Mortgage Disclosure Improvement Act (MDIA) that require lenders to disclose how borrowers' regular mortgage payments can change over time. The MDIA, which amended the Truth in Lending Act, seeks to ensure that mortgage borrowers are alerted to the risks of payment increases before they take out mortgage loans with variable rates or payments. Accordingly, under the interim rule, lenders' cost disclosures must include a payment summary in the form of a table, stating the following:

- The initial interest rate together with the corresponding monthly payment;
- For adjustable-rate or step-rate loans, the maximum interest rate and payment that can occur during the first five years and a "worst case" example showing the maximum rate and payment possible over the life of the loan; and
- The fact that consumers might not be able to avoid increased payments by refinancing their loans.

The interim rule also requires lenders to disclose certain features, such as balloon payments, or options to make only minimum payments that will cause loan amounts to increase. All of the disclosures required in the interim rule were developed through several rounds of qualitative consumer testing, including one-on-one interviews with consumers around the country.

Lenders must comply with the interim rule for applications they receive on or after January 30, 2011. Lenders have the option, however, of providing disclosures that comply with the interim rule before that date. The Board is also soliciting comment on the interim rule. Comments are due by November 23, 2010. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100816b.htm.

Board proposes to revise escrow account requirements for jumbo mortgages.
The proposed rule, which implements a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), would increase the annual percentage rate (APR) threshold used to determine whether a mortgage lender is required to establish an escrow account for property taxes and insurance for first-lien jumbo mortgage loans. Jumbo loans are loans exceeding the conforming loan-size limit for purchase by Freddie Mac. In July 2008, the Board issued final rules requiring creditors to establish escrow accounts for first-lien loans if a loan's APR is 1.5 percentage points or more above the applicable prime offer rate. Under the Dodd-Frank Act, which amended the Truth in Lending Act, the escrow requirement will apply to jumbo loans only if the loan's APR is 2.5 percentage points or more above the applicable prime offer rate. The APR threshold for nonjumbo loans remains unchanged. This proposal would implement only the Dodd-Frank Act's change to the APR threshold. Other provisions of the Dodd-Frank Act concerning escrow accounts will be implemented in a separate rulemaking. The proposed change would not affect the APR threshold used to determine whether a jumbo loan is subject to the other consumer protections that the Board adopted for higher-priced loans in 2008. The Board is soliciting comment on the proposed rule, including the appropriate implementation date. Comments are due by October 25, 2010. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100816a.htm.

The Board of Governors of the Federal Reserve System (Board) announces interim final rule to implement recent amendment to the CARD Act delaying effective date for certain gift cards. On August 11, 2010, the Board announced an interim final rule under Regulation E to implement a recent amendment to the Credit Card Accountability Responsibility and Disclosure Act (CARD Act) that delays the effective date for certain disclosure requirements for gift cards. Under the interim rule, certain disclosure and other requirements for gift certificates, store gift cards, and general-use prepaid cards issued before April 1, 2010 are delayed until January 31, 2011. However, to take advantage of the delayed effective date for cards issued before April 1, 2010, the issuer must: (1) comply with the CARD Act's substantive restrictions on gift card fees; (2) not impose an expiration date for funds underlying the gift card or certificate; (3) issue a replacement card to the consumer on request at no additional charge; and (4) make alternative disclosures available to the consumer through in-store signage, messages during customer service calls, websites, and general advertising. The purpose of the amendment is to permit the sale of existing, noncompliant gift card stock through January 31, 2011. Comments on the interim final rule were due by September 16, 2010. The Board's announcement and *Federal Register* notice are available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100811a.htm.

Board adjusts fee-based trigger for high-cost loans to $592. On July 30, 2010, the Board announced its annual adjustment to the dollar amount of fees that trigger additional disclosure requirements and restrictions under Regulation Z and the Home Ownership and Equity Protection Act for certain "high-cost" home mortgage loans. The dollar amount of the fee-based trigger has been adjusted to $592, effective January 1, 2011. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100730a.htm.

The U.S. Department of Housing and Urban Development (HUD) releases 2009 annual report on state of fair housing in America. On July 23, 2010, HUD announced the publication of its 2009 annual report on the state of fair housing in America. HUD is required to produce this report for Congress under the Fair Housing Act and the Housing and Community Development Act of 1987. The highlights of the report regarding enforcement activities include:

- HUD and other agencies that enforce fair housing laws received 10,242 complaints alleging a violation of the Fair Housing Act. This was the fourth consecutive year that the number of housing discrimination complaints exceeded 10,000.
- The most common basis of complaints was disability, and the second most common was race, followed by familial status.
- The most common issue in complaints was discrimination in the terms or conditions of the sale or rental of property. The second most common issue was refusal to rent, followed by failure to make a reasonable accommodation to allow a person with a disability an equal opportunity to use and enjoy a dwelling.
- HUD and other agencies obtained more than $8 million in monetary relief as a result of their enforcement efforts.

The report is available on HUD's website at: http://www.hud.gov/content/releases/fy2009annual-rpt.pdf.

Federal agencies issue final rules to implement S.A.F.E. Act requirements for registration of mortgage loan originators. On July 28, 2010, the Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, the Farm Credit Administration, and the National Credit Union Administration (agencies) issued a final rule requiring residential mortgage loan originators who are employees of national and state banks, savings associations, Farm Credit System institutions, credit unions, and certain of their subsidiaries to meet the registration requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). Under the S.A.F.E. Act, residential mortgage loan originators must register with the Nationwide Mortgage Licensing System and Registry created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The final rules take effect on October 1, 2010. The agencies anticipate that the registry could begin accepting registrations as early as January 28, 2011. Employees of agency-regulated institutions must not register until the agencies instruct them to do so. The agencies will provide an advance announcement of the date the registry will begin accepting federal registrations, and agency-regulated institutions and their applicable employees will have 180 days from that date to comply with the initial registration requirements. The Board's announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100728a.htm.

HUD publishes interpretive rule regarding home warranty companies. On June 25, 2010, HUD published an interpretive rule clarifying circumstances under which home warranty companies (HWC) may compensate real estate brokers and agents in compliance with §8 of the Real Estate Settlement Procedures Act (RESPA). Home warranties fall under RESPA's definition of "settlement services" and are therefore subject to RESPA's ban on kickbacks and referral fees if the home warranty service is part of a federally related mortgage loan transaction. The interpretive rule clarifies that marketing of an HWC by a real estate broker or agent to sell a home warranty to particular homebuyers or sellers constitutes a referral to a settlement service provider and is not compensable. The interpretive rule also applies a RESPA analysis to determine whether services performed by a broker or agent in connection with an HWC are compensable: An HWC can compensate a broker or agent for any nonnominal, necessary services actually performed, provided the compensation is reasonably related to the services. HUD provides some examples of compensable services to clarify the rule. The *Federal Register* notice for the interpretive rule is available at: http://edocket.access.gpo.gov/2010/pdf/2010-15355.pdf.

Banking agencies publish host state loan-to-deposit ratios. On June 24, 2010, the Board, the FDIC, and the OCC made public the updated host state loan-to-deposit ratios that the agencies use for verifying compliance with §109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 during a bank's Community Reinvestment Act examination. Section 109 prohibits a bank from establishing or acquiring a branch outside its home state when the primary purpose is to acquire deposits. A bank complies with §109 if the loan-to-deposit ratio in its home state is at least one-half the loan-to-deposit ratio of the host state where it plans to establish or acquire a branch. If the home state ratio is less than one-half the host state ratio, a second test is conducted to determine whether the bank is reasonably meeting the credit needs of the communities of the interstate branches. If the bank fails the second test, it violates §109 and can be sanctioned by its regulator. The agencies' announcement is available at http://www.federalreserve.gov/newsevents/press/bcreg/20100624a.htm.

HUD is investigating mortgage lenders for discrimination against expectant mothers and new parents. On July 21, 2010, HUD announced that it is investigating certain mortgage lenders who may be denying mortgage loans to expectant mothers. HUD enforces the Fair Housing Act, 42 U.S.C. §3601 et seq, which prohibits discrimination in housing based on sex, familial status (pregnancy or children in the family), or disability. HUD began the investigation in response to a report in the *New York Times* that some lenders were tightening their lending standards as a result of new quality control procedures instituted by Freddie Mac and Fannie Mae, and that pregnant mothers may be denied loans under the new procedures because their income is reduced or eliminated during pregnancy and maternity leave. (Tara Siegel Bernard, "Need a Mortgage? Don't Get Pregnant," *New York Times*, July 19, 2010). For example, Fannie Mae requires lenders to verify a borrower's finances a second time right before closing. Some lenders determine during the second verification that a borrower is on short-term disability because of maternity leave and deny the loan because Fannie Mae and Freddie Mac require that a borrower's income support the loan for at least three years. HUD's announcement is available at: http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10-158.

On the Docket: Recent Federal Court Opinions*

REGULATION Z - TRUTH IN LENDING ACT (TILA)

Court rules on "clear and conspicuous" standard for credit card solicitation disclosures. *Rubio v. Capital One Bank*, 613 F.3d 1195 (9th Cir. 2010). The Ninth Circuit held that a credit card issuer violated TILA's "clear and conspicuous" requirement because its solicitation for a credit card with a "fixed rate of 6.99%" did not conspicuously disclose when the annual percentage rate (APR) could change. The plaintiff received a credit card solicitation from Capital One that disclosed in the Schumer Box (a tabular format required by TILA for certain disclosures) a "fixed rate of 6.99%" for purchases and balance transfers and named three conditions under which a rate increase could occur. The APR was later increased to 15.9 percent even though none of the triggering conditions occurred. The solicitation disclosed outside the Schumer Box, under the heading "Terms of Offer," the right to change the agreement's terms, including the periodic rates. The plaintiff's class-action lawsuit alleged violations of TILA and state law. The court concluded that describing an APR as "fixed" was not clear and conspicuous when the APR could be changed for any reason and when the disclosure implied it could be increased only in three circumstances. The court noted that a disclosure cannot be clear and conspicuous if reasonable consumers can interpret an ambiguous disclosure in more than one way. Capital One argued that the term "fixed" meant the rate was nonvariable, not that it could not change. The court rejected this argument, citing the Federal Reserve's consumer testing of credit card disclosures, which found that consumers understood "fixed" to mean a rate that could not change. The court reversed the trial court's dismissal of the case and remanded it for further proceedings. Recent amendments to Regulation Z restrict a creditor's ability to refer to an APR as "fixed" in credit card disclosures and advertisements for open-end credit plans. See §226.5(a)(2)(iii) and §226.16(f).

Court rules on cardholder's liability for unauthorized card use. *Azur v. Chase Bank, USA, N.A.*, 601 F.3d 212 (3d Cir. 2010). The Third Circuit held that §1643 of TILA, which limits a cardholder's liability for unauthorized use of a credit card, does not provide the cardholder with the right to be reimbursed for payments already made for unauthorized transactions. The plaintiff hired a personal assistant to assist in managing his credit card with Chase. The assistant used the card to make daily unauthorized cash advances for seven years totaling over $1 million. The unauthorized charges appeared on at least 65 monthly billing statements and occasionally triggered Chase's fraud alerts. After discovering the assistant's fraud, the plaintiff sought reimbursement from Chase for the payments he made to the extent that they included unauthorized transactions and removal of adverse credit reports filed by Chase. The Third Circuit affirmed the district court's dismissal of the case, finding that the language in §1643 limits a cardholder's legal liability for unauthorized transactions but does not provide a right to be reimbursed once payment is made for those transactions. Additionally, the Third Circuit found that the plaintiff had vested the assistant with the apparent authority to use the card by allowing the continuous payment of fraudulent transactions over a period of time, thus barring the plaintiff's claims under §§1643 and 1666 of TILA.

Fair Credit Billing Act (FCBA) does not apply to nonobligor cardholder. *Edwards v. Wells Fargo and Co.*, 606 F.3d 555 (9th Cir. 2010). The Ninth Circuit held that a credit card issuer is not obligated to respond to billing disputes filed by a nonobligor authorized card user because the protections of the FCBA apply only to the obligors. Wells Fargo issued a credit card to two brothers who were the obligors for charges on the account. They later added the plaintiff to the account as a nonobligor authorized user. The plaintiff disputed several merchants' charges on the card with Wells Fargo, but Wells Fargo did not respond because the plaintiff was not an obligor on the account. The plaintiff sued Wells Fargo for failing to investigate and resolve the disputes. The court noted that the FCBA imposes a duty on creditors to respond to billing disputes filed by an obligor on an account and that §226.13 of Regulation Z imposes a duty to investigate disputes filed by a "consumer," which the regulation defines as a "cardholder or natural person to whom consumer credit is offered or extended." The court found that the plaintiff was neither an obligor under the FCBA nor a consumer under §226.13 and therefore affirmed the dismissal of the case.

Court rejects rescission request because of technical errors in TILA disclosures. *Larrabee v. Bank of America, N.A.*, 2010 WL 2089260 (E.D.Va. 2010). A federal district court rejected a rescission request for a refinanced mortgage because of errors in the rescission notice and disclosure statement. The plaintiff argued that the lender provided an incorrect rescission notice because it was labeled "Different Lender" when the same lender refinanced the loan. The borrower relied on *Handy v. Anchor Mort. Corp.*, 464 F.3d 760 (7th Cir. 2006) to argue that the right of rescission is extended to three years if a creditor uses the wrong rescission notice form. The court determined that the borrower received the appropriate rescission notice because the loan was with a new creditor. But even if the lender had provided the incorrect form, the court was persuaded by the First Circuit's decision in *Santos-Rodriquez v. Doral Mortgage Corp.*, 485 F.3d 12, 16 (1st Cir. 2007), which held that the use of the wrong rescission form does not trigger rescission if the notice used clearly and conspicuously apprises a borrower of the right to rescind. The court found that the borrower's notice satisfied this standard and rejected this claim. The borrower also argued that under *Hamm v. Ameriquest Mortgage Co.*, 506 F.3d 525 (7th Cir. 2007), the rescission period was extended to three years because the disclosure statement failed to state that payments were due in monthly intervals. Comment 226.18(g)-4 of the Regulation Z Official Staff Commentary requires creditors to specify the payment interval (such as monthly) in the disclosure statement. The court evaluated the adequacy of the creditor's disclosure statement under an objectively reasonable standard and determined that the plaintiff's interpretation that nearly all of the loan's 360 payments were due 45 days after loan closing because the monthly interval was not disclosed was "objectively unreasonable" and dismissed this claim.

FAIR CREDIT REPORTING ACT (FCRA)

First Circuit affirms dismissal of lawsuit against furnishers of credit information. *Chiang v. Verizon New England Inc.*, 595 F.3d 26 (1st Cir. 2010). The plaintiff had billing disputes with Verizon, his telecommunications company, and stopped paying his bills. Verizon referred the debt to a collection agency and notified the consumer reporting agencies (CRAs). The plaintiff disputed the debt with the CRAs, which contacted Verizon to verify the debt. The plaintiff's lawsuit alleged that Verizon failed to conduct an adequate investigation of the information it furnished after it received a dispute notice from the CRAs. Section 1681s-2(b)(1) of the FCRA requires furnishers to properly investigate a consumer's dispute filed with the CRAs about the accuracy of information provided by the furnisher to the CRAs. The court first held that the FCRA allows a private right of action against a furnisher for violating its investigation duties under §1681s-2(b)(1). For such a claim to succeed, the court imposed two requirements: 1) the plaintiff must establish that the furnisher acted unreasonably in its investigation of disputed information, i.e., that it failed to correct incomplete or inaccurate factual information; and 2) that a reasonable investigation would have uncovered inaccurate information. The court held that the plaintiff failed to submit any evidence establishing that Verizon's investigation was unreasonable and failed to prove that if Verizon had conducted a reasonable investigation, it would have discovered factual inaccuracies. The First Circuit therefore affirmed the lower court's dismissal of the case.

* Links to the court opinions are available in the online version of *Outlook* at: http://www.consumercomplianceoutlook.org.

RESPA Part Two: Changes to the HUD-1 Form

three important facets of the HUD-1: (1) determining when to use the HUD-1/1A; (2) disclosing charges paid outside of closing (P.O.C.); and (3) curing tolerance violations.

DETERMINING WHEN TO USE THE HUD-1/1A

RESPA directed HUD to develop a standard form to disclose settlement costs, and HUD responded with the HUD-1 and HUD-1A forms. The HUD-1 is the standard three-page form settlement agents must use for all federally related mortgage loans involving a borrower and a seller.[5] The HUD-1A is a two-page optional form that "may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property."[6] However, the regulation also permits such one-party transactions to be recorded by completing the borrower's side of the HUD-1.[7] Given the overlap between the HUD-1 and HUD-1A, Regulation X often references the two forms as a single form, the HUD-1/1A.

The HUD-1/1A must be used for every RESPA-covered transaction unless specifically exempted.[8] The only specific exemption is in §3500.8(a) for an open-end home equity line of credit covered by the Truth in Lending Act and Regulation Z. Although the HUD-1/1A is not required for certain transactions, HUD specifically states in its Instructions for Completing HUD–1 and HUD–1A Settlement Statements (HUD-1 Instructions) that it does not object "to the use of the HUD–1 in transactions in which its use is not legally required."[9] The instructions even encourage the use of the HUD-1A for open-end lines of credit transactions. It is important to note that using the HUD-1/1A in a transaction otherwise not covered by RESPA "does not subject a transaction to coverage under RESPA."[10]

DISCLOSING CHARGES PAID OUTSIDE OF CLOSING

Any settlement charges paid before or after closing are considered "paid outside of closing" (P.O.C.) and are disclosed on the HUD-1 differently from settlement charges paid at closing. Settlement charges paid at closing are listed on the appropriate line of the HUD-1 and included in the Borrower's and Seller's columns. While P.O.C. charges are still disclosed on the appropriate line of the HUD-1, they are labeled P.O.C. and recorded outside of the Borrower's and Seller's columns.[11]

To properly record a P.O.C. charge, the settlement agent must identify the amount of the payment and who made it.[12] For example, suppose appraisal services cost $500, but the borrower is paying $300 with earnest money. In Line 804, the settlement agent records the $300 paid outside of closing outside of the columns as "Appraisal Company P.O.C. $300 (borrower)" and places the remaining balance ($200) inside the Borrower's column. (See Figure 1.[13]) When computing the "Total Settlement Charges" on line 1400, only the amount listed in the columns on Line 804 — not the P.O.C. amount listed outside the columns on Line 804 — should be included in the total.

For the Comparison Chart on the last page of the HUD-1, the settlement agent recombines the amount identified as P.O.C. by the borrower ($300) and the amount in the Borrower's column ($200) to obtain the correct value for the Comparison Chart ($500), as shown in Figure 2.[14]

HUD's changes to Regulation X were driven, in large part, by HUD's goal of improving the disclosure of yield spread premiums (YSPs) "to help borrowers understand how YSPs can affect borrowers' settlement

[5] 24 C.F.R. §3500.8(a)
[6] HUD-1A Instructions
[7] 24 C.F.R. §3500.8(a)
[8] 24 C.F.R. §3500.8
[9] The HUD-1 instructions are available at: http://edocket.access.gpo.gov/cfr_2010/aprqtr/pdf/24cfr3500AppA.pdf.
[10] New RESPA Rule FAQs (FAQs) (April 2, 2010), p. 44, Q.2
[11] Regulation X does not directly address P.O.C. charges. Instead, §3500.8(a) requires that settlement agents complete the HUD-1/1A in accordance with the instructions in Appendix A of the regulation. This appendix addresses P.O.C. charges.
[12] HUD-1 Instructions
[13] RESPA FAQs, p. 59
[14] RESPA FAQs, p. 59
[15] 73 Fed. Reg., p. 68,204

Figure 1. Items Payable in Connection with Loan, HUD-1 (page 2)

800. Items Payable in Connection with Loan				
801. Our origination charge	$	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen	$	(from GFE #2)		
803. Your adjusted origination charges		(from GFE #A)		
804. Appraisal fee to Appraisal Company P.O.C. $300 (borrower)		(from GFE #3)	$200.00	
805. Credit report to		(from GFE #3)		
806. Tax service to		(from GFE #3)		
807. Flood certification to		(from GFE #3)		
808.				

Figure 2. Comparison Chart, HUD-1 (page 3)

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
Appraisal fee	# 804	$500.00	$500.00
	#		
	#		

charges."[15] HUD's main concern was that YSPs were often used for the originator's benefit rather than to help the consumer offset origination and settlement costs. To more clearly identify YSPs and other indirect payments from the lender to the mortgage broker, the FAQs state that such payments should not be recorded as P.O.C.[16] Instead, these payments must be disclosed on Line 802 as a credit to the borrower and recorded outside of the Borrower's column.[17] If the borrower pays a portion of the origination charge before settlement, an offsetting credit is disclosed on Lines 204 – 209 of the HUD-1.[18]

CURING TOLERANCE VIOLATIONS

Once the Comparison Chart is completed, the lender and settlement agent will check for tolerance violations. The tolerances create limits on the extent to which the actual settlement charges can exceed the amounts disclosed on the GFE.[19] The RESPA final rule establishes three categories of settlement charges, with different tolerances for each category. A chart identifying the charges contained in each category can be found on the last page of the GFE. The three tolerance categories are:

- Charges That Cannot Increase: The origination charge, credit charge, adjusted origination charges, and transfer taxes have a zero tolerance.
- Charges That in Total Cannot Increase More Than 10 Percent: The government recording charges, title services, lender's title insurance, owner's title insurance, and any other required services that are provided by a company identified by the loan originator cannot increase by more than 10 percent in the aggregate. Any individual charge may exceed 10 percent so long as the sum of the charges remains below the 10 percent threshold.[20] Only service providers identified by the loan originator are required to be included in this category.[21] A loan originator might identify a service provider either orally or in writing. However, if the consumer purchases required services from a provider not identified by the loan originator, these settlement costs would fall under the "charges that can increase" category.
- Charges That Can Increase: The initial escrow deposit, daily interest charges, homeowner's insurance, and any required services consumers purchase from providers not identified by the loan originator have no tolerance restrictions.

[16] RESPA FAQs, pp. 31, 49
[17] The FAQs provide additional guidance on this issue in questions 4 and 5 on p. 49.
[18] RESPA FAQs, p. 49
[19] 24 C.F.R. §3500.7(e)
[20] RESPA FAQs, p. 58.
[21] 24 C.F.R. §3500.7(e)(2)(ii)

If a charge exceeds the permitted tolerances, §3500.7(i) provides that the loan originator has 30 calendar days from the date of settlement to "cure" the violation by reimbursing the borrower the amount by which the tolerance was exceeded. Because of this 30-day window to cure a violation, the settlement agent does not have to stop a closing solely because of a tolerance violation.[22]

Curing a tolerance violation involves: (1) reimbursing the borrower and (2) revising the HUD-1. It is the loan originator's responsibility to reimburse the borrower the amount by which the actual settlement charges exceed the permitted tolerances.[23] Although the loan originator is responsible for reimbursement, the loan originator may authorize a third party (including the settlement agent) to send the reimbursement to the borrower.[24] Even if a seller or person other than the borrower pays for a settlement service, the loan originator or a third party authorized by the loan originator must reimburse the borrower for any tolerance violation that might have occurred.[25] Under §3500.7(i), a borrower will be deemed to have received timely reimbursement if the payment is delivered or placed in the mail within 30 days after settlement.

Whenever a tolerance violation is cured, an amended HUD-1 must be issued. It is the loan originator's responsibility to notify the settlement agent of the changes necessary to correct the HUD-1.[26] The amended HUD-1 must state the actual charges paid by the borrower and seller. One way to disclose a violation cure is to correct the amounts listed on page two of the HUD-1 to reflect the actual amount charged to the borrower (i.e., the amount from the initial HUD-1 less the reimbursement).[27] On a blank line in the applicable section, the settlement agent should make a notation that the loan originator has made a P.O.C. payment of a specified amount to correct a tolerance violation.[28] Figure 3 illustrates how to record a cure of $200 of transfer tax charges.[29] Line 1203, which would have listed $1,000 on the original HUD-1, has been reduced to $800 and the $200 has been listed as P.O.C. on Line 1206.

Another way to disclose a cure for a tolerance violation is to list the cure as a credit to the borrower on page 1 of the HUD-1 along with a description of the service to which the credit was applied. The next example from the FAQs involves a cure of $180 for a violation of the 10 percent tolerance category.[30] Since the 10 percent tolerance category is an aggregate measure, the cure can be listed as a lump sum amount (see Figure 4).

After the necessary changes have been made, the settlement agent must provide copies of the corrected HUD-1 to the borrower, seller, and loan originator, as appropriate. The settlement agent may mark the amended HUD-1 as "Amended" to distinguish it from the original HUD-1.[31]

CONCLUSION

HUD revised its regulations to ensure more timely and effective disclosures of mortgage settlement costs for federally related residential mortgage loans. The new regulations altered the terminology in the HUD-1 to

Figure 3. Government Recording and Transfer Charges, HUD-1 (page 2)

1200. Government Recording and Transfer Charges			
1201. Government recording charges	(from GFE #7)		
1202. Deed $ Mortgage $ Release $			
1203. Transfer taxes	(from GFE #8)	$800.00	
1204. City/County tax/stamps Deed $ Mortgage $			
1205. State tax/stamps Deed $ Mortgage $			
1206. Transfer taxes $200 P.O.C. (lender) to meet tolerance			

[22] RESPA FAQs, p. 41
[23] RESPA FAQs, p. 41
[24] RESPA FAQs, p. 41
[25] RESPA FAQs, p. 43
[26] RESPA FAQs, p. 42.
[27] RESPA FAQs, p. 42
[28] RESPA FAQs, p. 42
[29] RESPA FAQs, p. 42.
[30] RESPA FAQs, p. 43
[31] RESPA FAQs, p. 43

Figure 4. Amount Paid by or in Behalf of Borrower, HUD-1 (page 1)

200. Amount Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204. Cure for "10% Tolerance Category"	$180.00

better match the GFE and added a third page to the HUD-1 to clearly indicate important loan terms and show differences between settlement charges disclosed on the GFE at application and the final charges disclosed on the HUD-1 at closing.

Part one of this series, published in the Second Quarter2010 issue of *Outlook*, discussed important changes to the GFE and began the discussion on tolerances. This article addressed changes in the HUD-1/1A and built on the tolerance discussion, demonstrating how to calculate tolerances and cure tolerance violations. Specific issues and questions should be raised with the consumer compliance contact at your Reserve Bank or with your primary regulator.

CONTINUED FROM PAGE 3...

FURNISHER REQUIREMENTS UNDER THE FACT ACT

identify the account in dispute, the specific information being disputed, an explanation of the basis for the dispute, and all supporting documentation reasonably required by the furnisher to substantiate the basis of the dispute.

After receiving the dispute notice, the furnisher must determine whether to initiate an investigation or dismiss the dispute as frivolous or irrelevant. A dispute is frivolous or irrelevant if the dispute notice (1) does not contain sufficient information to investigate the dispute, (2) raises a dispute about information exempted from the rule, or (3) raises a dispute that is substantially the same as a dispute previously submitted by the consumer and resolved in accordance with the regulations. If the dispute is found to be frivolous or irrelevant, the furnisher has five business days to mail the consumer a notice of determination. The notice of determination must include the reasons for the determination and any information required to investigate the disputed information.

If the furnisher does not find the dispute frivolous or irrelevant, the furnisher must review all relevant information provided by the consumer in the dispute notice and conduct a reasonable investigation. The furnisher has 30 days from receipt of the dispute notice (with the possibility for a 15-day extension under certain circumstances) to complete the investigation and report the results to the consumer.[14] If the furnisher finds the information reported was inaccurate, the furnisher must promptly notify each CRA to which it provided the inaccurate information of the determination and provide the changes necessary to make the information accurate.[15]

CONCLUSION

The agencies' FACT Act implementing regulations require furnishers to develop reasonable written policies and procedures regarding the accuracy and integrity of the consumer information they furnish to CRAs and to investigate direct disputes filed by consumers about information in a consumer report regarding a consumer's account or other relationship with the furnisher. Furnishers should carefully review the regulations' requirements and the guidelines in Appendix E to ensure that their policies and procedures are in compliance. Specific issues and questions should be raised with the consumer compliance contact at your Reserve Bank or with your primary regulator.

[14] §222.43(e)(3)
[15] §222.43(e)(4)

CONTINUED FROM PAGE 5...

Mortgage Disclosure Improvement Act (MDIA): Examples and Explanations

which does not satisfy the requirement that a creditor be open for substantially all of its business functions. So Sunday is not counted.

Timing for Assessing Fees

Because the early disclosures are delivered in person on Monday, November 23, the creditor can impose fees on that date after the early disclosures are received.[8]

Timing for Consummation

The earliest date for consummation is seven business days (precise definition) after the early disclosures are delivered. Because the early disclosures were delivered on Monday, November 23, the earliest date for consummation is Wednesday, December 2. This excludes the legal holiday on Thursday, November 26, and Sunday, November 29, and counts the other intervening days. Only the specific date of the legal holiday is excluded as a business day under the precise definition, even if the creditor is closed on the Friday after Thanksgiving.

For another illustration involving a legal holiday, consider July 4. This year July 4 fell on a Sunday, but the holiday was celebrated on Monday, July 5. July 5 would not count as a business day under the general definition but would count as a business day under the precise definition, even though the bank was closed that day.[9]

Timing for Revised Disclosures

If revised disclosures are required and the consumer wants to keep the original consummation date, the consumer must receive the revised disclosures at least three business days (precise definition) before consummation. In this hypothetical, the creditor delivered revised disclosures on Saturday, November 28, so consummation can take place on or after Wednesday, December 2.

CONCLUSION

The examples in this article provide a good tool for understanding the MDIA's timing requirements and should be used in conjunction with the MDIA Q&A published in the Third Quarter 2009 issue of *Outlook*. Specific issues and questions should be raised with the consumer compliance contact at your Reserve Bank or with your primary regulator.

[7] §226.19(a)(2)(ii). The Board has proposed amending Regulation Z to add an additional requirement that creditors in all cases provide a "final" TILA disclosure that the consumer must receive at least three business days before consummation. The proposal is available at: http://edocket.access.gpo.gov/2009/pdf/E9-18119.pdf.

[8] In August 2010, the Board solicited comment on a proposed rule that, if adopted, would allow consumers to obtain a refund of the fees for three business days after receiving the disclosures. The Board's announcement and a copy of the rulemaking proposal are available at: http://www.federalreserve.gov/newsevents/press/bcreg/20100816e.htm.

[9] Compare comment 226.2(a)(6)-2.

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Thanks, and we look forward to your feedback!

Regulatory Calendar

EFFECTIVE DATE	IMPLEMENTING REGULATION	REGULATORY CHANGE
1/6/2009	Reg. BB (CRA)	Interagency Q&As Regarding Community Reinvestment
5/20/2009		Protecting Tenants at Foreclosure Act of 2009
7/2/2009	Reg. D (FRA)	Limitations on transfers/withdrawals for savings accounts
7/23/2009	Reg. Z (TILA)	Significant proposed amendments: HELOCs & closed-end credit rules
7/30/09	Reg. Z (TILA)	MDIA rules for early TILA disclosures
9/21/2009	Reg. H (flood)	Interagency Q&As Regarding Flood Insurance
10/1/2009	Reg. Z (TILA)	New rules for HPMLs and all residential mortgages
10/1/2009	Reg. C (HMDA)	New definition of HMDA rate-spread loan
12/31/2009	Reg. P (GLBA)	Model Privacy Form under GLBA
1/1/2010	Reg. Z (TILA)	HOEPA Trigger Amounts Revised for 2010
1/1/2010	Reg. V (FACTA)	Affiliate Marketing Model Form C-6
1/1/2010	Reg. DD (TISA)	Overdraft protection disclosures
1/1/2010	Reg. X (RESPA)	Revised GFE and HUD-1
1/1/2010	Reg. BB (CRA)	CRA asset-size threshold adjustments
1/1/2010	Reg. C (HMDA)	CRA asset-size exemption threshold
1/19/2010	Reg. Z (TILA)	Mortgage transfer notice to borrower
2/14/2010	Reg. Z (TILA)	New disclosures for private education loans
2/22/2010	Reg. Z (TILA)	Phase 2 CARD Act rules for credit cards
2/27/2010	Reg. CC (EFAA)	Nonlocal checks eliminated
4/1/2010	Reg. Z (TILA)	HPML escrow requirements for nonmanufactured homes
7/1/2010	Reg. V (FACTA)	Accuracy/integrity rules for furnishers and direct disputes
7/1/2010	Reg. E (EFTA)	Overdraft opt-in for accounts opened on July 1, 2010 or later
7/1/2010	Reg. Z (TILA)	Revisions to open-end credit disclosures
7/6/2010	Reg. E (EFTA), Reg. DD (TISA)	Clarification of overdraft rules
8/15/2010	Reg. E (EFTA)	Overdraft opt-in for accounts opened before July 1, 2010
8/16/2010	Reg. Z (TILA)	Proposal for higher trigger for first-lien jumbo HPML escrows
8/16/2010	Reg. Z (TILA)	Proposed amendments for reverse mortgages, rescission, loan modifications, and HELOCs
8/22/2010	Reg. E (EFTA)	Phase 3 CARD Act rules for gift cards
8/22/2010	Reg. Z (TILA)	Phase 3 CARD Act rules for penalty fees and rate-increase review
10/1/2010	Reg. Z (TILA)	HPML escrow requirements for manufactured homes
10/1/2010	S.A.F.E. Act	Registration requirements for mortgage loan originators
12/31/2010	Reg. P (GLBA)	Elimination of safe harbor for sample clauses in privacy rules
1/1/2011	Reg. V (FACTA)	Risk-based pricing notices
1/1/2011	Reg. Z (TILA)	Final rule for disclosures under Helping Families Save Their Homes Act
1/30/2011	Reg. Z (TILA)	MDIA interim final rule for mortgage loans with variable rates or payments
1/31/2011	Reg. E (EFTA)	Extension of compliance deadline for printed gift card disclosures
4/1/2011	Reg. Z (TILA)	Restrictions on loan steering and loan originator compensation

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Calendar of Events

October 5	Examining Pennsylvania's Affordable Rental Market: Identifying Needs, Challenges, and Opportunities Federal Reserve Banks of Cleveland and Philadelphia Pittsburgh Branch Pittsburgh, PA
October 5	Financial Coaching: A New Approach to Building Prosperity for Low-Income Workers Federal Reserve Bank of St. Louis Louisville Branch Louisville, KY
October 9-15	National Compliance School American Bankers Association Emory Conference Center and Hotel Atlanta, GA
October 10-14	Graduate School of Compliance Risk Management American Bankers Association Emory Conference Center and Hotel Atlanta, GA
October 13-15	Reclaiming Vacant Properties: The Intersection of Sustainability, Revitalization, and Policy Reform Center for Community Progress and Neighborhood Progress, Inc. Renaissance Cleveland Hotel Cleveland, OH
October 14 and November 18 3 p.m. — 4 p.m. EST	Informational Conference Call on Community Development Financial Institutions Certification (no registration U.S. Treasury Department's Community Development Financial Institutions Fund Conference Call: (202) 927-2255, PIN: 864232
November 7-10	Community Reinvestment Act and Fair Lending Colloquium Four Seasons Hotel Las Vegas, NV