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Inside



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# Consumer Compliance Requirements for Commercial Products and Services

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The term "federal consumer protection laws" suggests that the scope of these laws is limited solely to consumer products and services. However, some of these laws — including the Equal Credit Opportunity Act (ECOA), the Flood Disaster Protection Act (FDPA), and the Servicemembers Civil Relief Act (SCRA), among others — also apply to commercial products and services. In addition, other federal consumer protection laws, although generally limited in scope to consumer products and services, include certain provisions that also apply to commercial products and services. For example, Regulation Z (the implementing regulation for the Truth in Lending Act (TILA)) includes certain requirements for business-purpose credit cards.

It is important that financial institutions that offer commercial products and services integrate the corresponding compliance requirements into their applicable policies and procedures. This article provides a general overview of these laws and regulations.

## EQUAL CREDIT OPPORTUNITY ACT/REGULATION B

The ECOA, as implemented by Regulation B, requires that creditors do not discriminate on a prohibited basis in any aspect of a credit transaction. Prohibited bases include race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); if the applicant's income is being derived from public assistance; or if the applicant exercises in good faith any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Consumer Financial Protection Bureau (CFPB).[1] ECOA and Regulation B apply to all consumer and commercial credit transactions, with limited exceptions.[2]

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[1] 12 C.F.R. §1002.2(z)

[2] Regulation B does not apply to public utilities credit, government credit, securities credit, and incidental credit. See 12 C.F.R. §1002.3. In addition, the furnisher requirements in 12 C.F.R. §1002.10 only apply to consumer credit transactions. See Comment 10-1 of the Regulation B staff commentary. ("The requirements of §1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.")

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# The Expanded Scope of High-Cost Mortgages Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

*By Rachel Leary, Examiner, Federal Reserve Bank of Kansas City*

The Home Ownership and Equity Protection Act (HOEPA)[1] was enacted in 1994 as an amendment to the Truth in Lending Act (TILA) to address abusive lending practices for mortgages with high annual percentage rates (APRs) and/or high points and fees (known as high-cost mortgages) by restricting loan terms and features. The law also provides enhanced remedies for violations in a private civil action.[2]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the HOEPA to enhance its protections. The amendments:

- expand the types of loans covered by the HOEPA to include home-purchase loans and open-end, home-secured credit transactions (such as home equity lines of credit (HELOCs)), which were previously exempt;
- add a new HOEPA threshold for what is considered a high-cost mortgage based on prepayment penalties;
- lower the two existing thresholds based on a loan's rate and points and fees so more loans will qualify as high-cost mortgages; and
- impose additional restrictions on high-cost mortgages, such as prohibiting balloon payment features (with specified exceptions) regardless of the term.

In January 2013, the Consumer Financial Protection Bureau (CFPB) issued implementing regulations for the HOEPA amendments, which became effective on January 10, 2014.[3]

The purpose of this article is to remind bankers that more residential loans may qualify as high-cost mortgages subject to the HOEPA's enhanced protections and remedies as a result of the Dodd-Frank Act amendments. This article also discusses the history of HOEPA, its expanded coverage under the amendments, the remedies available to borrowers for violations, the new substantive restrictions for high-cost mortgages, and suggestions for compliance programs.

[1] The HOEPA is codified at 15 U.S.C. §1639; 12 C.F.R. §§1026.32,1026.34.
[2] TILA's civil remedies are set forth at 15 U.S.C. §1640.
[3] 78 Fed. Reg. 6856 (Jan. 31, 2013). Further amendments were published in June 2013 and October 2013. For additional information, visit the CFPB web page on the HOEPA rule.

## HOEPA HISTORY

Congress enacted the HOEPA in 1994 to respond to abusive mortgage lending practices in the subprime mortgage market, particularly the issue of equity stripping loans (loans that erode a borrower's equity in his or her home through high interest rates and/or high points and fees). The HOEPA addressed this problem by creating a regulatory category for residential loans known as high-cost mortgages based on the loan's APR and/or its fees. The HOEPA restricted loan features on these mortgages, required disclosures to the applicant, and provided enhanced remedies to borrowers for violations in a civil action.[4]

The HOEPA excluded residential mortgage transactions (defined as a mortgage to finance the acquisition or construction of a principal dwelling, commonly known as a purchase-money mortgage);[5] reverse mortgages; and open-end, home-secured credit transactions (e.g., HELOCs) from its coverage. Thus, as originally enacted, the HOEPA focused on closed-end refinance, home-equity, and home-improvement loans with high APRs and/or high points and fees.

## DODD-FRANK ACT HOEPA CHANGES

### *Expanded Product Coverage*

The amended HOEPA now applies to purchase-money mortgages and open-end, dwelling-secured credit transactions such as HELOCs. Reverse mortgages and construction loans remain exempt. The CFPB also added a new exemption for loans originated and financed by housing finance agencies, and loans originated through the U.S. Department of Agriculture's Rural Housing Service Section 502 Direct Loan Program.[6]

## THRESHOLD CHANGES

### *APR Threshold Test*

The prior APR test was based on a margin added to the rate for a Treasury security of comparable duration. The revised test is based on a lower margin added to the average prime offer rate (APOR)[7] for a comparable transaction.

| Previous HOEPA APR Test | Revised HOEPA APR Test[8] |
|---|---|
| Treasury rate + 8.5 percentage points for first-lien loan | APOR + 6.5 percentage points for first-lien loan (except as described below) |
| Treasury rate + 10 percentage points for subordinate-lien loan | APOR + 8.5 percentage points for subordinate-lien loan |
| | APOR + 8.5 percentage points for a first-lien loan if the dwelling is personal property and the loan amount is less than $50,000 |

As a result of the changes to this test, the APR threshold for a high-cost mortgage has been lowered so more loans will qualify.

### *Points and Fees Threshold Test*

The previous and revised points and fees test are listed below.

| Previous Points and Fees Test | Revised Points and Fees Test |
|---|---|
| Equals or exceeds 8 percent of the total loan amount[9] | Equals or exceeds 5 percent of the total loan amount for loans either equal to or greater than $20,000 (adjusted for inflation annually) |
| | Exceeds the lesser of either 8 percent of the total loan amount or $1,000[10] (adjusted for inflation annually) for total loan amounts less than $20,000 |

The major change here is that the points and fees threshold was lowered from 8 percent to 5 percent of the total loan amount, except for loans of less than $20,000, for which points and fees cannot exceed $1,000 or 8 percent of the total loan amount, whichever is lower.

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[4] The TILA's civil liability provision provides that borrowers establishing a HOEPA violation are entitled to a refund of all finance charges and fees paid in addition to the damages generally available for a TILA violation. See 15 U.S.C. §1640(a)(4).
[5] 12 C.F.R. §226.32(a)(2) (2013 C.F.R.)
[6] 12 C.F.R. §1026.32(a)(2)
[7] The APOR is derived from Freddie Mac's Primary Mortgage Market Survey, which surveys lenders to determine the average mortgage rates they are charging prime borrowers. Current APOR information is available on the Federal Financial Institutions Examination Council website at www.ffiec.gov/ratespread/aportables.htm.
[8] 12 C.F.R. §1026.32(a)(1)(i)
[9] For closed-end credit, the total loan amount is defined in 12 C.F.R. §1026.32(b)(4)(i); for open-end credit, the total loan amount is defined in 12 C.F.R. §1026.32(b)(4)(ii).
[10] 12 C.F.R. §1026 32(a)(1)(ii)

# News from Washington: Regulatory Updates*

**Consumer Financial Protection Bureau (CFPB) issues report on loans to servicemembers and their families.** On December 29, 2014, the CFPB issued a report discussing ways in which some creditors are circumventing the Military Lending Act (MLA), 10 U.S.C. §987, which provides consumer protections for certain loan products to servicemembers and their families. The MLA and its implementing regulations, 32 C.F.R. Part 232, cover three types of loans: (1) closed-end payday loans with a term of 91 days or fewer and in an amount of $2,000 or less; (2) closed-end auto title loans with a term of 181 days or fewer; and (3) closed-end tax refund anticipation loans. The report noted that "lenders can avoid the [MLA's] limitations when they offer open-end lines of credit, contract for an initial duration of greater than 91 days for payday loans or 181 days for auto title loans, or finance an initial amount of more than $2,000 for payday loans." The report concludes that "this issue is of substantial concern to the [CFPB] and we will continue to use the tools available to us to address the consumer financial challenges affecting the military community." The CFPB's report is available at http://tinyurl.com/CFPB-service-report. On a related note, the Department of Defense issued a rulemaking proposal to expand the scope of the MLA's coverage, which is discussed below.

**The Department of Defense (DOD) proposes to expand the MLA's coverage to prevent circumvention.** On September 29, 2014, the DOD issued a rulemaking proposal, 79 Fed. Reg. 58602, that addresses "a wider range of credit products that currently fall outside the scope of the regulation implementing the MLA, streamline[s] the information that a creditor would be required to provide to a covered borrower, and provide[s] a more straightforward mechanism for a creditor to assess whether a consumer applicant is a covered borrower." The MLA currently only applies to (1) closed-end payday loans with a term of 91 days or fewer and in an amount of $2,000 or less; (2) closed-end auto title loans with a term of 181 days or fewer; and (3) closed-end tax refund anticipation loans. The proposal would align the regulation's definition of "consumer credit," 32 C.F.R. §232.3(f), with the broader definition of consumer credit in Regulation Z; namely, credit primarily for personal, family, or household purposes and subject to a finance charge; or payable by a written agreement in more than four installments. Certain credit transactions would be exempt: (1) credit secured by the borrower's dwelling; (2) credit to finance the purchase of a motor vehicle secured by the vehicle; (3) credit to finance the purchase of personal property secured by the property; and (4) credit exempt from Regulation Z (except for 12 C.F.R. §1026.29). The comment period closed on November 28, 2014.

**Agencies release annual CRA asset-size threshold adjustments for small and intermediate small institutions.** On December 19, 2014, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank, and intermediate small savings association under the Community Reinvestment Act (CRA) regulations. Financial institutions are evaluated under different CRA evaluation procedures based upon their asset-size classification. Financial institutions meeting the small and intermediate small asset-size threshold are not subject to the reporting requirements for large banks and savings associations. Annual adjustments are required by the CRA rules, and the adjustments to these asset-size thresholds are based on the change in the average of the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. The asset-size threshold adjustments were effective on January 1, 2015.

The annual adjustments for CRA evaluations for the period ending in November 2014 were made based on a 1.60 percent increase in the CPI index. As a result of the increase, the new CRA definition is as follows:

- A small bank or small savings association means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion.
- An intermediate small bank or intermediate small savings association means a small institution with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years.

**CFPB proposes expanded foreclosure protections.** On November 20, 2014, the CFPB proposed several amendments to the Mortgage Servicing Rules under Regulation X, which implements the Real Estate Settlement Procedures Act, and Regulation Z, which implements the Truth in Lending Act. The proposal would:

- require servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan;
- expand consumer protections to a deceased borrower's surviving family members or persons who inherit a property from a borrower;
- require servicers to notify borrowers when loss mitigation applications are complete;
- require a transferee servicer to comply with loss mitigation requirements within the same time frames that applied to the transferor servicer;
- clarify servicers' obligations to avoid dual-tracking and prevent wrongful foreclosures;
- clarify that a borrower becomes delinquent, for purposes of the servicing rules, the day the borrower fails to make a periodic payment;
- require servicers to provide periodic statements to borrowers in bankruptcy; and
- clarify a servicer's obligation to provide early intervention notices about loss mitigation options to borrowers who have told the servicer to stop contacting them under the Fair Debt Collection Practices Act.

The proposal would make additional changes including providing flexibility for servicers to comply with certain force-placed insurance and periodic statement disclosure requirements. The changes would also clarify several early intervention, loss mitigation, information request, and prompt crediting of payments requirements, as well as the small servicer exemption. The proposal would exempt servicers from providing periodic statements under certain circumstances when the servicer has charged off the mortgage. The comment period closed on March 16, 2015.

**CFPB proposes protections for prepaid products.** On November 13, 2014, the CFPB proposed new federal consumer protections for general purpose reloadable prepaid cards as well as mobile and other electronic prepaid accounts that can store funds. Covered products include payroll cards; certain federal, state, and local government benefit cards; student financial aid disbursement cards; tax refund cards; and peer-to-peer payment products. The protections would be similar to those provided for debit and ATM cards under the Electronic Fund Transfer Act and Regulation E, including free access to account information. The proposal would require issuers of prepaid cards to limit consumers' losses when funds are stolen or cards are lost, investigate and resolve errors, and adhere to credit card protections if a credit is offered in connection with a prepaid account. Card issuers would be required to include a new Know Before You Owe prepaid disclosure that provides consumers with information about the costs and risks of prepaid products.

**Agencies request comment on proposed flood insurance rule.** On October 24, 2014, the Board, OCC, FDIC, National Credit Union Administration, and Farm Credit Administration announced a rulemaking proposal to amend their flood insurance regulations. The proposed rule would implement provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) relating to escrowing flood insurance payments and exemptions of certain detached structures from the mandatory flood insurance purchase requirement. The HFIAA amends the escrow provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. The proposed rule would require regulated institutions to escrow premiums and fees for flood insurance for loans secured by residential improved real estate or mobile homes that are made, increased, extended, or renewed on or after January 1, 2016, unless the regulated lending institution or a loan qualifies for a statutory exception. The proposed rule provides borrowers who have existing residential loans outstanding on January 1, 2016, with the option to escrow flood insurance premiums and fees. The proposal includes new and revised sample notice forms and clauses concerning the escrow requirement and the option to escrow. The proposal would eliminate the requirement to purchase flood insurance for a structure that is a part of a residential property located in a special flood hazard area if that structure is detached from the primary residential structure and does not also serve as a residence; however, lenders have the option to require flood insurance on the detached structures to protect the collateral securing the mortgage. The comment period closed on December 29, 2014.

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

# On the Docket: Recent Federal Court Opinions*

## REGULATION B — EQUAL CREDIT OPPORTUNITY ACT (ECOA)

**U.S. Supreme Court accepts a case to determine if the ECOA and Regulation B apply to spousal guarantors.** *Hawkins v. Community Bank of Raymore*, 135 S. Ct. 1492 (March 2, 2015). The scope of the ECOA is generally limited to credit applicants, except that Regulation B defines "applicant" as including "guarantors" for the purposes of the spousal signature provisions of 12 C.F.R. §1002.7(d). In 2014, the Sixth and Eighth Circuits issued conflicting decisions whether spousal guarantors qualify as credit applicants covered by the ECOA. The Eighth Circuit held in *Hawkins v. Community Bank of Raymore*, 761 F.3d 937, 941 (8th Cir. 2014) that a "guarantor does not request credit and therefore cannot qualify as an applicant under the unambiguous text of the ECOA." The Sixth Circuit in *RL BB Acquisition, LLC v. Bridgemill Commons Development Group, LLC*, 754 F.3d 380, 385 (6th Cir. 2014) held to the contrary that §1002.7(d)'s protections for spousal guarantors was valid because the definition of "applicant" was ambiguous and could "encompass all those who offer promises in support of an application — including guarantors, who make formal requests for aid in the form of credit for a third party." This case is scheduled to be argued during the Court's 2015–2016 term, which ends on June 30, 2016.

**Sixth Circuit holds that a creditor's refusal to modify a repayment plan under the Home Affordable Modification Program (HAMP) does not constitute adverse action.** *Thompson v. Bank of America, N.A.*, 773 F.3d 741 (6th Cir. 2014). A borrower defaulted on her mortgage and filed suit against Bank of America (BOA), to which her mortgage had been assigned. She alleged, among other things, that BOA's denial of her request to modify the loan (on the grounds of her having provided insufficient documentation) under HAMP constituted adverse action, for which BOA failed to provide an adverse action notice. The ECOA, as implemented by Regulation B, requires that if a creditor takes adverse action against a credit applicant, it must provide an adverse action notice. See 15 U.S.C. §1691(d)(2); 12 C.F.R. §1002.9(a)(1). The court found that BOA's denial of the request to restructure the loan under HAMP did not constitute adverse action, which ECOA defines as "a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested." Accordingly, BOA was not obligated to provide an adverse action notice.

## REGULATION Z — TRUTH IN LENDING ACT (TILA)

**U.S. Supreme Court holds that the TILA does not require a borrower to file a lawsuit to preserve a rescission claim.** *Jesinoski v. Countrywide Home Loans, Inc.* 135 S. Ct. 790 (January 13, 2015). Under the TILA, 15 U.S.C. §1635(a), and Regulation Z, 12 C.F.R. §§1026.15(a), 1026.23(a), a consumer has three business days to rescind certain credit transactions secured by the consumer's principal dwelling. But this right can be extended to three years if the creditor fails to provide the consumer with two copies of the notice of the right to rescind or all material TILA disclosures (as defined in Regulation Z). The federal appeals courts have been divided as to whether a consumer exercises — and thus preserves — the right of rescission during the three-year period by notifying the creditor in writing within three years of consummation, as the Third, Fourth, and Eleventh Circuits have held, or instead must file a lawsuit within three years of consummation, as the First, Sixth, Eighth, Ninth, and Tenth Circuits have held.

In *Jesinoski*, the Supreme Court reviewed an Eighth Circuit decision dismissing a rescission lawsuit because it was filed more than three years after consummation, even though the borrower sent the creditor written notice to rescind within the three-year period. Based on Section 1635(a) of the TILA, which provides that the borrower "shall have the right to rescind … by notifying the creditor … of his intention to do so," the Supreme Court held "that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely.

The statute does not also require him to sue within three years." The Eighth Circuit relied on Section 1635(f) of the TILA, which specifies that a rescission claim must be exercised within three years. But the Supreme Court clarified that §1635(f) addresses *when* a claim must be exercised, not *how* to exercise it. The Eighth Circuit's decision was reversed, and the case was remanded for further proceedings.

**Rescission period extended to three years because creditor asked borrower to sign a postdated rescission waiver form.** *Harris v. Schonbrun* 773 F.3d 1180 (11th Cir. 2014). In connection with a mortgage loan, a creditor asked a borrower to sign a postdated waiver of her right to rescind, which Regulation Z prohibits (12 C.F.R. §1026.23(e)), and only provided one copy of the notice of the right to rescind (instead of the two copies that the regulation requires). After the borrower defaulted and the creditor filed a foreclosure lawsuit, the borrower sued the creditor to rescind the loan. The borrower argued that the right to rescind was extended to three years under the TILA because the creditor asked the borrower to sign a postdated waiver of the right to rescind and only provided one copy of the notice of right to rescind. The trial court held that the right of rescission was extended to three years but denied the borrower's request for statutory damages, attorney's fees, and court costs. On appeal, the Eleventh Circuit affirmed that the loan could be rescinded because the "simultaneous execution of both a loan and a waiver of the right to rescind preclude[s] the possibility of 'clear' disclosure. [The borrower] had no reason to believe she was signing a waiver that would not take effect until the three-day period had expired. If [the borrower] had changed her mind [during the three-day period,] and wished to rescind the transaction, it would have been reasonable for her not to have exercised that right as a direct result of [the waiver]." But the Eleventh Circuit reversed the lower court's denial of statutory damages, attorney's fees, and court costs, finding that they are mandatory once a rescission violation has been established. The case was remanded for further proceedings.

## REGULATION E — ELECTRONIC FUND TRANSFER ACT (EFTA)

**Fifth Circuit holds that a plaintiff alleging an EFTA violation for a missing fee notice on an automated teller machine has legal standing.** *Mabary v. Home Town Bank, N.A.*, 771 F.3d 820 (5th Cir. 2014). Regulation E, until it was recently amended, required operators of automated teller machines (ATMs) that impose fees on users to display two fee notices: one on or at the ATM (external notice) and one on the ATM's screen or on a paper printout before the transaction is completed (screen notice), which must be displayed and accepted before a fee can be imposed. If an ATM transaction fee is imposed without the required notice, the EFTA allows consumers to collect actual damages, statutory damages, costs, and fees. See 15 U.S.C. §1693m(a). The plaintiff in this class action suit alleged an EFTA violation because the defendant bank failed to display an external notice on or at its ATM, even though she acknowledged seeing a fee notice on the ATM screen before the fee was imposed. The lower court dismissed the lawsuit because it found that the plaintiff did not suffer any concrete injury-in-fact and thus lacked legal standing to pursue a lawsuit. On appeal, the Fifth Circuit reversed. Although the court acknowledged that a violation of a procedural right alone without resulting harm does not confer standing, the court found that the missing fee notice harmed the plaintiff: "Congress's determination that consumers were entitled to the fee information they need to decline a transaction before investing the time needed to initiate it protects a substantive, if small, right, and its deprivation is an injury-in-fact that allows [the plaintiff] to pursue her claim here." Effective March 26, 2013, the Consumer Financial Protection Bureau amended Regulation E to eliminate the external notice requirement, although ATM operations must still comply with the screen notice requirement.

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

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# Consumer Compliance Requirements for Commercial Products and Services

**Adverse action notification requirements to business credit applicants.**[3] Although ECOA and Regulation B apply to both consumer and business credit applicants, the notice requirements vary when credit is extended to a business. For business credit applicants who had $1 million or less in gross revenues during the prior fiscal year, the timing requirements and the contents of the notices are the same as for consumer applicants although financial institutions may notify the applicants of the adverse action either orally or in writing.[4] Additionally, a creditor has the option of disclosing at application (instead of after adverse action is taken) the right to request the reasons for the action taken, provided that this disclosure includes the ECOA notice and the applicant's right to a statement of specific reasons for the action taken.[5]

For business credit applicants who had more than $1 million in gross revenues during the prior fiscal year, creditors must notify applicants of adverse actions orally or in writing within a *reasonable time*, as opposed to the 30-day requirement for consumer credit applicants and business credit applicants with $1 million or less in gross revenues. Creditors must provide a written statement of the reasons for the adverse action and the ECOA notice if the applicant makes a written request within 60 days of the creditor's notification.[6]

**Spousal signature rule.** Before discussing spousal requirements in connection with commercial credit, we should review the core requirements: When an applicant applies for individual credit and meets the creditor's lending standards for the amount and credit terms requested, the creditor cannot require an applicant's spouse (or anyone else), other than a joint applicant, to sign the credit instrument, subject to certain exceptions.[7] If the individual applicant does not meet the creditor's lending standards, the creditor may ask for a guarantor to provide credit support but cannot specify that it be the applicant's spouse. To implement these requirements, the regulation requires that when a husband and wife apply jointly for credit, their intent to do so must be evident at application. A spouse's signature on a financial statement or joint signatures on a promissory note are insufficient for this purpose. However, the staff commentary states that "signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit."[8] For additional information on the spousal signature rules, see the *Consumer Compliance Outlook* (*Outlook*) article "Regulation B and Marital Status Discrimination: Are You in Compliance?" by Carol Evans and Surya Sen (Fourth Quarter 2008).

For commercial credit, a creditor may require the personal guarantee of the partners, directors, or officers of a business as well as the shareholders of closely held corporations even though the business independently meets the creditor's lending standards for the amount and terms requested. Creditors must base this decision on the guarantor's relationship to the business and not on a prohibited basis, such as requiring guarantees only for women-owned or minority-owned businesses or requiring guarantees only from the married officers of a business or the married shareholders of a closely held corporation.[9]

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[3] See 12 C.F.R. §1002.9(a)(3).
[4] 12 C.F.R. §1002.9(a)(3)(i)(A)
[5] 12 C.F.R. §1002.9(a)(3)(i)(B)
[6] 12 C.F.R. §1002.9(a)(3)(ii)
[7] 12 C.F.R. §1002.7(d)(1); note that the U.S. Court of Appeals for the Eighth Circuit issued a decision in 2014 holding that ECOA protections only apply to credit applicants and that guarantors do not fall within ECOA's definition of an applicant: *Hawkins v. Community Bank of Raymore*, 761 F.3d 937 (8th Cir. 2014). As a result, the spousal signature rule as it pertains to guarantors currently does not apply to creditors operating in the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). That decision conflicts with the Sixth Circuit's 2014 ruling in *RL BB Acquisition, LLC v. Bridgemill Commons Development Group, LLC*, 754 F.3d 380 (6th Cir. 2014). The U.S. Supreme Court recently agreed to review the Eighth Circuit's decision to resolve this circuit conflict. A decision is expected before the end of the court's 2015–16 term, which ends on June 30, 2016.
[8] See Comment 7(d)(1)-3.
[9] See Comment 7(d)(6)-1.

**Record retention requirements.** ECOA requires financial institutions to retain all written or recorded information in connection with a commercial credit application for 12 months after the date that the applicant learned of the adverse action taken (compared with 25 months for consumer credit applications).[10]

**Statute of limitations for ECOA lawsuits.** The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) extended the statute of limitations for ECOA claims from two to five years.[11] As a result, creditors have longer exposure to civil legal liability for consumer and commercial credit transactions. In some cases, courts have held that if a creditor secures a borrower's or guarantor's liability on a credit instrument in violation of ECOA or Regulation B and later files a collection lawsuit because of a default, the borrower or guarantor can raise the violation as a defense to the claim without regard to the statute of limitations.[12]

## FLOOD DISASTER PROTECTION ACT/ REGULATION H

The FDPA mandates, with limited exemptions,[13] that federally regulated lending institutions cannot make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area (SFHA) unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.[14] The type and location of the collateral are the primary factors for this determination; the loan purpose (i.e., consumer or commercial) is not relevant. For an overview of flood insurance requirements, refer to the *Outlook* article "Flood Insurance Compliance Requirements" by Kenneth Benton and Michael Schiraldi (Fourth Quarter 2011).

In some cases, when a lender provides notice to a borrower that the property securing the loan is in an SFHA, a borrower may disagree with the finding. For example, the borrower may believe that the property was inadvertently included in the Flood Insurance Rate Map. Borrowers may seek to resolve these disputes through a process established by the Federal Emergency Management Agency (FEMA), which administers the National Flood Insurance Program. FEMA created the Letter of Map Change (LOMC) to resolve disputes about FIRMs. Several LOMC types are available, with the appropriate one depending on the nature of the request:

- Letter of Map Amendment (LOMA)
- Conditional Letter of Map Amendment (CLOMA)
- Letter of Map Revision (LOMR)
- Letter of Map Revision Based on Fill (LOMR-F)
- Conditional Letter of Map Revision (CLOMR)
- Conditional Letter of Map Revision Based on Fill (CLOMR-F)
- Flood Hazard Determination Review

When such a dispute occurs, regulators can rely only on a final determination from FEMA to resolve the issue. More information about the LOMC process and application procedures is available on FEMA's website.[15] FEMA has also published an online LOMC tutorial[16] and LOMC frequently asked questions.[17]

Finally, Congress has passed two laws in recent years — the Biggert-Waters Flood Insurance Reform Act (BWA) of 2012[18] and the Homeowner Flood Insurance Affordability Act (HFIAA) of 2014[19] — that have amended certain provisions of the FDPA. The federal banking agencies and the Farm Credit Administration (FCA) have issued two rulemaking proposals to implement the BWA and the HFIAA.[20]

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[10] 12 C.F.R. §1002.12(b)
[11] 15 U.S.C. §1691e(f)
[12] See, e.g., *RL BB Acquisition, LLC v. Bridgemill Commons Development Group*, LLC, 754 F.3d 380 (6th Cir. 2014); *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 32–33 (3d Cir. 1995); *Bolduc v. Beal Bank, SSB*, 167 F.3d 667, 672 (1st Cir. 1999); *Bank of the West v. Kline*, 782 N.W.2d 453, 458-63 (Iowa 2010).
[13] The exemptions apply to state-owned property covered under a policy of self-insurance satisfactory to FEMA and to loans with an original principal balance of $5,000 or less and a repayment term of one year or less. 12 C.F.R. §208.25(d).
[14] 12 C.F.R. §208.25(c)
[15] www.fema.gov/national-flood-insurance-program-flood-hazard-mapping/letter-map-change
[16] www.fema.gov/online-lomc-training
[17] www.fema.gov/media-library/assets/documents/29948
[18] *Outlook* (Third Quarter 2012) summarized this law at https://consumercomplianceoutlook.org/2012/third-quarter/compliance-spotlight/.
[19] *Outlook* (Second Quarter 2014) summarized this law at https://consumercomplianceoutlook.org/2014/second-quarter/compliance-spotlight/.
[20] 78 Fed. Reg. 65108 (Oct. 30, 2013) (implementing the BWA) and 79 Fed. Reg. 64518 (Oct. 30, 2014) (implementing the HFIAA)

The proposals are currently pending. In the interim, the agencies issued the "Interagency Statement on the Impact of Biggert-Waters Act" to clarify certain issues, including the effective dates of some of the provisions of these laws.[21]

FEMA has also made a change to the program concerning waiting periods. FEMA generally imposes a 30-day waiting period when a flood policy is purchased, subject to certain exceptions.[22] One long-standing exception was a lender's purchase of a force-placed policy after the lender determined that a property securing a loan was in an SFHA and did not have flood insurance. In April 2013, FEMA announced in Bulletin W-13017 that effective October 1, 2013, the 30-day waiting period would also apply to force-placed policies purchased through the Mortgage Portfolio Protection Program. This bulletin is discussed in more detail on page 17.

## FAIR CREDIT REPORTING ACT

The FCRA regulates the furnishing and collection of consumer credit information and access to credit reports and imposes certain disclosure requirements. Some FCRA provisions have implementing regulations, while others do not. Although the FCRA is generally limited to consumer credit transactions, it also applies in some instances to commercial credit transactions involving a consumer.

**Permissible purpose to obtain consumer report.** Creditors must have a permissible purpose to obtain a consumer's credit report, regardless of the purpose of the transaction.[23] In some cases, when credit is extended to a business, the creditor will include the business's principal on the credit instrument as a guarantor or co-obligor and obtain the consumer's credit report. The question arises whether a creditor has a permissible purpose in this circumstance.

A creditor always has a permissible purpose to obtain a credit report if the consumer authorizes it in writing.[24] If a creditor is unsure if it has a permissible purpose for a business purpose loan for which the consumer is a guarantor or co-obligor, it has been an acceptable practice for the creditor to include an authorization to access the consumer's credit report in the credit application or in a separate document.[25]

**Adverse action notice.** The FCRA requires that if a person accesses a consumer report and takes adverse action based, in whole or in part, on information in the report, the consumer must be given an adverse action notice.[26]

The FCRA may so apply when a creditor pulls a credit report on a consumer who is or could be liable for a commercial loan (for example, the consumer is the principal of a business and the creditor wants the consumer to be a guarantor or coapplicant on the loan) and takes adverse action based on the report. If the consumer is acting as a guarantor, a surety, or in a like capacity on the commercial loan, an adverse action notice is not required because the FCRA definition of adverse action is based on ECOA's definition of adverse action, and ECOA's definition does not apply to guarantors.[27] However, if a consumer is a coapplicant for a commercial loan and adverse action is taken, based in whole or in part on information in the consumer's report, and the creditor is unsure if an FCRA adverse notice is required, an adverse action notice may be provided.

## SERVICEMEMBERS CIVIL RELIEF ACT

The SCRA[28] provides certain financial protections to servicemembers and, in some cases, their spouses, dependents, and other persons subject to the obligations of service members. The SCRA covers issues such as rental agreements, eviction, installment loans, credit card interest rates, mortgage interest

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[21] http://tinyurl.com/BWA-statement
[22] http://tinyurl.com/FEMA-13017
[23] FCRA Section 604(a),15 U.S.C. §1681b(a)
[24] FCRA Section 604(a)(2)
[25] The Federal Trade Commission has published informal guidance addressing this issue; however, primary rulemaking and interpretive authority for the FCRA transferred to the Consumer Financial Protection Bureau in 2011 pursuant to the Dodd-Frank Act. See *40 Years of Experience with the Fair Credit Reporting Act* ("commercial transactions — reports on principals of a business entity"at p. 45); available at http://tinyurl.com/FTC-40 (July 2011).
[26] FCRA Section 615(a)
[27] 76 Fed. Reg. 41590, 41597 (July 15, 2011) http://tinyurl.com/FCRA-FRB
[28] 50 U.S.C. App. 501 et seq. The SCRA is a standalone statute with no implementing rule, regulation, or commentary.

rates, mortgage foreclosure, automobile repossessions, and automobile leases.

The SCRA's protections apply to obligations contracted prior to entering military service and cover servicemembers and joint obligations of servicemembers and their spouses. No distinction is made between consumer and commercial credit. For more information, refer to the *FedLinks* bulletin "Servicemembers Civil Relief Act" (February 2014), the *Outlook* article "Servicemember Financial Protection Webinar: Questions and Answers" by Lanette Meister, Laurie Maggiano, and Laura Arce (First Quarter 2013) and the 2012 Outlook Live webinar titled Servicemember Financial Protection.

## HOME MORTGAGE DISCLOSURE ACT/ REGULATION C

The HMDA as implemented by Regulation C requires lenders to collect and publicly disclose information regarding applications for, and originations and purchases of, home-purchase loans, home-improvement loans, and refinancings for each calendar year. Regulators use HMDA data during Community Reinvestment Act (CRA) evaluations to help determine whether financial institutions are serving the residential mortgage credit needs of their communities and in fair lending evaluations to help identify possible discriminatory lending patterns and enforce antidiscrimination laws. HMDA data are also used by economists, researchers, and community groups.

Although residential mortgages are the primary focus of HMDA reporting, certain commercial loans must also be reported. In particular, the refinancing of a dwelling-secured loan is reportable, regardless of the loan purpose.[29] If a consumer obtained a commercial loan secured by the consumer's dwelling, the loan would not be HMDA reportable when originated, but it would be reportable if the loan were refinanced because all refinancings of dwelling-secured loans are reported.[30] In addition, Regulation C requires reporting of multifamily loans (housing for five or more families), which are typically commercial investment property loans (e.g., an apartment building).[31]

Finally, as required by the Dodd-Frank Act, the CFPB issued a rulemaking proposal in 2014 to amend Regulation C to expand the scope of its coverage and to require the collection of new data fields, which could also affect reporting requirements for commercial loans.[32] The proposal is pending.

## COMMUNITY REINVESTMENT ACT/ REGULATION BB

The CRA requires that the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency periodically assess the record of each covered depository institution in helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The CRA also requires that large financial institutions (based upon asset size) collect and report their CRA small business and small farm lending activity. *Outlook* reviewed the reporting requirements in the article "Transitioning from an Intermediate Small Bank to a Large Bank Under the Community Reinvestment Act" by Rebecca Zirkle White (Fourth Quarter 2014).

## EXPEDITED FUNDS AVAILABILITY ACT/ REGULATION CC

The Expedited Funds Availability Act, as implemented by Regulation CC, requires that depository institutions make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. It also establishes rules designed to speed the collection and return of unpaid checks and describes requirements that affect banks that create or receive substitute checks, including requirements related to consumer disclosures and expedited recredit procedures. The statute and the regulation apply to both consumer and commercial accounts.[33]

CONTINUED ON PAGE 14

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[29] 12 C.F.R. §§1003.2,1003.4(a)

[30] 2013 *A Guide to HMDA Reporting: Getting It Right!* glossary definition of refinancing on p. 28 ("Refinancing is any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower. The purpose of the loan being refinanced is not relevant to determining whether the new loan is a refinancing for HMDA purposes.")

[31] Regulation C Comment 1003.2-1 (dwelling)

[32] http://tinyurl.com/CFPB-HMDA-proposal

[33] 12 C.F.R. §229.2(a)

CONTINUED FROM PAGE 3...

# The Expanded Scope of High-Cost Mortgages Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

*Prepayment Penalties Threshold Test*
Under the new prepayment penalty threshold, a consumer credit transaction secured by the consumer's principal dwelling is a high-cost mortgage if:

- the creditor can impose prepayment penalties, as defined in 12 C.F.R. §1026.32(b)(6), more than 36 months after consummation or account opening; or
- the prepayment penalties can exceed 2 percent of the prepaid amount.[11]

One complexity of this provision is that Regulation Z also prohibits prepayment penalties for high-cost mortgages.[12] Thus, the new threshold creates an anomaly: If a loan has a prepayment penalty that crosses the threshold, it is a high-cost mortgage under §1026.32(a)(1)(iii), yet a high-cost mortgage cannot have a prepayment penalty under §1026.32(d)(6).

The CFPB discussed this issue in the preamble to the January 2013 final rule, explaining that the new prepayment penalty test "effectively establish[es] a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a transaction secured by a consumer's principal dwelling, other than a mortgage that is exempt from high-cost mortgage coverage under §1026.32(a)(2)."[13] In other words, creditors offering loans secured by a consumer's principal dwelling (except construction loans, reverse mortgages, and certain government guaranteed loans[14]) cannot impose prepayment penalties that cross the thresholds discussed previously.

Creditors should also recognize that another section of the regulation restricts prepayment penalties for certain dwelling-secured credit transactions. In particular, 12 C.F.R. §1026.43(g) limits prepayment penalties on a "covered transaction," which is defined as a consumer credit transaction secured by a dwelling, with certain exclusions (including HELOCs).[15] For a covered transaction, a prepayment penalty is only allowed if the transaction is a qualified mortgage and if the penalty is otherwise permitted by law.[16] Even then, additional restrictions apply: The APR cannot change after consummation; a penalty can only be imposed during the first 36 months after consummation; the penalty cannot exceed 2 percent if incurred during the first two years following consummation and cannot exceed 1 percent if incurred during the third year following consummation; and the loan cannot be a higher-priced mortgage loan.[17]

Thus, creditors considering prepayment penalties for dwelling-secured consumer credit transactions should consider these limitations during the product development stage for new loan products and should review their existing products for compliance with these changes.

## NEW RESTRICTIONS ON HIGH-COST MORTGAGES

Determining if a loan is subject to the HOEPA is only the first step in originating a high-cost mortgage loan. If the HOEPA applies, creditors must ensure they are complying with the HOEPA's disclosure requirements and substantive restrictions. The Dodd-Frank Act added the following new substantive restrictions on HOEPA loans, as implemented in Regulation Z:

[11] 12 C.F.R. §1026.32(a)(1)(iii)
[12] 12 C.F.R. §1026.32(d)(6)
[13] 78 Fed. Reg. 6856, 6882 (Jan. 31, 2013)
[14] 12 C.F.R. §1026.32(a)(2)
[15] 12 C.F.R. §1026.43(b)(1)
[16] 12 C.F.R. § 1026.43(g)(1). Qualified mortgages are defined in §1026.43(e)(2).
[17] 12 C.F.R. §1026.43(g)(2) and 43(g)(1)(C)

- Creditors and mortgage brokers cannot encourage a consumer to default on an existing loan that will be refinanced with a high-cost mortgage.[18]
- Creditors cannot charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage.[19]
- Late fees cannot exceed 4 percent of the overdue payment, and the fee cannot be imposed more than once for a single late payment.[20]
- Creditors or servicers generally cannot charge fees for a payoff statement.[21]
- Creditors cannot finance charges included in the points and fees test.[22]
- Loans cannot be structured to evade HOEPA coverage.[23]
- A high-cost mortgage cannot be originated without mandatory preloan counseling.[24]

To facilitate compliance with these requirements, the CFPB offers several resources on its website, including an updated small entity compliance guide[25] and a web page focused solely on the HOEPA rule.[26]

## EFFECT OF HOEPA RESTRICTIONS AND REMEDIES ON HOEPA ORIGINATIONS

According to recent mortgage lending data, most lenders do not extend HOEPA loans. For example, the 2013 HMDA data indicate that 428 lenders (out of a total of 7,190 HMDA reporters) extended 1,873 HOEPA loans, which accounts for less than 2 percent of all refinance and home-improvement loans. The data also indicate that only 203 of these loans were sold to secondary market participants.[27]

Lenders' reluctance to originate HOEPA loans since the statute's enactment likely reflects several concerns: HOEPA's significant restrictions on loan terms,[28] enhanced damages for violations in a civil action, assignee liability, and an extended statute of limitations. For example, the TILA's remedies in a civil action for a HOEPA violation include refund of the sum of all finance charges and fees paid, statutory damages, court costs, and attorney's fees.[29] In addition, the statute of limitations for a HOEPA violation is three years, compared with one year for most other violations of the TILA.[30] Finally, the TILA generally limits the liability of loan assignees to violations that are clear on the face of the disclosure statement;[31] however, for HOEPA loans, the assignee is subject to all claims and defense of the original creditor — unless the assignee can demonstrate that it was not apparent the mortgage purchased was subject to the HOEPA.[32] The creditor must also provide a notice to the assignee regarding the assignee's potential liability for violations.

## COMPLIANCE MANAGEMENT CONSIDERATIONS

The HOEPA amendments expand the scope of loans qualifying as high-cost mortgages and impose new substantive restrictions. Lenders must ensure that their systems, policies, procedures, training, and controls have been updated to account for the new rules and expanded scope. Lenders should also ensure that they have systems in place to determine whether their existing loan products are high-cost mortgages under the amendments. If so, they need to ensure that those loans comply with HOEPA's restrictions, disclosures, and counseling requirements.

Specific issues and questions should be raised with your primary regulator.

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[18] 12 C.F.R. §1026.34(a)(6)
[19] 12 C.F.R. §1026.34(a)(7)
[20] 12 C.F.R. §1026.34(a)(8)
[21] 12 C.F.R. §1026.34(a)(9)
[22] 12 C.F.R. §1026.34(a)(10)
[23] 12 C.F.R. §1026.34(b); the prior version of the HOEPA prohibited origination of an open-end loan solely for the purpose of avoiding the HOEPA coverage amendment is broader.
[24] 12 C.F.R. §1026.34(a)(5)
[25] See http://tinyurl.com/HOEPA-guide
[26] See http://tinyurl.com/CFPB-HOEPA
[27] http://www.consumerfinance.gov/hmda/
[28] The restrictions are set forth in 12 C.F.R. §1026.34.
[29] 15 U.S.C. §1640(a)(4)
[30] 15 U.S.C. §1640(e)
[31] 15 U.S.C. §1641(a)
[32] 15 U.S.C. §1641(d)(1)

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## TRUTH IN LENDING ACT/REGULATION Z

The TILA as implemented by Regulation Z, seeks to provide "meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit …."[34] The TILA and Regulation Z's scope is generally limited to consumer credit, as defined in 12 C.F.R. §1026.2(a)(12) and elaborated upon in the staff commentary.

However, two provisions apply to credit cards issued for business purposes. First, credit cards can only be issued, regardless of their purpose, in response to an application or oral or written request or as a substitute for or renewal of an existing card.[35] Second, the regulation provides protections to employees for unauthorized use of a business credit card where a card issuer provides 10 or more credit cards for use by the employees of an organization.[36]

## CONCLUSION

Although many federal consumer protection laws and regulations solely apply to consumer transactions, in some instances, a financial institution's commercial products and services are also subject to certain of these requirements. Financial institutions should review these requirements to ensure that effective policies and procedures are in place for complying with these laws and regulations. Specific issues and questions should be raised with your primary regulator.

[34] 15 U.S.C. §1601(a)
[35] 12 C.F.R. §1026.12(a)
[36] 12 C.F.R. §1026.12(b)(5)

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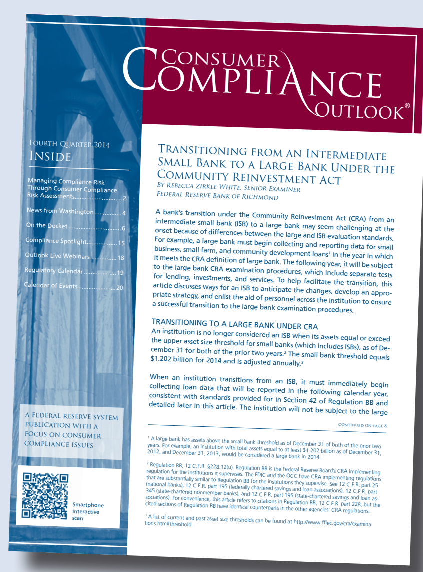

# Agencies Issue Guidance on Youth Savings Programs

On February 24, 2015, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Financial Crimes Enforcement Network issued guidance to help financial institutions develop and implement youth savings programs that are intended to expand the financial capability among America's youth and increase their opportunities to save.

The guidance is presented in a Q&A format and is available at www.federalreserve.gov/newsevents/press/bcreg/bcreg20150224a1.pdf. The following is a condensed version.

### Banking Activity

1. Are there restrictions on minors opening savings accounts? How old must a person be to open a savings account without a parent or guardian serving as the custodian or co-owner of the account?

Federal law does not prohibit a minor from opening a savings account. This matter is governed by state law. Minors are generally deemed as lacking the legal capacity to enter into a contract, which would include opening an account at a financial institution. However, some states specifically allow a minor to open a savings account. Legal counsel should be consulted when determining whether it is legally permissible for a financial institution to open an account for a minor without requiring a responsible adult to be the custodian or co-owner.

2. Can a minor with a custodial account be issued an automated teller machine (ATM) card or debit card?

The Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA) of each state governs custodial accounts for minors. As a general matter for custodial accounts, a custodian manages the funds in the account on behalf of the minor, meaning the minor would not be able to withdraw funds without the custodian's approval. Therefore, a minor with a custodial account should not be provided with an ATM or debit card that permits withdrawals.

3. Do consumer protection laws and regulations apply to accounts held by or for the benefit of minors?

As with other deposit accounts, various federal and state consumer financial protection laws and regulations apply to youth savings accounts. Applicable federal consumer financial protection laws and regulations include the Children's Online Privacy Protection Act (Children's Online Privacy Protection Rule), the Electronic Fund Transfer Act (Regulation E), the Expedited Funds Availability Act (Regulation CC), the Truth in Savings Act (Regulation DD), and prohibitions against unfair or deceptive acts or practices.

4. Can banks and savings associations receive consideration under the Community Reinvestment Act (CRA) for developing and implementing youth savings programs?

Yes, if the youth savings and financial education programs are targeted primarily to low- and moderate-income students. To the extent that a financial institution's youth savings program has a primary purpose of community development, the program will receive CRA consideration as a community development service. Interagency CRA guidance provides examples of community development services that include establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals.

5. Is a financial institution required to file a branch application when it partners with a school to offer a youth savings program?

Applicable requirements vary by regulatory agency. Generally, a branch application might not be required if the primary purpose of the youth savings program is financial education designed to teach students the principles of personal financial management, banking operations, and saving for the future, and if the program is not designed for the purpose of profit-making. Detailed information regarding agency-specific requirements is provided in the guidance.

### Customer Identification Program (CIP)

6. Does the CIP rule prohibit a minor from opening an account?

No. If a minor opens a savings account, the minor is the financial institution's customer. For example, where a financial institution sends its employees to a school so that students may open savings accounts by themselves without the involvement of a parent or guardian as part of a program to promote financial education, the student opening an account is the financial institution's customer. However, if a parent, guardian, or third party opens an account on behalf of a minor, the financial institution's customer is the parent, guardian, or third party. The CIP rule states that the financial institution's "customer" is the person who opens the account for a person who lacks legal capacity, such as a minor.

7. What requirements of the CIP rule apply to a financial institution that opens an account on behalf of a customer, including a minor, such as through a youth savings program?

The USA PATRIOT Act requires each financial institution to establish, maintain, and implement a written CIP appropriate for its size and type of business. If a financial institution opens an account for a minor, the CIP must include risk-based procedures for: (1) verifying the identity of a customer seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the customer's identity; (3) determining whether the customer appears on any government-issued list of suspected terrorists or terrorist organizations; and (4) providing customers with adequate notice that the financial institution is requesting information to verify their identities.

8. Based on the CIP rule, what information must a financial institution collect from a customer when opening an account, including for a minor?

A financial institution must obtain, at a minimum, the following information from the customer before opening an account:

- name
- date of birth
- address
- identification number

9. How can a financial institution verify the identity of a minor to satisfy the CIP rule when the minor is the customer?

Since verification procedures are risk-based, institutions may use reasonable documentary or nondocumentary methods to verify a minor's identity. The procedures must describe when the financial institution will use documents, nondocumentary methods, or a combination of both. The financial institution's CIP must contain procedures for verifying the identity of the minor within a reasonable time after the account is opened. Additional information regarding the use of documentary and nondocumentary methods is provided in the guidance.

### Third-Party Deposit Relationships

10. What are the CIP requirements for customer verification for a financial institution when a third party (such as a school district or other governmental unit, educational institution, nonprofit organization, or corporate sponsor) opens a trust, custodial, or other administrative account at a financial institution to maintain and administer assets for multiple minors?

There are circumstances in which a party may create a master savings account with subaccounts for various minors to save for a restricted purpose (such as higher education). Under the CIP rule, the customer is generally the "person" who opens a new account for another individual who lacks legal capacity, such as a minor. In these situations, the "customer" is the trust, regardless of whether the financial institution is the trustee for the trust. A financial institution will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries of the account holder. Instead, the financial institution will only be required to verify the identity of the named account holder by obtaining, at a minimum, the account holder's name, address, and identification number.

### Lender Force-Placed Flood Insurance

On March 29, 2013, the Federal Emergency Management Agency (FEMA) issued Bulletin W-13017 to announce a change in the waiting period requirements for lender force-placed insurance using the Mortgage Portfolio Protection Program (MPPP). Under the National Flood Insurance Program, when a standard flood insurance policy is purchased, it is subject to a 30-day waiting period unless an exception applies.[1] This rule addresses the problem of adverse selection (i.e., that some property owners will not purchase insurance until they believe a flood is likely to occur). Prior to this bulletin, the exceptions to the waiting period included policies for the initial purchase of flood insurance coverage in connection with the making, increasing, extending, or renewing of a loan and lender force-placed insurance. With the issuance of this bulletin, MPPP policies became subject to the 30-day waiting period.

Lenders using the MPPP to purchase force-placed insurance should consider the effect of this change on their policies and procedures.[2] Because MPPP policies now become effective 31 days after the date of purchase, lenders should factor that waiting period into the date on which they purchase the MPPP policy. It is important to note that FEMA Bulletin W-13017 applies only to policies purchased through the MPPP. Many lenders use private flood insurance policies that do not have waiting periods for force-placed insurance and, therefore, would be unaffected by this MPPP change.

As lenders evaluate the potential impact of this FEMA announcement on their policies, they should also consider another important change regarding force-placed insurance. On July 6, 2012, Congress enacted the Biggert-Waters Flood Insurance Reform Act of 2012 (BWA). Section 100244(a)(1) of the BWA permits lenders to purchase force-placed insurance beginning on the date that a lender determines a property lacks coverage or the amount of coverage is insufficient, and it permits lenders to pass the cost of that force-placed insurance along to the borrower, including any associated fees. The federal banking agencies and the Farm Credit Administration discussed this in the Interagency Statement on the Impact of Biggert-Waters Act, dated March 29, 2013.

Thus, if a lender determines that a loan in its portfolio is secured by real property in a special flood hazard area and does not have flood insurance or have a sufficient amount, the lender does not have to wait 45 days to purchase the MPPP policy and risk a gap in coverage.

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[1] FEMA Flood Insurance Manual, General Rules, pp. 9–10; 42 U.S.C. §4013(c)(2)

[2] Under the Flood Disaster Protection Act of 1973 (FDPA), as amended, if a lender determines that a property securing a loan in its portfolio is in a special flood hazard area (SFHA) and does not have flood insurance or a sufficient amount of insurance, the lender must provide a notice to the borrower to purchase flood insurance within 45 days or the lender is required to purchase it on the borrower's behalf and pass the cost on to the borrower (42 U.S.C. §4012a(e)(2); 12 C.F.R. §208.25(g)).

## Under Cover

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**The *Outlook* Team**

# Outlook Live Webinars

The Federal Reserve System regularly conducts Outlook Live webinars on consumer compliance topics. Here are the archived webinars from 2014, which are available for replay free of charge. You can view the webinars and presentation slides on the Outlook Live archive page at http://bit.ly/outlook-webinars.

| Date | Webinar | Description |
|---|---|---|
| 12/4/14 | Consumer Compliance Hot Topics — 2014 Year in Review | This session discussed significant 2014 compliance changes and previewed changes for 2015. |
| 11/18/14 | TILA-RESPA Integrated Disclosures, Part 4 — Completing the Closing Disclosure | This session focused on issues related to completing the closing disclosure. |
| 10/22/14 | 2014 Federal Interagency Fair Lending Hot Topics | This session discussed expectations for compliance management systems, fair lending risk assessments, REO properties, maternity leave discrimination, mortgage pricing risks, and auto lending enforcement. The presenting agencies were the CFPB, DOJ, FDIC, Federal Reserve, HUD, NCUA, and OCC. |
| 10/1/14 | FAQs on the TILA-RESPA Integrated Disclosures Rule, Part 3 — Completing the Loan Estimate | This session focused on questions related to rule interpretation and implementation challenges for the loan estimate. |
| 8/26/14 | FAQs on the TILA-RESPA Integrated Disclosures, Part 2 — Various Topics | This session covered application, scope, record retention, timing for delivery, tolerance, and basic form contents for the disclosures. |
| 7/17/14 | Interagency Questions and Answers Regarding Community Reinvestment | This session covered revisions to the Interagency Q&As Regarding CRA issued on 11/15/13, and the revised Interagency Large Institution CRA Examination Procedures issued on 4/18/14. |
| 6/17/14 | TILA-RESPA Integrated Disclosures, Part 1 — Overview of the Rule | This session provided an overview of the integrated disclosures final rule and addressed compliance questions. |
| 4/10/14 | Consumer Compliance Management Program — Common Concerns and Best Practices | This session discussed concerns commonly seen at Federal Reserve supervised institutions and highlighted various components of a successful compliance program. |
| 3/6/14 | Community Bank Risk-Focused Consumer Compliance Supervision Program | This session provided an overview of the new Risk-Focused Supervision Program. |

# Regulatory Calendar*

| Effective Date | Implementing Regulation | Regulatory Change | Outlook Live Webinar |
|---|---|---|---|
| † | Reg. Z and X | Proposal to make nine changes to mortgage servicing rules under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) | |
| † | Reg. Z | Proposal to expand small creditor qualified mortgages (QMs) and expand the definition of "rural" area so more creditors will qualify for small creditor balloon QMs and exemption from escrow requirement for higher-priced mortgage loans | |
| † | Regs. E and Z | Proposal to provide consumer protection for prepaid cards | |
| † | Reg. H | Proposal to implement the Homeowner Flood Insurance Affordability Act | |
| † | N/A | Proposal to define larger nonbank participants in the automobile financing market | |
| † | Reg. BB | Proposal to revise Interagency Community Reinvestment Act Q&As | |
| † | Reg. C | Proposal to add new Home Mortgage Disclosure Act data fields to Reg. C | |
| † | Various | Interagency proposal under Economic Growth and Regulatory Paperwork Reduction Act to streamline regulations of the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation | |
| † | Various | Interagency proposal to establish minimum requirements for appraisal management companies | |
| † | Reg. E | Final rule to extend until July 21, 2020, temporary provision allowing estimates for foreign remittance transfer pricing disclosures | |
| † | Reg. H | Proposal to implement Biggert-Waters Flood Insurance Reform Act | |
| 8/1/15 | Regs. X and Z | Final rule integrating RESPA and TILA mortgage disclosures | 6/17/14<br>8/26/14<br>10/1/14<br>11/18/14 |
| 12/1/14 | Reg. E | Final rule defining larger nonbank participants in international money transfer market | |
| 11/3/14 | Reg. Z | Final rule on cure procedure for points and fees errors for QMs | |
| 10/28/14 | Reg. P | Final rule to streamline privacy notices | |

* Links to the regulatory changes are available in the online version of *Outlook* at tinyurl.com/calendar-cco.
† Rulemaking proposals generally do not have an effective date.

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# Calendar of Events 2015

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| May 5–6 | **Consumer Economics Summit: Policy and Practice**<br>Federal Reserve Bank of Cleveland and the University of Cincinnati<br>Kingsgate Marriott Conference Center at the University of Cincinnati<br>Cincinnati, OH |
| June 14–17 | **ABA Regulatory Compliance Conference**<br>American Bankers Association<br>Washington Marriott Wardman Park<br>Washington, DC |
| June 18–19 | **2015 Policy Summit on Housing, Human Capital, and Inequality**<br>Federal Reserve Bank of Cleveland<br>Omni William Penn Hotel<br>Pittsburgh, PA |