2011 – Year in Review
2012 – Year in the Making

Outlook Live Webinar – December 15, 2011

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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

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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)
    • Interagency Statement Clarifying Supervisory Authority – (November 17, 2011)

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# Federal Consumer Financial Law

## Compliance Laws and Regulations Bureau Enforces

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

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

<table>
<thead>
<tr>
<th>Rule/Act</th>
<th>Enforcement/Specifics</th>
</tr>
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<tbody>
<tr>
<td>Community Reinvestment Act (Regulation BB)</td>
<td>Fair Housing Act (24 C.F.R. Part 100)</td>
</tr>
<tr>
<td>Expedited Funds Availability Act (Regulation CC)</td>
<td>Protecting Tenants at Foreclosure Act (Sunsets on December 31, 2014)</td>
</tr>
<tr>
<td>Fair Credit Reporting Act (Regulation V)</td>
<td>Regulation D (including 6 transactions a month for Savings/MMDA accounts)</td>
</tr>
<tr>
<td>- 222.1(c) - Effective Dates</td>
<td>Regulation G (Disclosure and reporting of CRA-related agreements)</td>
</tr>
<tr>
<td>- 222.83 - Disposal of consumer information</td>
<td>Servicemembers Civil Relief Act (SCRA)</td>
</tr>
<tr>
<td>- 222.90 - Duties for detecting, preventing, and mitigating identity theft</td>
<td>Talent Amendment for loans to military members (32 C.F.R. Part 232)</td>
</tr>
<tr>
<td>- 222.91 - Duties of card issuers regarding change of address</td>
<td></td>
</tr>
<tr>
<td>- Appendix J - Interagency Guidelines on Identify Theft Detection, Prevention and Mitigation</td>
<td></td>
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</tbody>
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Recently/Pending Rule Changes

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

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

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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

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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

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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. 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. In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.

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!

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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
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:
  – 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!!!
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