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Inside

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Smartphone interactive scan

Government Monitoring Information Requirements Under the HMDA and the ECOA

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INTRODUCTION

Government monitoring information (GMI) refers to the loan applicant demographic data creditors must collect under Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), when consumers apply for certain mortgage loans. The regulatory requirement for lenders to collect such information dates back to 1977 when the Federal Reserve Board (Board) amended Regulation B to require creditors to collect monitoring information regarding age, sex, marital status, and race or national origin on home-purchase loans and refinancing transactions.[1] The Board explained that this information would help federal regulators detect mortgage lending discrimination. Consumer groups also believed that this data would be valuable in detecting mortgage lending discrimination.[2]

Similarly, in 1989, the Financial Institutions Reform, Recovery and Enforcement Act amended the HMDA to require creditors to collect race, sex, and income data from applicants for home mortgage loans to help identify discriminatory lending practices and facilitate enforcement of antidiscrimination statutes.[3] In 2002, the Board amended Regulation C to conform the collection of race and ethnicity information to changes adopted by the Office of Management and Budget.[4] Overall, the scope of the HMDA data collection requirements is broader than the ECOA's requirement because the HMDA applies to all mortgage loans, including home-improvement loans.

Based on the frequency of examination violations, complying with GMI requirements can be challenging. On the one hand, Regulation B generally

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[1] 42 Fed. Reg. 1242, 1250 (Jan. 6, 1977)

[2] 42 Fed. Reg. at 1250

[3] Pub. L. 101-73 (1989), Section 1211(a)(4). For further information, see "History of HMDA," which is available at www.ffiec.gov/hmda/history2.htm.

[4] 67 Fed. Reg. 7222 (Feb. 15, 2002)

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Overview of E-Banking Compliance Considerations

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INTRODUCTION

According to a recent survey, 51% of U.S. adults bank online, and 32% bank with their mobile phones.[1] Both consumers and banks have benefited from this migration to e-banking. Consumers enjoy the convenience of conducting many banking transactions with their computers or mobile devices, while financial institutions appreciate the cost savings from e-banking. But the shift to Internet banking can also raise compliance concerns. As banks adapt products and services to allow for more electronic banking options, the risk of noncompliance with applicable consumer protection laws and regulations increases. This article provides a high-level overview of some e-banking compliance considerations for Regulation X — Real Estate Settlement Procedures Act (RESPA), Regulation Z — Truth in Lending Act (TILA), Regulation B — Equal Credit Opportunity Act (ECOA), Regulation E — Electronic Fund Transfer Act, and Regulation DD —Truth in Savings Act (TISA).

Regulations X and Z

An increasing number of residential mortgages are originated online.[2] Creditors relying on electronic disclosures to satisfy mortgage disclosure requirements must ensure they are complying with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §7001 et seq. The E-Sign Act permits the use of electronic disclosures to satisfy laws or regulations requiring written disclosures if the E-Sign Act's consumer consent requirements are satisfied.[3] The Federal Reserve Board's 2007 final rule amending Regulation Z to include E-Sign Act compliance requirements discussed which sections of the regulation that were in effect at the time require compliance with the E-Sign Act consumer consent requirements and which sections permit electronic delivery without regard to the consent requirements.[4] Similarly, the Consumer Financial Protection Bureau (CFPB) amended Regulation X effective January 10, 2014, to reiterate that the electronic disclosures are permitted under the E-Sign Act for all provisions of the regulation, provided the consent requirements are satisfied.[5]

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[1] Susannah Fox, "51% of U.S. Adults Bank Online." Pew Research Center, Aug. 7, 2013, available at: www.pewinternet.org/~/media//Files/reports/2013/PIP_OnlineBanking.pdf

[2] Mitch Lipka, "Online mortgages boom despite housing bust," *Reuters*, Jan. 23, 2012

[3] 15 U.S.C. § 7001(c)(1). *Outlook* reviewed the consent requirements in 2009. *See* Jeffrey Paul and Gary Louis, "Moving From Paper to Electronics: Consumer Compliance Under the E-Sign Act," *Consumer Compliance Outlook*, Fourth Quarter 2009.

[4] 72 Fed. Reg. 63462 (Nov. 9, 2007).

[5] *See* amended 12 C.F.R. §1024.3 ("The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the [E-Sign Act].") 78 Fed. Reg. 10696, 10711 (Feb. 14, 2013).

Institutions must ensure that when a borrower submits a completed, closed-end residential mortgage application electronically, the application disclosures currently required by Regulations X and Z are provided to consumers within three business days: the Good Faith Estimate (GFE),[6] the Servicing Disclosure,[7] and the early TILA disclosures.[8] In addition, for closed-end loans with adjustable rates, the disclosures required by 12 C.F.R. §1026.19(b) must be provided at application or before the consumer pays a nonrefundable fee. For home-equity lines of credit, the disclosures required by 12 C.F.R. §1026.40(d) and (e) must be provided at application unless an exception applies.[9]

Another concern with electronic mortgage originations is the requirement in Regulation X, 12 C.F.R. §1024.7a(4), that fees other than a credit report fee cannot be imposed until a consumer receives the GFE and indicates an intent to proceed with the transaction:

> The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. *The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE.*[10] *(emphasis added)*

If a consumer submits an application online, the loan originator should have a procedure to verify and capture the applicant's intent to proceed after the required disclosures have been provided. For example, after providing the disclosures, the creditor could call the borrower or send a follow-up e-mail to determine if the borrower wants to proceed with the loan. If the creditor does this by phone, the call should be documented in the creditor's systems.

Additionally, an institution must ensure that its online advertisements for mortgages comply with Regulation Z's advertising requirements. The regulation contains specific advertising requirements for open-end home equity lines of credit in 12 C.F.R. §1026.16(d) and for closed-end dwelling-secured credit in 12 C.F.R. §1026.24(f). The regulation also has requirements for electronic advertisements that use terms requiring additional disclosures.[11]

In this changing regulatory environment, it is also important that financial institutions maintain systems to monitor and implement regulatory changes, including changes to e-banking systems, so they are prepared to implement final rules. For example, the CFPB's integrated disclosure rule contains significant changes to the application and consummation disclosures as well as accompanying regulatory requirements that will require significant changes to creditors' systems.

Regulation B

Regulation B requires creditors to notify consumers of the action taken on a submitted application, including those submitted electronically. The time frame depends on the creditor's decision on the application, as prescribed by 12 C.F.R. §1002.9(a), which requires a creditor to notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in

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[6] 12 C.F.R. §1024.7(a)

[7] 12 C.F.R. §1024.21(b)

[8] 12 C.F.R. §1026.19(a). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the CFPB to conduct a rulemaking to integrate the RESPA and TILA mortgage disclosures required at application and at consummation into a single disclosure. The CFPB issued a final rule in November 2013 for the integrated disclosure that becomes effective August 1, 2015, 78 Fed. Reg. 79730 (Dec. 31, 2013). This article is based on the current rule.

[9] 12 C.F.R. 1026.40(b)

[10] *See* 12 C.F.R. §1024.7(a)(4). The existing regulation does not define "intent to proceed." The CFPB's final rule integrating the RESPA and TILA disclosures elaborates on the meaning of "intent to proceed." *See* 12 C.F.R. §1026.19(e)(2)(i)(A) and Comment 19(e)(2)(i)(A)–2. This rule is effective August 1, 2015.

[11] 12 C.F.R. §1026.16(c) and 12 C.F.R. §1026.24(e). The Official Staff Commentary for these sections of the regulation also discusses electronic advertisements.

Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule. On October 22, 2013, the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (agencies) issued a statement to address industry questions about fair lending risks associated with offering only qualified mortgages (QMs). The CFPB's Ability-to-Repay rule (ATR) implements provisions of the Dodd-Frank Act that require creditors to make a reasonable, good-faith determination that a consumer has the ability to repay a mortgage loan before extending credit to the consumer. Lenders are presumed to have complied with the ATR rule if they originate QMs, which must satisfy requirements that prohibit or limit risky features that harmed consumers in the recent mortgage crisis. Creditors asked for clarification whether the disparate impact doctrine of the Equal Credit Opportunity Act and its implementing regulation, Regulation B, allows them to originate only QMs. In response, the agencies stated that they do not anticipate that a creditor's decision to offer only QMs would, absent other factors, elevate a supervised institution's fair lending risk.

The agencies noted the decisions that creditors will make about product offerings in response to the ATR rule are similar to decisions creditors have made for other significant regulatory changes affecting particular types of loans. The statement counsels that creditors should continue to evaluate fair lending risk as they would for other types of product selections, including carefully monitoring policies and practices and implementing effective compliance management systems. The agencies issuing the statement with supervisory authority for the Fair Housing Act (FHA) believe that the same principles apply in determining compliance with the FHA and its implementing regulation.

Five Federal Regulatory Agencies Issue a Rulemaking Proposal to Implement the Biggert-Waters Flood Insurance Reform Act of 2012 (BWA). On October 11, 2013, the Board, the Farm Credit Administration, the FDIC, the NCUA, and the OCC (agencies) issued a rulemaking proposal to implement the provisions of the BWA concerning escrow requirements for flood insurance, forced-placed insurance, private flood insurance, and civil money penalties (CMPs). First, the proposal would require regulated lending institutions to escrow premiums and fees for flood insurance for loans secured by residential improved real estate or a mobile home. Consistent with the timing requirements set forth in the BWA, this requirement would not only apply to loans made on or after July 6, 2014, but also to loans that are outstanding on that date. The proposal allows for an exemption from this escrow requirement for regulated lending institutions with total assets of less than $1 billion and that, as of July 6, 2012, were not otherwise required under federal or state law to escrow premiums and did not have a policy of requiring escrow accounts. Second, the proposal would require regulated lending institutions to accept a private flood insurance policy, as defined in the BWA. The agencies solicited comments on whether they should use their rulemaking authority to allow lenders to accept a private policy that does not meet the statutory definition. Third, the agencies proposed revised notice forms. Fourth, the agencies clarified that a lender can begin charging a borrower for forced-placed insurance and related fees beginning on the date on which the borrower's insurance lapsed. The agencies also clarified that a lender must refund forced-placed premiums when a borrower produces proof of overlapping existing insurance. Finally, the agencies clarified that the changes for forced-placed insurance and CMPs — removing the limit on the total amount of CMPs and raising the penalties per violation — became effective when the BWA was signed into law on July 6, 2012, while the escrow and private insurance provisions will not become effective until the agencies issue a final rule.

Board Releases Revised Examination Procedures for Regulations X and Z for State Member Banks. On December 23, 2013, the Board issued Consumer Affairs letters CA 13-24 and 13-25, concerning the revised interagency examination procedures the Federal Financial Institutions Examination Council (FFIEC) recently approved for Regulations X and Z, respectively. The revised procedures reflect the CFPB's new mortgage regulations under Regulations X and Z taking effect in January 2014. The revisions under Regulation Z reflect the new rules regarding ATR and QM standards, loan originator compensation and qualification, servicing, and loans subject to the Home Ownership and Equity Protection Act of 1994. The revisions under Regulation X reflect the new rules regarding mortgage servicing and homeownership counseling requirements. The interagency appraisal rules for higher-priced mortgage loans that took effect on January 18, 2014, are also reflected in the procedures.

CFPB Issues Bulletin About Servicing Rules and Interim Final Rule Amending Requirements of Regulations X and Z. On October 15, 2013, the CFPB issued a bulletin that provides servicing guidance concerning:

1. servicers' policies and procedures for communicating with successor in interest of a deceased borrower
2. communication with borrowers under the early intervention rule, and

3. servicers' obligation to provide notices to borrowers who have made a "cease communication" request under the Fair Debt Collection Practices Act (FDCPA).

The CFPB also issued an interim final rule to make changes to certain aspects of the mortgage regulations under Regulations X and Z that become effective in January 2014. The amendments clarify the disclosures that creditors must provide before counseling for high-cost mortgages can begin. The amendments also clarify compliance requirements for the servicing of a loan when a consumer is a debtor in a bankruptcy case or makes a "cease communications" request. The amendments took effect on January 10, 2014.

CFPB Finalizes Modifications to Mortgage Rules under Regulations B, X, and Z. On September 13, 2013, the CFPB issued final amendments and clarifications to its January 2013 mortgage rules, which included: rules requiring lenders to make a good-faith determination that borrowers have the ability to repay their loans, mortgage servicing rules for homeowners facing foreclosure, rules addressing loan originator compensation, and rules requiring escrow accounts for higher-priced mortgages. The CFPB made several amendments to these rules to clarify interpretive issues and facilitate compliance. The CFPB explained that modifications were designed to:

- clarify which mortgage servicer activities are prohibited in the first 120 days of delinquency
- outline procedures for obtaining follow-up information on loss-mitigation applications
- facilitate servicers' offering of short-term forbearance plans
- clarify best practices for informing borrowers about the address for sending error resolution documents
- facilitate lending in rural or underserved areas while the CFPB reexamines the definition of "rural or underserved" during the next two years
- clarify the financing of credit insurance premiums
- clarify the definition of a loan originator
- clarify the points and fees thresholds and loan originator compensation rules for manufactured housing employees
- revise effective dates of certain loan originator compensation rule provisions.

CFPB Issues Notice to Furnishers of Consumer Credit Information About Duty to Investigate Consumer Credit Report Disputes. On September 4, 2013, the CFPB issued a notice to companies that furnish information to consumer reporting agencies. The notice stressed that furnishers are required under the Fair Credit Reporting Act (FCRA) to investigate consumer disputes forwarded by the consumer reporting agencies and are responsible for reviewing all relevant information provided with the disputes, including documents submitted by consumers.

Consumers may file a dispute with a consumer reporting agency about credit report items. The agency ordinarily must inform the furnisher that the consumer has filed a dispute and forward all relevant information to the furnisher. Once the furnisher receives the information, it must review it, conduct an investigation, and respond to the consumer reporting company. An electronic system, known as e-OSCAR, is used by the three largest nationwide consumer reporting companies — Equifax Information Services LLC, TransUnion LLC, and Experian Information Solutions, Inc. — to send information relating to consumer disputes to furnishers. The CFPB had previously noted that the e-OSCAR system did not provide a means for credit reporting companies to forward to furnishers any documents submitted by consumers. Since then, the e-OSCAR system has been upgraded so that the three companies can now send furnishers any relevant dispute documents mailed in by consumers.

The CFPB's announcement addresses furnishers' obligations to review all relevant dispute information provided by the consumer reporting companies. The CFPB expects each furnisher to investigate each dispute, provide the investigation results, and correct inaccurate information. The CFPB stated that it will take appropriate supervisory and enforcement actions to address violations of the FCRA or other consumer financial laws and seek appropriate corrective measures, possibly including restitution to harmed consumers. The CFPB also stated that it will continue to review furnishers' compliance with these requirements.

FFIEC Announces Availability of 2012 Small Business, Small Farm, and Community Development Lending Data. On August 22, 2013, the Board, the FDIC, and the OCC announced the availability of data on small business, small farm, and community development lending reported by certain commercial banks and savings associations, pursuant to the Community Reinvestment Act (CRA). Disclosure statements on the reported 2012 CRA data are available in electronic form for each reporting commercial bank and savings association. The FFIEC also has prepared aggregate disclosure statements of small business and small farm lending for all of the metropolitan statistical areas and nonmetropolitan counties in the United States and its territories.

* Links to the announcements are available in the online version of *Outlook* at: www.consumercomplianceoutlook.org.

On the Docket: Recent Federal Court Opinions*

REGULATION Z — TRUTH IN LENDING ACT (TILA)

The Eighth Circuit holds that a borrower must file a lawsuit to exercise the right of rescission. *Hartman v. Smith*, 734 F.3d 752 (8th Cir. 2013) and *Jesinoski v. Countrywide Home Loans, Inc*., 729 F.3d 1092 (8th Cir. 2013). If a creditor fails to provide a borrower with a rescission notice or accurate material disclosures for certain residential mortgage loans, the rescission period is extended from three business days to three years. The federal appeals courts are divided on whether a borrower timely exercises this right by sending the creditor a rescission notice within three years of consummation or whether the borrower must also file a lawsuit within three years. The Eighth, Ninth, and Tenth Circuits hold that a rescission claim is untimely if a borrower fails to file a lawsuit within three years of consummation, even though the borrower previously sent the creditor a timely rescission notice. *See Keiran v. Home Capital, Inc*., 720 F.3d 721 (8th Cir. 2013); *Rosenfield v. HSBC Bank, USA*, 681 F.3d 1172 (10th Cir. 2012); and *McOmie-Gray v. Bank of America Home Loans*, 667 F.3d 1325 (9th Cir. 2012). The Third and Fourth Circuits hold that a borrower is only required to send a rescission notice within three years. *See Sherzer v. Homestar Mortgage Services*, 707 F.3d 255 (3d Cir. 2013) and *Gilbert v. Residential Funding LLC*, 678 F.3d 271 (4th Cir. 2012).

Two new decisions from the Eighth Circuit in *Hartman* and *Jesinoski* reiterate, based on the court's earlier precedential decision in *Keiran*, that borrowers must file a lawsuit to preserve the statute of limitations. However, one judge in *Hartman* dissented, and two judges in *Jesinoski* stated in concurring opinions that if they were not bound by the *Keiran* case, they would hold that a borrower's rescission notice to a creditor within three years of consummation is sufficient to preserve the statute of limitations. The split among the circuit courts of appeals and within one circuit suggests that this issue might ultimately have to be resolved by the U.S. Supreme Court, which often accepts appeals for issues on which the federal appeals courts are divided.

REGULATION E — ELECTRONIC FUND TRANSFER ACT (EFTA)

The Eighth Circuit holds that a plaintiff alleging an EFTA violation for a missing fee notice on an ATM machine has legal standing to file a lawsuit. *Charvat v. Mutual First Federal Credit Union*, 725 F.3d 819 (8th Cir. 2013). Regulation E, until it was recently amended, required operators of automatic teller machines (ATMs) to display two fee notices: one on or at the ATM, and one on the ATM screen that must be displayed before the consumer is committed to paying a fee. The plaintiffs alleged a violation of the EFTA in this class-action case because the financial institution failed to display the fee notice required on the ATM machine. The lower court dismissed the case on standing grounds, finding that because the plaintiff saw the second fee notice on the screen before incurring a fee, the plaintiff was not injured and therefore lacked standing to pursue a lawsuit. On appeal, the Eighth Circuit reversed, finding that the failure to display the required fee notice and the statute's provision allowing the award of statutory damages to the plaintiffs provided standing. The court also rejected the argument that the injury of paying a $2.00 ATM fee was not traceable to the defendant's conduct. In December 2012, Congress enacted legislation that eliminated the requirement that ATM owners provide a fee notice on or at an ATM to supplement the onscreen notice.

REGULATION B — EQUAL CREDIT OPPORTUNITY ACT (ECOA)

The Sixth Circuit dismisses an ECOA lawsuit because the plaintiffs failed to plausibly indicate that the lender denied their request for a loan restructuring for a discriminatory reason. *16630 Southfield Ltd. Partnership v. Flagstar Bank, F.S.B.*, 727 F.3d 502 (6th Cir. 2013). The plaintiffs, including a naturalized U.S. citizen from Iraq, obtained a loan for a real estate venture. The loan was later restructured when the plaintiffs had difficulties making payment. When the restructured loan was coming due, the plaintiffs asked for an extension and offered additional collateral and a guarantor, but the bank denied the request. The lawsuit alleged that the bank discriminated against the plaintiffs because of their national origin in denying the second restructuring request. On appeal, the Sixth Circuit affirmed the dismissal of the lawsuit, relying on the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Those cases held that a plaintiff responding to a motion to dismiss cannot simply respond with conclusory allegations but must instead offer specific facts that plausibly support the plaintiff's legal theory. In this case, the court found that the plaintiffs' mere allegation that other unidentified borrowers were more favorably treated was insufficient to explain how their national origin played a role in the bank's decision to deny their second restructuring request. The court also noted that it was reasonable for the bank to deny the restructuring request after the bank had already extended one repayment deadline.

The Third Circuit holds that a discrimination lawsuit cannot be certified as a class action based solely on lender pricing discretion. *Rodriguez v. National City Bank*, 726 F.3d 372 (3d Cir. 2013). The plaintiffs filed a class-action lawsuit against National City Bank alleging that its policy of providing pricing discretion to loan officers had a disparate impact on minority applicants because a larger percentage of minority borrowers were surcharged points and fees unrelated to credit risk than similarly situated Caucasian borrowers. The parties agreed to settle the case and received tentative approval from the lower court. But after the U.S. Supreme Court issued its landmark class-action decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), the lower court reconsidered its approval and denied class certification. On appeal, the Third Circuit affirmed the decision not to certify the case as a class action based on the *Dukes* case.

In *Dukes*, the plaintiffs alleged that the local Wal-Mart store managers' discretionary authority over employees' pay had a disparate impact on female employees, whose salaries were lower on average than similarly situated male employees. The Supreme Court held that the managers' discretion over salaries that resulted in disparities did not, by itself, satisfy the class-action requirement of a common issue affecting all class members. Under *Dukes*, plaintiffs must also identify the challenged practice causing the disparities and demonstrate that each class member was subjected to the challenged practice in the same manner. The Third Circuit found that "as in *Dukes*, the exercise of broad discretion by an untold number of unique decision-makers in the making of thousands upon thousands of individual decisions undermines the attempt to claim, on the basis of statistics alone, that the decisions are bound together by a common discriminatory mode." The court therefore affirmed the denial of class certification.

FEDERAL ARBITRATION ACT (FAA)

The Seventh Circuit orders arbitration of a TILA case even though the arbitration forum specified in the agreement was unavailable. *Green v. U.S. Cash Advance Illinois, LLC*, 724 F.3d 787 (7th Cir. 2013). The plaintiff sued a payday lender, alleging that the defendant's loan disclosures misstated the annual percentage rate (APR). The lender asked the court to stay the lawsuit and refer the matter to arbitration under a clause in the loan agreement requiring disputes to "be resolved by binding arbitration by one arbitrator by and under the Code of Procedure of the National Arbitration Forum." However, the National Arbitration Forum (NAF) had previously stopped accepting arbitrations under a settlement agreement with the Minnesota attorney general. The lower court denied the request to compel arbitration because the NAF was unavailable and the court deemed that to be integral to the agreement. But on appeal, the Seventh Circuit reversed, finding that the parties selected arbitration, and Section 5 of the FAA allows a party to petition the court to appoint an arbitrator if the agreement does not specify a method for appointing one. The case was remanded with instructions to appoint an arbitrator to hear the case. One judge dissented.

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

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Government Monitoring Information Requirements Under the HMDA and the ECOA

prohibits creditors from collecting information about race, color, religion, national origin, or sex "to discourage discrimination, based on the premise that if creditors cannot inquire about or note applicants' personal characteristics, such as national origin or race, they are less likely unlawfully to consider the information in connection with a credit transaction."[5] But the regulation also contains an exception in 12 C.F.R. §1002.13 that requires creditors to collect GMI for home-purchase and refinanced loans secured by an owner-occupied dwelling.[6] Similarly, Regulation C requires that creditors collect GMI for certain types of mortgage loans. Thus, creditors must ensure they have procedures in place to ensure that applicant information is not collected about race, color, religion, national origin, or sex, except in the context of GMI for mortgage loans, when they must collect certain information.

A review of supervisory data from Federal Reserve System compliance examinations reveals that GMI requirements regularly appear on the list of the most frequently violated regulations. These violations involve failing to collect GMI when required, collecting it when not required, and recording the GMI information incorrectly. To facilitate compliance, this article reviews the GMI requirements under Regulations B and C, identifies common GMI violations in Federal Reserve System compliance examinations, and discusses the new GMI provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

ECOA/Regulation B

Under 12 C.F.R. §1002.13(a)(1), a "creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application" the applicant's ethnicity, race, sex, marital status, and age. This requirement does not apply to loans secured by the applicant's principal residence for purposes other than to purchase or refinance a dwelling (such as home-improvement or debt-consolidation purposes) or to loans to provide temporary financing to construct a dwelling, unless the application for the temporary loan is also accompanied by an application for a permanent mortgage that becomes effective when the construction is completed.[7] Home equity lines of credit are not subject to this section unless it is readily apparent to the creditor at application that the primary purpose is to purchase or refinance a principal dwelling.[8] The requested information may be listed on the application form or on a separate form that references the application.[9] The creditor must explain the reason the information is requested. If the applicant does not voluntarily provide the information, the financial institution must make a visual observation or determination by surname to collect the GMI.[10] Unlike the HMDA, Regulation B does not require creditors to aggregate the information into a register or report it.

HMDA/Regulation C

Creditors subject to the HMDA that purchase or originate home purchase, home improvement, and refinancing loans must collect information about the ethnicity, race, and sex of the applicant either on a loan application or on a separate form that references the

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[5] 68 Fed. Reg. 13144, 13147 (March 18, 2003)

[6] The regulation also contains an exception permitting creditors to collect this information for self-testing purposes; *see* 12 C.F.R. §§1002.5(b)(1) and §1002.15.

[7] Comment 1002.13(a)-5 of the Official Staff Commentary for Regulation B

[8] Comment 1002.13(a)-5

[9] 12 C.F.R. §1002.13(b)

[10] 12 C.F.R. §1002.13(c)

application.[11] As with Regulation B, the creditor must explain the reason the information is requested and disclose that the applicant is not required to provide the information. If the applicant does not voluntarily provide the information, the financial institution must make a visual observation or determination by surname to collect the GMI.[12]

The table below compares the information creditors must collect under Regulations B and C.

GMI: What Information Must Be Collected		
Field	Regulation B[13]	Regulation C[14]
Ethnicity	X	X
Race	X	X
Sex	X	X
Marital status	X	
Age	X	

Differences Between Regulations B and C

Both Regulations B and C require creditors to collect customer-specific information such as ethnicity and sex of the applicant. However, Regulation C additionally requires creditors to collect more specific loan information, such as loan type, rate spread, purpose, property type, and other pertinent data. Regulation B requires creditors to collect marital status and age while Regulation C does not. The scope of Regulation C data collection is broader because it is required for most closed-end mortgage loans, including home-improvement loans, and it is optional for home equity lines of credit, whereas Regulation B data collection only applies to applications for credit primarily for the purchase or refinance of a dwelling to be occupied as a principal residence.

Because the regulations define some terms differently, both rules may not apply to the same transaction. For Regulation B, a purchase is defined as the purchase of a *principal* residence using an extension of credit secured by the residence.[15] But under the HMDA, a purchase is more broadly defined as the purchase of a dwelling using an extension of credit secured by a dwelling, but the security does not have to be the dwelling being purchased.[16] Similarly, Regulation B requires GMI for a refinance loan for a *principal* dwelling, where the dwelling secures the loan, whereas Regulation C defines refinance as a new obligation that satisfies and replaces an existing one by the same borrower, in which the existing and new obligations are secured by liens on dwellings. For example, a loan to refinance an existing loan for a vacation property (satisfying and replacing the loan) would not be subject to Regulation B GMI, but would be subject to Regulation C GMI requirements. The table on page 10 lists the GMI requirements under Regulations B and C.

The regulations also define dwellings differently. Under Regulation B, a dwelling is limited to residential structures with one to four units.[17] But Regulation C defines dwellings to contain any number of units, and it excludes recreational units and "transitory residences such as hotels, hospitals, and college dormitories."[18] Occupancy status is another source of variance. As noted, Regulation B requires collection of GMI only for a home-purchase or a refinance application involving an applicant's principal residence.[19] However, Regulation C requires data collection for applications involving home-purchase, refinance, or

[11] 12 C.F.R. §1003.4(b)

[12] Comment 1003.4(a)(10)-2

[13] 12 C.F.R. §1002.13(a)

[14] 12 C.F.R. §1003.4(a)(10)

[15] 12 C.F.R. §1002.13(a)(1)

[16] 12 C.F.R. §1003.2

[17] 12 C.F.R. §1002.13(a)(2)

[18] Comment 1003.2(d)(dwelling)-2

[19] 12 C.F.R. §1002.13(a)(1)

What Types of Loans Are Subject to GMI		
	Regulation B	Regulation C
Loans subject to GMI	Purchase or refinance loans secured by a dwelling that is, or will be, applicant's principal residence An application for a home equity line of credit is not subject to GMI requirements unless it is readily apparent when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling	Purchase and refinance loans secured by a dwelling and home-improvement loans; reporting is optional for HELOCs
Home-purchase loan	Not defined in Regulation B	A loan secured by and made for the purpose of purchasing a dwelling
Dwelling	Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.	A residential structure (whether or not attached to real property); the term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.
Home-improvement loan	Not applicable; GMI not required to be collected	A loan secured by a lien on a dwelling that is for the purpose (whole or part) of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, or A nondwelling-secured loan that is: • for the purpose (whole or part) of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and • classified by the financial institution as a home-improvement loan
Home equity line of credit (HELOC)	Not applicable; GMI not required to be collected	An open-end credit plan secured by a dwelling as defined in Regulation Z
Refinancing	An existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction	A new obligation that satisfies and replaces an existing obligation by the same borrower, in which for coverage purposes: • the existing obligation is a home-purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and • both the existing obligation and the new obligation are secured by first liens on dwellings For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.

home-improvement loans for owner-occupied and nonowner occupied properties.[20] Creditors must ensure that their systems reflect these differences when collecting loan information.

Common Violations

In considering a recent five-year examination period covering 1,328 examinations conducted by the Federal Reserve System, 10.2 percent of these examinations included a citation for violating §1003.4(a)(10) of Regulation C.[21] This violation involves errors in the collection of information regarding ethnicity, race, and sex of the applicant, and/or the gross annual income the creditor relied upon in processing the application. Additionally, 10.3 percent of examinations included a violation of §1002.13(a)(1)(i) of Regulation B involving the failure to request ethnicity and race information on home-purchase and refinancing loans as required. Also, 88 examinations cited violations of §1002.13(a)(1)(ii) of Regulation B regarding failure to collect information about an applicant's sex. Finally, examinations of 88 institutions involved violations of §1002.13(b) of Regulation B. These violations relate to either deficiencies concerning the method of collecting GMI or failing to collect the applicant's ethnicity, race, and sex based upon visual observation when the applicant chooses not to provide the requested GMI.

Institutions can also be cited for collecting GMI when it is not required or permitted. In considering the same five-year examination period, 8.3 percent of examinations included violations of §1002.5(b) of Regulation B, concerning a creditor's collection of GMI on loans not subject to collecting such data.

The complexity of the collection of GMI is reflected in the violations data. A high percentage (56.3 percent) of the Regulation C §1003.4(a)(10) violations are procedural (i.e., not isolated). Furthermore, 31.8 percent of the Regulation B §1002.5(b) violations were procedural. At least 27.3 percent of the other violations previously mentioned are procedural in nature. These statistics suggest that violations often result from systemic breakdowns involving internal controls and training.

Future HMDA Collection

Section 1094 of the Dodd-Frank Act amended the HMDA to expand the number of required data collection fields, as shown in the following table.

New HMDA Fields Required by the Dodd-Frank Act	
Age	Application channel
Credit score	Loan originator identifier
Loan term	Negative amortization
Prepayment penalty term	Property's parcel number
Property value	Rate spread for all loans
Term of introductory rate period	Total origination points and fees
Universal loan identifier	

The Dodd-Frank Act also authorizes the Consumer Financial Protection Bureau (CFPB) to add other fields.[22] Also, the CFPB may waive the requirement to collect a particular data item if it raises privacy concerns.[23] These new data collection requirements do not become effective until the CFPB issues an implementing regulation. As of this date, the CFPB has not yet published a rulemaking proposal.[24]

Minority-Owned, Women-Owned, and Small Businesses

Section 1071 of the Dodd-Frank Act added new Section 704B to the ECOA to impose additional data

[20] 12 C.F.R. §1003.4(a)

[21] Some institutions examined by the Federal Reserve System are not subject to HMDA (for example, because they do not originate mortgages), so the percentage of examinations involving HMDA GMI violations is actually higher than 10.2 percent.

[22] *Outlook* reviewed the amendments to HMDA in the Fourth Quarter 2012 issue: "HMDA Data Collection and Reporting," available at: tinyurl.com/hmda-cco.

[23] Section 1094(2) of the Dodd-Frank Act, codified at 12 U.S.C. § 2803(h)(3)(B)

[24] According to the Unified Regulatory Agenda that the CFPB filed earlier this year with the Office of Management and Budget, the Regulation C rulemaking to implement the Dodd-Frank Act changes to HMDA data collection is in the prerule stage, available at: tinyurl.com/cfpb-hmda.

reporting responsibilities on financial institutions related to women-owned, minority-owned, and small businesses. These additional data collection requirements seek "to facilitate enforcement of fair lending laws and enable communities, government entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses."[25] The CFPB issued a bulletin on April 11, 2011, explaining that creditors need not comply with Section 1071 of the ECOA "until the Bureau issues necessary implementing regulations."[26]

CONCLUSION

Financial institutions must have strong controls and training to ensure bank staff can distinguish between the information they are required to collect under Regulations B and C versus the information they cannot collect. In addition to the existing requirements, the Dodd-Frank Act added new GMI requirements. The new information will provide regulators and bankers with more robust data to monitor, identify, and address fair lending issues. Specific issues and questions should be raised with your primary regulator.

[25] 76 Fed. Reg. 59237 (Sept. 26, 2011)

[26] CFPB Bulletin (April 11, 2011), available at: files.consumerfinance.gov/f/2011/04/GC-letter-re-1071.pdf. The Board is responsible for issuing rules that implement Section 1071 for most automobile dealers. *See* 15 U.S.C. §1691b(f). The Board delayed compliance for automoblie dealers until it issues implementing regulations. 76 Fed. Reg. 59237 (Sept. 26, 2011)

Continued from page 3...

Overview of E-Banking Compliance Considerations

accordance with paragraph (c) of this section
(iii) 30 days after taking adverse action of an existing account, or
(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

For applications submitted online, a creditor must ensure its systems notify the consumer of the action taken within these time frames. Consumer adverse action notices provided electronically are subject to the E-Sign Act's consent requirements.[12]

The Dodd-Frank Act amended the ECOA's notice requirements for appraisals effective January 18, 2014. Under the amendment, a creditor must notify an applicant for a first-lien mortgage loan that the creditor may order an appraisal or other written valuation to determine the value of the property securing the loan and will promptly provide the applicant with a copy, even if the loan is not consummated.[13] The appraisal or valuation may be provided electronically subject to compliance with the E-Sign Act's consent provisions,[14] while the notice may be provided without regard to the consent requirements.[15]

[12] The consent requirements only apply to disclosures that must be provided in writing. For the required notices in §1002.9(a), only consumer adverse action notices must be provided in writing. The other notices can be provided electronically without regard to the consent requirements.

[13] 12 C.F.R. §1002.14

[14] 12 C.F.R. §1002.14(a)(5)

[15] 12 C.F.R. §1002.4(d)(2)

Regulation E

If a consumer applies for credit electronically, a financial institution may believe the consumer is a good candidate to repay the loan using preauthorized electronic transfers. Many institutions prefer this repayment method because the payments are automatic, as well as easier and faster to process than a check payment. However, Regulation E prohibits creditors from conditioning the extension of credit on the consumer's agreement to repay the loan using a preauthorized electronic transfer:

> No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.
> 12 C.F.R. §1005.10(e)(1)

Thus, the creditor must ensure that its electronic application for credit does not obligate the consumer to agree to preauthorized electronic transfers to repay the obligation. A creditor may offer the consumer the option to repay through preauthorized electronic transfers, but such transfers cannot be the only permissible method of repaying the extension of credit.

Regulation DD

In addition to processing loan applications online, some financial institutions accept online applications for deposit products. Regulation DD permits electronic disclosures that comply with the requirements of the E-Sign Act and waives the E-Sign Act's consent provisions for two requirements:[16]

> The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.). The disclosures required by sections 1030.4(a)(2) [account disclosures upon request] and 1030.8 [advertising] may be provided to the consumer in electronic form without regard to the consumer-consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

It is also important to note that banks must issue TISA disclosures to a consumer who applies electronically before an account is opened or services are rendered:

> If a consumer who is not present at the institution uses electronic means (for example, an Internet website) to open an account or request a service, the disclosures required under [§1030.4(a)(1)] must be provided before an account is opened or a service is provided.[17]

Therefore, banks must ensure that all necessary disclosures are issued to consumers in the required time frame for online deposit account applications.

Online advertisements are also subject to the advertisement requirements under the TISA; therefore, banks must ensure that deposit advertisements, including online advertisements, are compliant. For further information regarding advertising requirements under the TISA, refer to the article "Understanding Regulation DD's Advertising Requirements" by Amy Armstrong that was published in the Fourth Quarter 2010 issue of *Outlook*.

CONCLUSION

The migration to e-banking has benefitted consumers and financial institutions. But e-banking can also raise compliance concerns under the E-Sign Act and Regulations B, E, X, Z, and DD. Financial institutions must ensure e-banking products and services comply with these laws and regulations. Specific issues and questions should be raised with your primary regulator.

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[16] 12 C.F.R. §1030.3(a)

[17] 12 C.F.R. §1030.4(a)(1)(ii)

AMENDMENT TO THE REGULATION E FOREIGN REMITTANCE TRANSFER RULE

Congress added new consumer protections for foreign remittance transfers in Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and directed the Consumer Financial Protection Bureau (CFPB) to issue an implementing regulation. In response, the CFPB published final rules under Regulation E in 2012.[1]

In response to industry concerns about certain aspects of the regulation, the CFPB amended the final rule on May 22, 2013.[2] The amendment includes the following changes:

- making it optional for the remittance transfer provider (provider) to disclose fees imposed by a designated recipient's institution or foreign taxes collected by a person other than the provider. When a transfer could include such taxes or fees, a disclaimer must appear on the prepayment disclosure and receipt (or the combined disclosure if it is utilized in lieu of the prepayment disclosure and receipt) stating the recipient could receive less than the amount disclosed because of fees charged by the recipient's bank or foreign taxes
- establishing that a provider is not liable to the consumer when funds are mistakenly deposited in the account of someone other than the designated recipient because the sender provided an incorrect account number or recipient institution identifier, and
- delaying the original effective date from February 17, 2013, until October 28, 2013.

This Compliance Spotlight provides an overview of the amendment.

New Definitions

To provide greater clarity about which fees must be disclosed, the amendment added two new definitions to the regulation concerning third-party fees:[3]

- covered third-party fees — fees imposed on the remittance transfer by a person other than the provider, except for noncovered third-party fees
- noncovered third-party fees — fees imposed by the designated recipient's institution for receiving a remittance transfer into an account unless the institution acts as an agent of the remittance transfer provider

Changes to Disclosure Requirements for Fees and Foreign Taxes

The industry expressed concern to the CFPB that the original rule's requirement that providers must disclose all foreign taxes and fees imposed by persons other than the provider would be difficult to implement in an open network because typically no single provider has relationships with all of the participants collecting or disbursing funds.[4] Thus, fees or taxes could be imposed in an open-network transaction over which the provider has no knowledge or control. To address this concern, providers do not have to disclose noncovered third-party fees and foreign taxes collected by a person other than the provider. The CFPB stated in the rulemaking that it believes the majority of remittance transfers are conducted through closed networks, to which these exemptions would generally not apply.

Although providers are not required to disclose noncovered third-party fees and taxes collected by a person other than the provider, the final rule permits providers to disclose this information when it is available using the actual information or estimates, as long as the estimates are derived from reasonable sources of information.[5] The Official Staff Commentary (Commentary) for Regulation E provides examples of reasonable sources of information for estimates:

- information obtained from recent transfers to the same institution or the same country or region
- fee schedules from the recipient institution
- fee schedules from the recipient institution's competitors
- surveys of recipient institution fees in the same country or region as the recipient institution
- information provided or surveys of recipient institutions' regulators or taxing authorities

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[1] *Outlook* published an article about the final rule, "An Overview of the New Regulation E Requirements for Foreign Remittance Transfers," by Kenneth Benton, *Consumer Compliance Outlook*, Third Quarter 2012.

[2] 78 Fed. Reg. 30662 (May 22, 2013)

[3] 12 C.F.R. §1005.30(h)

[4] In an open network, the provider relies on intermediaries to complete the transfer and usually does not have a relationship with all of them, making it difficult to disclose certain fees and taxes. In a closed network, the provider has relationships with all of the intermediaries. Western Union is an example of a closed network, in which a Western Union office in the United States transmits funds to a Western Union office in a foreign country.

[5] Comment 1005.31(b)(1)(viii)-2

- commercially or publicly available databases, services or sources, and
- information or resources developed by international nongovernmental organizations or intergovernmental organizations.[6]

Changes to Prepayment Disclosure

When a transfer includes, or could include, noncovered third-party fees or taxes collected by a person other than the provider, the provider must include a disclaimer on the prepayment disclosure and receipt (or the combined disclosure if it is utilized) stating that the recipient may receive less than the amount disclosed because of fees charged by the recipient's bank or foreign taxes.[7] The final rule includes revised model forms for the prepayment disclosure, receipt, and combined disclosure with the disclaimer.[8]

Error Resolution

The rule revises the error resolution requirements in 12 C.F.R. §1005.33(a)(1)(iii)(C), consistent with the changes to the disclosure requirements previously discussed. When a discrepancy occurs between the amounts disclosed on the receipt or prepayment disclosure and the amount the recipient received because of noncovered third-party fees or foreign taxes, and the provider made the disclaimer under 12 C.F.R. §1005.31(b)(1)(viii) that the recipient may receive less than the amount disclosed because of fees charged by the recipient's bank or foreign taxes, an error has NOT occurred.

In addition, if the sender gives the provider an incorrect account number or recipient institution identifier, the failure to make the funds available to a designated recipient by the date stated in the disclosure is not an error.[9] This exception only applies if:

- The sender provided an incorrect account number or recipient institution identifier.
- For any instance in which the sender provided an incorrect recipient identifier, the provider used reasonably available means to verify that the recipient institution identifier submitted by the sender corresponded with the recipient institution name provided by the sender.
- The provider notified the sender before the sender paid for the remittance transfer that if the sender provided incorrect information, the sender could lose the transfer amount.
- The incorrect information provided by the sender resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's account, and
- The provider promptly used reasonable efforts to recover the amount that was meant to be received by the designated recipient.[10]

The Commentary clarifies that the exception does not apply when the failure to make funds available occurred because of a provider's error, a third-party error, or if it resulted from incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier.[11] The Commentary also elaborates on what constitutes reasonable efforts to recover the amount that was transferred to someone other than the designated recipient, stating that whether a provider used reasonable efforts does not depend on the ultimate success of those efforts. The Commentary describes, as an example of reasonable efforts, a remittance transfer provider promptly contacting the institution that received the transfer either directly, indirectly, or through a messaging service, to request that the funds be returned.[12]

Further, if a provider determines that an error occurred, the final rule permits the provider to deduct from the amount refunded, or applied to a new transfer, any fees imposed by persons other than the provider or taxes deducted from the first unsuccessful remittance transfer attempt. But this exception does not apply if the provider will receive a refund of the taxes or fees. The Commentary includes examples to facilitate compliance.[13]

Specific issues and questions should be raised with your primary regulator or with the CFPB, which has a regulations assistance line at (202) 453-7700 and an e-mail address for regulation questions at CFPB_reginquiries@cfpb.gov.

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[6] Comment 1005.32(b)(3)-1

[7] 12 C.F.R. §1005.31(b)(1)(viii)

[8] Appendix A to 12 C.F.R. Part 1005

[9] 12 C.F.R. §1005.33(a)(1)(iv)(D)

[10] 12 C.F.R. §1005.33(h)

[11] Comment 1005.33(a)-7

[12] Comments 1005.33(h)-2.i and 1005.33(h)-2

[13] Comment 1005.33(c)-12

Dodd-Frank Act Mortgage Regulations

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made significant changes to the federal consumer protection laws for residential mortgage loans. In January 2013, the Consumer Financial Protection Bureau (CFPB) issued final rules to implement provisions of Title XIV. The CFPB has since issued a number of clarifications and amendments designed to address implementation concerns. In addition, the other federal banking agencies and the CFPB jointly issued a final rule on high-risk appraisals in January 2013, followed by a supplemental final rulemaking in December 2013. In November 2013, the CFPB also published the final rule integrating the mortgage disclosures required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA), as required by Sections 1098(2) and 1100A(5) of the Dodd-Frank Act.

This chart provides a quick summary of the new rules and lists the effective date. For details on the new rules, visit the CFPB's regulatory implementation page and its "mortgage-rules-at-a-glance" page, which contains compliance guides and other resources. In addition, Outlook Live conducted a webinar on the small creditor qualified mortgages on December 4, 2013, which is available for replay at: tinyurl.com/QM-outlooklive.

Dodd-Frank Act Mortgage Regulations*
Ability-to-Repay/Qualified Mortgage Rule – Regulation Z, effective 1/10/2014 Creditors must make a reasonable, good faith determination of a consumer's ability to repay (ATR) a loan secured by a dwelling based on specified underwriting criteria. The rule applies to most closed end, consumer credit transactions but excludes home equity lines of credit (HELOC), timeshare loans, reverse mortgages, and short-term bridge and construction loans of 12 months or less. The rule also exempts certain creditors and loan programs, such as loans made by a state housing finance agency. Creditors that offer "qualified mortgages" (QMs) are presumed to comply with the ATR requirement. There are several categories of QMs, which generally limit points and fees charged to the borrower, prohibit certain risky loan features, such as negative amortization, and have other specific underwriting requirements. Two QM categories are uniquely available to "small creditors" (determined by asset size and loan volume). The CFPB has published a small business compliance guide for this rule.
Appraisals for Higher-Priced Mortgages – Regulation Z, effective 1/18/2014, except 7/18/2015 for manufactured home loans The rule adds consumer protections for appraisals for certain closed-end higher-priced mortgages (HPMLs), including requiring creditors to provide certain disclosures and a free copy of the appraisal to borrowers. (Creditors may charge borrowers a fee to perform an appraisal but cannot charge a fee for providing a copy.) The rule also requires second appraisals for "flips" in certain circumstances. Exempt transactions include qualified mortgages. A supplemental rule issued on December 12, 2013 includes, among other things, special provisions applicable to manufactured home loans and extends the mandatory compliance date for those provisions until July 18, 2015. The CFPB has published a small business compliance guide for this rule.
Appraisals Under the Equal Credit Opportunity Act – Regulation B, effective 1/18/2014 The rule modifies the existing Regulation B requirements for appraisals by requiring creditors to provide certain disclosures and promptly provide a free copy of an appraisal to the consumer, rather than only requiring the creditor to do so in response to a consumer request. However, the rule narrows the scope of coverage to first-lien mortgages, and therefore the existing Regulation B appraisal notice will no longer be required for subordinate liens. Creditors may charge borrowers a fee to perform an appraisal but cannot charge a fee for providing a copy. The rule also addresses the timing requirements for transactions subject to both the ECOA and the TILA HPML appraisals rules. The CFPB has published a small business compliance guide for this rule.

Dodd-Frank Act Mortgage Regulations*

Escrow Requirements – Regulation Z, effective 6/1/2013, except 1/1/2014 for small creditor exemption in §1026.35(b)(2)(iii)

Since 2010, creditors have been required to establish and maintain escrow accounts for originated HPMLs secured by a first lien on a principal dwelling. The final rule lengthens the required period for such mandatory escrows from one to five years. The final rule also expands an existing exemption from escrowing certain insurance premiums on condominium-secured loans to include other types of property covered by a master insurance policy. The rule further exempts small creditors (determined by asset size and loan volume) that operate predominantly in rural or underserved areas and meet other eligibility requirements. The CFPB has published a small business compliance guide for this rule.

High-Cost Mortgage and Homeownership Counseling Amendments – Regulations X and Z, effective 1/10/2014

The rule expands the protections under the Home Ownership and Equity Protection Act (HOEPA) to cover home-purchase loans and HELOCs and revises the HOEPA coverage tests. It also implements additional restrictions and conditions on HOEPA loans, including a preloan homeownership counseling requirement. The rule also implements additional homeownership counseling requirements not limited to HOEPA loans, including that all applicants for loans covered by the RESPA receive a list of local homeownership counselors. The CFPB has published a small business compliance guide for this rule.

Integrated RESPA/TILA Mortgage Disclosure Rule – Regulations X and Z, effective 8/1/2015

The rule combines the separate mortgage disclosures required by the RESPA and the TILA at the time of application and at consummation into single integrated disclosures. The TILA early disclosure statement and the RESPA good-faith estimate are replaced with the Loan Estimate, and the TILA final disclosure statement and HUD-1 are replaced with the Closing Disclosure. Among other substantive changes, the rule amends the definition of "application" for purposes of determining when the Loan Estimate must be provided, and requires that the Closing Disclosure in most cases be received by the borrower at least three business days before closing.

Loan Originator Compensation – Regulation Z, effective 1/1/2014, except 6/1/2013 for arbitration ban

In 2011, the Federal Reserve Board (Board) amended Regulation Z to add restrictions on loan originator compensation (LOC). The Board's rule prohibits LOC from varying with loan terms and conditions (except for the amount of credit extended), provides that LOC can be paid by the consumer or by the creditor but not by both, and prohibits originators from steering a consumer to a loan because of higher LOC. The CFPB's rule clarifies these restrictions and adds new ones. For example, the rule clarifies the definitions of "loan originator" and a proxy for loan term and condition and clarifies that certain profit-sharing arrangements and bonus plans are permitted. The rule also prohibits creditor financing of certain credit insurance premiums, prohibits mandatory arbitration clauses in residential mortgage contracts, and imposes training and background-check requirements on loan originators not required to be licensed under the Secure and Fair Enforcement for Mortgage Licensing Act. The CFPB has published a small business compliance guide for this rule.

Mortgage Loan Servicing – Regulations X and Z, effective 1/10/2014

The rule revises and expands consumer protections for loan servicing, including new requirements for loss mitigation (including requirements for application intake, evaluation and notification, and appeal); servicer policies and procedures, early intervention and continuity of contact rules for delinquent borrowers; and restrictions on dual tracking; a periodic statement requirement for certain loans; a new initial interest-rate change and a revised interest-rate adjustment notices for adjustable rate mortgages. The rule implements additional protections regarding forced-placed insurance, revised error resolution procedures, and information request requirements. "Small servicers" (who service 5,000 or fewer mortgages and are creditor or assignee for loans) are exempt from some of the servicing rules. The CFPB has published a small business compliance guide for this rule.

** Thanks to the Federal Reserve Bank of San Francisco for its assistance in preparing this chart.*

Regulatory Calendar*

Effective Date	Implementing Regulation	Regulatory Change	*Outlook* Article/ Webinar
8/1/15	Regs. X and Z	Final rule integrating Real Estate Settlement and Procedures Act (RESPA) and Truth in Lending (TILA) mortgage disclosures	
1/1/14	Reg. Z	Annual dollar amount adjustments to TILA	
1/18/14**	Reg. Z	Final rule exempting subset of higher-priced mortgage loans (HPMLs) from appraisal requirements	
1/1/14	Reg. C	Annual adjustment to asset-size exemption threshold for Home Mortgage Disclosure Act (HMDA) requirements	
1/1/14	Reg. Z	Annual adjustment to asset-size exemption threshold for escrows for HPMLs	
1/1/14	Regs. X and Z	Amendment to RESPA and TILA mortgage rules	
1/10/14 (1/1/14 for loan originator compensation)	Regs. B, X, and Z	Sept. 2013 final rule amending certain aspects of Dodd-Frank Act mortgage rules	
10/28/13	Reg. E	Technical correction to final rule on foreign remittance transfers	Q3 2012
1/10/14	Regs. X and Z	July 2013 final rule amending certain aspects of Dodd-Frank mortgages rules	
1/10/14	Reg. Z	June 2013 final rule amending Jan. 2013 Dodd-Frank Act rules for ability-to-repay and loan servicing rules	
1/10/14	Reg. Z	Final rule delaying effective date of Dodd-Frank Act prohibition on single-premium credit insurance to Jan. 10, 2014	
1/18/14	Reg. B	Final rule on Dodd-Frank Act appraisal requirements under the Equal Credit Opportunity Act (ECOA)	
1/18/14***	Reg. Z	Final rule on Dodd-Frank Act requirements for loan originator compensation, mandatory arbitration, SAFE Act, and single-premium credit insurance	
1/18/14	Regs. X & Z	Final rule on Dodd-Frank Act requirements for high-cost mortgages and homeownership counseling	
1/18/14	Reg. Z	Final rule on Dodd-Frank Act appraisal requirements for HPMLs	
1/10/14	Reg. Z	Final rule amending Dodd-Frank Act ability-to-repay/qualified mortgage rule	
1/10/14	Reg. Z	Final rule on Dodd-Frank Act ability-to-repay/qualified mortgage rule	12/4/13 Webinar
1/10/14	Reg. Z	Federal Housing Finance Agency announcement limiting Fannie Mae/Freddie Mac loan purchases to "qualified mortgages"	
11/4/13	Reg. Z	Final rule amending ability-to-repay requirements for credit cards	
10/28/13	Reg. E	Revised final rule for foreign remittance transfer rule	Q3 2012
3/28/13	Reg. Z	Final rule amending Reg. Z prohibiting fees from exceeding 25 percent of credit limit during first year after account opening	
3/26/13	Reg. E	Final rule eliminating requirement that fee notice must be posted on/at ATMs	

* Links to the regulatory changes are available in the online version of *Outlook* at: tinyurl.com/calendar-cco.

**For manufactured homes, the effective date for the HPML appraisal requirement is 7/18/15.

***The amendment for mandatory arbitration is effective on June 1, 2013. All other provisions of the rule took effect on Jan. 10, 2014.

Outlook Live Webinars

As part of its outreach efforts, the Federal Reserve System regularly conducts Outlook Live webinars on consumer compliance topics at no charge. The table below lists the webinars conducted in 2013. You can view these webinars and download the presentation slides on the Outlook Live website: tinyurl.com/archive-outlooklive. If you subscribe to *Outlook*, you will automatically be notified of future Outlook Live events.

Date	Webinar	Description
12/12/13	**Consumer Compliance Hot Topics — 2013 Year in Review**	Senior Federal Reserve staff recap recent regulatory changes, discuss hot topics, and review future regulatory changes.
12/4/13	**Small Creditor Qualified Mortgages**	Presenters from the Consumer Financial Protection Bureau (CFPB) discuss small creditor qualified mortgages.
10/24/13	**2013 Interagency Fair Lending Hot Topics**	Presenters from several different federal agencies discuss a variety of emerging fair lending issues and hot topics.
8/20/13	**Conducting Consumer Compliance Risk Assessments — Examiner Insights**	Examiners from the Federal Reserve Bank of St. Louis provide insights on risk assessments.
8/6/13	**Indirect Auto Lending — Fair Lending Considerations**	Presenters from several different federal agencies discuss fair lending risks with indirect auto lending.
3/5/13	**UDAP — Analysis, Examinations, Case Studies, and Emerging Risks**	Senior Federal Reserve staff discuss compliance issues for unfair and deceptive acts or practices.

Setting the Record Straight

Correction

An article in the Third Quarter 2013 issue of *Outlook*, "New Compliance Requirements Under the Garnishment Rule for Accounts Receiving Certain Federal Benefits," misstated when financial institutions are required by 31 C.F.R. §212.7(a) to provide notice to account holders of an account review.

The text should have read if "a covered benefit payment was deposited into the holder's account during the lookback period, the balance in the account on the date of account review was greater than $0 and the institution established a protected amount, *and* funds in the account exceed the protected amount."

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Calendar of Events 2014

February 16–19	**ABA National Conference for Community Bankers** JW Marriott Desert Ridge Resort & Spa Phoenix, AZ
March 21–27	**ABA National Compliance School** DoubleTree by Hilton Hotel San Diego – Mission Valley San Diego, CA
March 30–April 2	**The 2014 National Interagency Community Reinvestment Conference** FDIC, FRB Chicago and San Francisco, OCC, and CDFI Fund Hyatt Regency Chicago Chicago, IL
May 12–14	**Reinventing Older Communities: Bridging Growth & Opportunity** Federal Reserve Bank of Philadelphia Loews Hotel Philadelphia, PA