

2011 – Year in Review

2012 – Year in the Making

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Objectives

- **2011 Year in Review / 2012 Year in the Making**
 - Consumer Financial Protection Bureau
 - Federal Consumer Financial Law
 - Rules Remaining with Prudential Regulators
 - Recent/Pending Rule Changes
 - Resources (Consumer Compliance Outlook Newsletter and Outlook Live)
- **Specific Topics in Focus**
 - Mortgage Lending Rules
 - UDAAP
 - Miscellaneous Topics in Brief
- **Questions and Answers Segment**

Regulatory Structure

- Consumer Financial Protection Bureau (Bureau)
 - Opened on **July 21, 2011**
 - **Rulemaking Authority** – transferred authority for 18 enumerated laws and Title X of the DFA
 - **Large Institution Supervisory Authority** – Banks, savings associations, credit unions with > \$10 billion in assets
 - **Nonbank Supervision** – Mortgage lending, payday lending, private student lenders
 - **Larger Nonbank Participants** – Bureau requested input on definition
 - **Resources:**
 - Identification of Enforceable Rules and Orders – Federal Register (July 21, 2011)
 - <http://www.federalregister.gov/articles/2011/07/21/2011-18426/identification-of-enforceable-rules-and-orders>
 - Interagency Statement Clarifying Supervisory Authority – (November 17, 2011)
 - <http://www.federalreserve.gov/newsevents/press/bcreg/20111117a.htm>

Federal Consumer Financial Law

Compliance Laws and Regulations Bureau Enforces

Alternative Mortgage Transactions Parity Act	§502-509 of Gramm-Leach-Bliley (privacy of consumer financial information) (Regulation P)
Consumer Leasing Act (Regulation M)	SAFE Mortgage Licensing Act
Electronic Funds Transfers Act (Regulation E)	Real Estate Settlement Procedures Act (Regulation X)
Equal Credit Opportunity Act (Regulation B)	Right to Financial Privacy Act
Fair Credit Reporting Act (Regulation V) – Except sections listed on next slide	Truth in Lending Act (Regulation Z) (includes Fair Credit Billing Act and Home Ownership and Equity Protection Act)
Fair Debt Collection Practices Act	Truth in Savings Act (Regulation DD)
Certain FTC Regulations (16 C.F.R. Parts 310, 313, 320-22, 425, 429, 433, 444, 435-37)	Title X of the DFA (includes §1031 for unfair, deceptive or abusive acts or practices)
Home Mortgage Disclosure Act (Regulation C)	§626 of Omnibus Appropriations Act (16 C.F.R. parts 321, 322) (mortgage acts and practices advertising rule and mortgage assistance relief services)
Homeowners Protection Act (HPA)	§43(b)-(f) of FDIC Act (16 C.F.R. part 320) (disclosures for banks lacking federal deposit insurance)
Interstate Land Sales Full Disclosure Act	

Rules Remaining With Prudential Regulators

Compliance Laws and Regulations Prudential Regulators Enforce in Banks Over \$10 Billion

Community Reinvestment Act (Regulation BB)	Fair Housing Act (24 C.F.R. Part 100)
E-Sign Act (15 U.S.C. § 7001)	Flood Insurance (Regulation H 12 C.F.R. §208.25)
Expedited Funds Availability Act (Regulation CC)	Protecting Tenants at Foreclosure Act (Sunsets on December 31, 2014)
Fair Credit Reporting Act (Regulation V) <ul style="list-style-type: none"> • 222.1(c) - Effective Dates • 222.83 - Disposal of consumer information • 222.90 - Duties for detecting, preventing, and mitigating identity theft • 222.91 - Duties of card issuers regarding change of address • Appendix J - Interagency Guidelines on Identify Theft Detection, Prevention and Mitigation 	Regulation D (including 6 transactions a month for Savings/MMDA accounts)
	Regulation G (Disclosure and reporting of CRA-related agreements)
	Servicemembers Civil Relief Act (SCRA)
	Talent Amendment for loans to military members (32 C.F.R. Part 232)

Recent/Pending Rule Changes

Product / Rule	Impact and Status	Effective Date
Mortgage Lending	HUD proposed Fair Housing Act guidance	In comment period
	Ability to repay proposal – qualified mortgage	In review period
	Credit risk retention proposal – qualified residential mortgage	In review period
	Proposal to lengthen required term of escrow period for higher priced mortgage loans	In review period
	SAFE Act mortgage loan originator registration deadline	July 29, 2011
	Restrictions on loan steering and loan originator compensation	April 6, 2011
	Interim final rule relating to appraiser independence for consumer credit transactions	April 1, 2011
	Higher trigger for first-lien jumbo higher priced mortgage loan escrow requirements	April 1, 2011
	Revised MDIA interim rule for mortgage loans with variable rates or payments; clarifications to these MDIA rules	January 30, 2011 October 1, 2011
	HOEPA trigger amounts and HMDA asset-size exemption for 2011	January 1, 2011
	Required notice to borrower when mortgage is sold or transferred	January 1, 2011
Risk-based pricing notice requirements	January 1, 2011	
Consumer Credit/Leases	DFA rule increasing transaction coverage for Regulations Z and M from \$25,000 to \$50,000	July 21, 2011

Recent/Pending Rule Changes

(continued)

Product / Rule	Impact and Status	Effective Date
Interchange Fees	DFA - related rule limiting debit card interchange fees	October 1, 2011
Demand Deposit Accounts	DFA - related rule that repealed prohibited practice of paying interest on demand deposits; eliminated Regulation Q	July 21, 2011
Check Holds	Proposed rules to shorten hold periods and encourage electronic check processing	In review period
	DFA - related rule increasing next day availability requirement from \$100 to 200	July 21, 2011
Gift Cards	Final rule to modify effective date of certain disclosure requirements applicable to gift cards	January 31, 2011
Remittance Transfers	DFA - related rules to create new protections for consumers who send remittance transfers to recipients in a foreign country	In review period
Community Reinvestment Act	Final rules to provide credit for certain Neighborhood Stabilization Program activities	January 19, 2011
	Annual CRA asset-size threshold adjustment	January 1, 2011
Fair and Accurate Credit Transactions Act / Regulation V	DFA - related rule requiring credit scores on risk-based pricing and adverse action notices	August 14, 2011
	Final rules that require notice to consumer when given less favorable terms (i.e., risk-based pricing notices)	January 1, 2011
Regulation H (flood insurance requirements)	Proposed revisions to two Q&A released on October 14, 2011	In review period
	Finalized two Q&A proposed July 21, 2009	October 14, 2011

Required Dodd-Frank Act Changes by CFPB

- Define non-depository covered institutions subject to CFPB Oversight
- Integrate RESPA and TILA disclosures
- Issue rules relating to the following
 - Mortgage service prohibitions
 - MLO steering prohibitions
 - Qualified mortgage, including safe harbor
 - Mortgage monthly statements
 - Notice of mortgage resets
 - Revised high-cost (HOEPA) triggers
 - Required escrows and exemption
 - Counseling for high cost mortgages
 - Qualified written request

CONSUMER COMPLIANCE OUTLOOK[®]

Outlook Website – www.consumercomplianceoutlook.com

- Regulatory Calendar; News from Washington; On the Docket
- Third Quarter 2011
 - An Overview of the Credit Score Disclosure Requirements for Risk-Based Pricing Notices
 - The Federal Reserve Board’s Interim Final Rules on Valuation Independence
 - The New Dollar Threshold for Regulation Z Coverage
- Second Quarter 2011
 - Compliance Requirements for Servicemembers Civil Relief Act
 - HMDA and CRA Data Reporting (Q&As)
 - Compliance Requirements for Young Consumers

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CONSUMER COMPLIANCE OUTLOOK®

- First Quarter 2011
 - Vendor Risk Management
 - Mortgage Disclosure Improvement Act: Corrected Disclosure for an Overstated APR
 - Federal Reserve Board's Compliance Guide to Small Entities
- Fourth Quarter 2010
 - An Overview of the Risk-Based Pricing Implementing Regulations
 - Regulation Z's Payment Crediting Rules for Open-End Credit, Credit Cards, and Closed-End Mortgage Payments
 - Understanding Regulation DD's Advertising Requirements
 - Compliance Alert: Interagency Guidance on Reverse Mortgage Products

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- Prior Events – Recorded and available for viewing on Outlook site
 - Fair Lending Issues and Hot Topics
 - Real Estate Owned (REO) Disposition Risks and CRA Opportunities
 - Proposed Ability to Repay Standards for Mortgage Loans
 - CRA and HUD Neighborhood Stabilization Program
 - Loan Originator Compensation
 - Risk Based Pricing Notices
 - Tips for Reporting Accurate HMDA and CRA Data
 - Consumer Regulatory Changes
 - Consumer Compliance “Top Ten” Lists
 - New Overdraft Protection Program Rules

Mortgage Lending Final Rules 2011

- Regulation Z – Mortgage Transfer Notice – Effective January 1, 2011
- Regulation Z – Valuation Independence – Effective April 1, 2011
- Regulation Z – Escrow trigger for Jumbo Higher Priced Mortgage Loans – Effective April 1, 2011
- Regulation Z – Loan Originator Compensation – Effective April 6, 2011
- SAFE Act Registration – Deadline was July 29, 2011

Mortgage Transfer Notice §226.39

- Applies to consumer closed- and open-end credit transactions secured by consumer's principal dwelling
- When a mortgage loan is sold, assigned or otherwise transferred, person acquiring loan must provide notice to the consumer by 30th day following transfer
- Transfers for shorter than 30 days are exempt from requirements
- Should not be confused with Regulation X requirement for notice to consumer when *loan servicing* changes (24 C.F.R. §3500.21(d))

Valuation Independence §226.42

- Prohibits coercion
- Prohibits conflicts of interests
- Prohibits credit extension when there's coercion or conflicts violation
- Requires creditors to report misconduct to state licensing authorities
- Requires appraiser's compensation to be reasonable and customary

Escrow for Jumbo Loans §226.35(b)(3)

- Jumbo loan: loan amount is greater than maximum principal amount eligible for purchase by Freddie Mac (nonconforming loan)
- Escrow required for HPML first-lien loans if APR is 2.5 points greater than average prime offer rate (APOR) for comparable mortgage
- All other HPML protections for jumbo loans are still 1.5 points over APOR for first lien loans and 3.5 points for subordinate lien loans
- Example: 30 year first-lien loan for \$1 million with 8% fixed APR. APOR is 4.05%. Escrow is required because APR exceeds APOR by more than 2.5% percentage points

Loan Originator Compensation

§226.36(d)

- LOC cannot be based on the interest rate or other terms, including proxy
- LOC can be paid by consumer or creditor— but not both
- Originators cannot steer consumer to loans to increase compensation unless in consumer's best interest. Safe harbor is available
- Yield spread premium to fund borrower's closing costs is permissible – see comment 36(d)(1)-4
- CFPB will issue rules implementing DFA §1403 LOC requirements

SAFE Act Registration

Deadline for Mortgage Originators

- Mortgage originators employed by depository institutions must register with Nationwide Mortgage Licensing System and Registry
- Registration deadline was July 29, 2011 for existing originators
- Existing originators who were not registered by July 29, 2011 cannot originate mortgages until they register

Mortgage Lending Rules Proposed in 2011

- Regulation Z: proposal to implement DFA requirements to verify repayment ability and to limit prepayment penalties
- Regulation Z: proposal to implement DFA requirements to lengthen escrows for first-lien higher priced mortgage loans from 1 year to 5 and to exempt creditors in rural and underserved areas
- Qualified Residential Mortgage (QRM): interagency proposal to implement DFA requirement to define QRM for credit risk retention requirements for securitization

UDAAP

- §1031 of DFA added “abusive” to UDAP to create UDAAP
- DFA defines “abusive” as act or practice that:
- (1) materially interferes with consumer’s ability to understand term or condition of consumer financial product or service or
- (2) takes unreasonable advantage of
 - (A) consumer’s lack of understanding of material risks, costs, or conditions of product or service; or
 - (B) consumer’s inability to protect own interests in selecting financial product or service; or
 - (C) consumer’s reasonable reliance on covered person to act in consumer’s interests

UDAAP *(continued)*

- Unfair:
 - (1) Act or practice causes or is likely to cause substantial injury to consumers,
 - (2) The injury is not reasonably avoidable by consumers, and
 - (3) The injury is not outweighed by benefits to consumers or to competition.
- Deceptive:
 - (1) A representation, omission, act, or practice that misleads or is likely to mislead
 - (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances, and
 - (3) The misleading representation, omission, act, or practice is material

UDAAP Rulemaking

- Bureau
 - can define unfair, deceptive, or abusive acts or practices by rule
 - must consult with prudential regulators
 - must conduct cost/benefit analysis
 - must consider impact on community banks and persons in rural areas
 - must monitor risks to consumers
 - may exempt class of persons or financial products or services

UDAAP Resources

- Bureau examination manual: <http://1.usa.gov/cfpb-manual>

CFPB Consumer Laws and Regulations

UDAAP

Unfair, Deceptive, or Abusive Acts or Practices

Introduction

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.¹ The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.² In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.³

- Consumer Compliance Outlook compliance resource website:
<http://bit.ly/outlook-udaap>

UDAAP - Impact on Consumers

- Examiners looking beyond technical compliance with regulatory requirements
 - Is the product or practice unfair or deceptive?
 - Does it result in negative consequences for the consumer?
 - Does it pass the smell test?
 - If not, we will investigate further
- Considerations
 - Don't rely solely on technical compliance with rules
 - Incorporate regulatory guidance (e.g., overdraft programs, appraisal)
 - Ask yourself these same questions with regard to new or existing products, services, marketing materials, disclosures and other customer communications, etc.
 - Analyze consumer complaint data – good source for potentially unfair practices
 - Anticipate concerns from consumers and regulators
 - Make sure you have a good response!

Deposit-Related Items

- Repeal of Regulation Q
 - Effective July 21, 2011 – No longer have restrictions on NOW account eligibility
 - Section 343 of Dodd-Frank Act provides unlimited deposit insurance for non-interest bearing accounts through 12/31/2012
 - FDIC issued FIL-38-2011: If institutions pay interest, must notify customers account no longer eligible for unlimited deposit insurance coverage
- Regulation CC – Increased Next Day Availability
 - Effective July 21, 2011
 - DFA required increase of next day availability from \$100 to \$200
 - Required updates to notices and disclosures (initial and subsequent)
- Proposed Regulation CC amendments – In review period
 - <http://www.federalreserve.gov/newsevents/press/bcreg/20110303a.htm>

Lending-Related Items

- Flood Q&A Updated as of October 14, 2011
 - Clarifies the term “insurable value”
 - Expands beyond 100% replacement cost value (RCV)
 - Provides examples and flexibility
 - Clarifies that brief delay in force placing after 45-day notification is acceptable; expect reasonable explanation
 - Requested comment on three additional questions related to force placement
- Resources:
 - Updated Q&A:
<http://www.federalreserve.gov/newsevents/press/bcreg/20111014a.htm>
 - Previous Q&A:
<http://www.federalreserve.gov/boarddocs/caletters/2009/0903/caltr0903.htm>
 - *Outlook* flood insurance article in Q4 2011 (coming soon)

Community Reinvestment Act

- Availability of 2010 Census Data
 - Banks required to report 2012 CRA and HMDA data using 2010 Census Data
 - FFIEC geocoding system to be updated in January 2012
 - Verify vendor/proprietary systems also updated with 2010 Census Data
- FFIEC to Compile Economic and Demographic Data
 - New “FFIEC Median Family Income” in June 2012; Replaces HUD Figures
 - Use of ACS Data in Demographic Data
 - Examiners to use updated data for compliance and CRA exams
 - Banks should use updated data too!!!

Questions

