

Consumer Compliance Hot Topics

Outlook Live Webinar – December 4, 2012

Jason Lew, Compliance Risk Coordinator
Kenneth Benton, Senior Consumer Regulations Specialist

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Agenda

- Regulatory Updates
 - Remittance Transfer Rule
 - Mortgage Proposals
 - Delayed Implementation of Title XIV Disclosures
 - Biggert-Waters Flood Insurance Reform Act
 - Servicemembers Civil Relief Act (SCRA)
 - Expiration of Unlimited Deposit Insurance
 - Regulation Z and M Updates
- Supervisory Hot Topics
- Questions and Answers Segment

CFPB's Remittance Transfer Rule

- Regulates consumer remittance transfers to designated recipients in foreign countries in the amount of \$15 or higher with four consumer protections:
 - Requires disclosure about important transaction terms, error resolution, and cancellation
 - Establishes error resolution procedures
 - Establishes cancellation and refund policies
 - Establishes remittance transfer provider's liability for agent's acts

Rulemaking History

- February 2012: [final rule](#) and [proposal](#) to address transfers scheduled in advance and remittance transfer provider
- July 2012: [technical correction](#) to model forms
- August 2012: [second final rule](#) (RTP definition and estimates for transfers scheduled five business days in advance)
- November 2012: CFPB announces [delay](#) of February 7, 2013 effective date to address (1) errors when sender provides wrong account numbers; (2) disclosure of third party fees and foreign taxes; and (3) disclosure of regional and local taxes assessed in foreign countries.

Pre-Payment Disclosure

Provided when consumer requests transfer

A-30 — Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

NOT A RECEIPT

Transfer Amount:	\$100.00
Transfer Fees:	+\$7.00
Transfer Taxes:	+\$3.00
Total:	\$110.00

Exchange Rate: US\$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

Receipt

Provided if consumer proceeds with transaction after pre-payment disclosure

A-31 — Model Form for Receipts for Remittance Transfers Exchanged into Local Currency

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2013

Transfer Amount:	\$100.00
Transfer Fees:	+\$7.00
Transfer Taxes:	+\$3.00
Total:	\$110.00

Exchange Rate: US\$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

Combined Disclosure Option

- Allows provider to provide combined disclosure in lieu of prepayment disclosure and receipt
- Combined disclosure contains same information as receipt
- If consumer proceeds with transaction, proof of payment must be provided

Estimates

- **Temporary Exception for Depository Institution or Credit Union**
 - Applies to exchange rate, taxes and fees imposed by other persons, transfer amount, and total amount transferred. Expires 7/15/2015 but CFPB can extend for five years
- **Permanent Exceptions**
 - If provider cannot determine exact amounts because of a recipient nation's laws
 - Recipient's nation methods for transfer do not permit providers to know amount of currency to be received. CFPB's [safe-harbor list](#) of qualifying countries: Aruba, Brazil, China, Ethiopia and Libya
 - For transfers scheduled at least five business days before future transfer, estimates may be used for certain terms in prepayment disclosure and receipt. A second receipt with accurate figures must be provided no later than one business day after transfer
- **When estimates are used, provider must comply with 12 C.F.R. §1005.32(c) concerning methodology for calculating estimates**

Right of Cancellation

- Sender generally has 30 minutes after payment to cancel the transaction, provided funds have not been picked up and provider is able to identify transaction
- Once a provider receives a valid cancellation request, it has three business days to refund the total amount of funds the sender provided, including fees and taxes (unless prohibited by law) and cannot impose fees for cancelling the transaction.
- For transfers scheduled at least three business days in advance before transfer, sender may cancel if provider receives request at least three business days before scheduled transfer.

Error Resolution

- Error resolution is generally governed by §1005.33 instead of §1005.11
- Qualifying errors:
 - incorrect amount paid by a sender (except for estimates)
 - computational error
 - failure to make funds available in the amount of currency stated (except for estimates)
 - failure to make funds available by disclosure date (except for extraordinary circumstances)

Error Resolution *(continued)*

- Consumer has 180 days after funds availability date to report error
- Provider has 90 days to complete investigation. If error found, provider has one business day (or as soon as reasonably practicable after) to make refund in appropriate amount to either sender or recipient
- For unauthorized remittance transfers, requirements in §§1005.6 and 1005.11 apply to institution with account

Provider Liability for Acts of Agents

- A remittance transfer provider is liable for any violation of the remittance transfer rules (subpart B of Regulation E) by an agent when the agent acts for the provider
- UCC Article 4A Issue: Under §4A-108 of UCC, Article 4A does not apply to transactions covered by EFTA. If provider is liable for agent's error, Article 4A does not apply to determine provider's rights and responsibilities with other parties to the transfer
- CFPB stated in final rule that it does not possess the legal authority to address this issue
- Federal Reserve Board [amended its Regulation J](#) to clarify that Article 4A applies to FedWire consumer remittance transfers unless there is a conflict with EFTA, in which case the EFTA applies

Remittance Rule Resources

- ["An Overview of the New Regulation E Requirements for Foreign Remittance Transfers,"](#) *Consumer Compliance Outlook* 3rd Quarter 2012
- [CFPB Remittance Transfer Rule page](#) (final rules and resources)
- [CFPB's Small Business Compliance Guide for Remittance Transfers.](#)
- October 16, 2012 [CFPB Webinar](#) on remittance transfer rule
- November 27, 2012 CFPB [Bulletin](#): Discussing proposed changes to final rule and extension of effective date

Remittance Rule Resources *(continued)*

- CFPB's [unofficial version](#) of regulation and official staff commentary
- [Federal Reserve Bank of Atlanta Symposium: Exploring the Final Remittance Transfer Rule and the Path Forward](#) (presentation slides)

Mortgage Proposals

Issue Date	Proposal	Issuing Agency	Due Date
8/17/2012	Mortgage Loan Originator Rule	CFPB	January 2013
8/15/2012	Improved Consumer Access to Appraisal Reports	CFPB	January 2013
8/15/2012	Appraisals for Higher Risk Mortgages	Interagency	January 2013
8/10/2012	Mortgage Loan Servicing Amendments	CFPB	January 2013
7/9/2012	Integrated Mortgage Disclosures	CFPB	No Due Date
7/9/2012	High-Cost Mortgages and Homeownership Counseling Amendments	CFPB	January 2013
5/31/2012	Ability to Repay – New Data and Info	CFPB	January 2013
4/19/2011	Ability to Repay Rule (transferred to CFPB)	FRB	
3/31/2011	Credit Risk Retention	Interagency	No Due Date
2/23/2011	Escrow Proposal (transferred to CFPB)	FRB	No Due Date

Mortgage Loan Originator Rules

- Issued 8/17/12 – Final rules due January 2013
- Mortgage Loan Originator (MLO) proposal key provisions:
 - No-point, no loan fee option
 - Interest rate reduction with upfront points and fees
 - Adjustments to existing loan originator compensation rules
 - MLO qualification and screening standards
 - Restrictions on arbitration clauses and credit insurance financing
- [CFPB Summary of Proposed Loan Originator Rules](#)

Improved Consumer Access to Appraisal Reports

- Issued 8/15/12 – Final rules due January 2013
- Key provisions of proposals:
 - Require creditors inform consumers within 3 days of applying for loan to right to receive a copy of appraisal reports and home value estimates
 - Require creditors provide appraisal reports to consumers 3 days before closing
 - Prohibit creditors from charging consumers fees for obtaining the reports (can still charge for conducting appraisals)
- [CFPB Summary of Proposed Rule on Providing Appraisals and Valuations](#)

Appraisals for Higher Risk Mortgages

- Issued 8/15/2012 – Final rules due January 2013
- Proposal would establish new requirements for “higher-risk mortgage loans” including:
 - Require creditors to use licensed or certified appraisers
 - Require written appraisal report based on physical inspection of the interior of the property
 - Require disclosure of information about the purpose of the appraisal
 - Require lenders provide a free copy of any appraisal report
 - Require additional appraisal if seller acquired property for lower price in prior six months to address fraudulent property flipping

Mortgage Loan Servicing Amendments

- Issued 8/10/12 – Final rules due January 2013
- Proposal addresses:
 - Monthly mortgage statements
 - Notice of interest rate adjustments
 - Force-placed insurance protections
 - Early outreach for delinquent borrowers
 - Prompt crediting of payments
 - Accurate information management
 - Error resolution and information
 - Direct and ongoing access to servicing personnel
 - Evaluation of alternatives to foreclosure
- [CFPB Summary of Proposed Mortgage Servicing Rules](#)

Integrated Mortgage Disclosure

- Issued 7/9/12 – No due date for final rules
- Proposal includes:
 - New **Loan Estimate** and **Closing Disclosure** forms
 - Loan Estimate – replaces GFE and early Truth in Lending Disclosure and incorporates new DFA disclosures
 - Closing Disclosure – replaces HUD-1 and final Truth in Lending Disclosure
 - APR Changes
- [CFPB Summary of Proposed Rule](#)
- [Know Before You Owe Website](#)

High-Cost Mortgages and Homeownership Counseling Amendments

- Issued 7/9/12 – Final rules due January 2013
- Proposal would:
 - Expand types of mortgages subject to protections of HOEPA
 - Prohibit certain types of higher risk features
 - Prohibit and limit certain types of fees
 - Add restrictions on HOEPA mortgages, including a pre-loan counseling requirement
 - Impose additional requirements related to homeownership counseling
- [CFPB press release](#) and [proposed rule](#)

Ability to Repay Mortgage Rule

- Initial proposal issued 4/19/11; reopened 5/31/12
- Final rules due January 2013
- Proposal would:
 - Require lenders assess consumer's ability to repay mortgage loans before extending them credit
 - Define "Qualified Mortgages" (QM)
 - Potential establish relationship between ability to repay and underwriting variables
- QRM next?

Escrow Proposal

- Issued 2/23/2011 – No due date for final rules
- Proposal would
 - Lengthen the time for which mandatory escrow accounts for higher-priced mortgage loans must be maintained
 - Implement Dodd-Frank Act disclosure requirements regarding escrow accounts
 - Exempt certain loans from statute's escrow requirements – primarily loans extended by creditors in rural or underserved areas that meet certain prerequisites

Delayed Implementation of Title XIV Disclosures

- Title XIV of the Dodd-Frank Act imposes new disclosure requirements for mortgage transactions (Title XIV Disclosures)
- Set to automatically take effect on January 21, 2013 (18 months after transfer date)
- However, CFPB issued [Final Rule](#) on November 16, 2012 to delay implementation until after proposed mortgage disclosure rules finalized

Biggert-Waters Flood Insurance Reform Act

- Reauthorizes the NFIP through September 30, 2017 (§100203)
- Increases civil money penalties effective July 6, 2012 from a maximum of \$385 per violation to a maximum of \$2,000 per violation and removes the \$135,000 statutory cap (§100208)
- Requires lenders or servicers to terminate force-placed flood insurance and refund premiums and fees paid by borrower for duplicate coverage within 30 days of proof of borrower's policy (§100244)
- Increases coverage limits on multifamily properties of 5 or more from \$250,00 to \$500,000 (§100204)

Biggert-Waters Compliance Highlights

- Requires federal banking agencies, federal agency lenders and GSEs to accept private insurance under certain circumstances (§100239)
- Directs the federal entities for lending regulation to issue implementing regulations effective July 6, 2014 for new escrow requirements for flood insurance premiums, subject to certain exceptions (§100209)
- Authorizes FEMA to accept flood insurance premiums in installments for policyholders who are not required to escrow premiums (§100205(d))
- Amends RESPA to require disclosure in CFPB's Special Information Booklet of availability of flood insurance, whether or not property is in SFHA (§100222)

Biggert-Waters Compliance Highlights

(continued)

- Section 100205 eliminates federal subsidies for flood insurance policies issued or lapsed after 7/6/12, and certain existing policies covering:
 - commercial or second properties
 - properties with substantial damage exceeding 50% of property's FMV or with substantial improvement exceeding 30% of property's FMV
 - properties that have "severe repetitive losses"
 - properties where cumulative insurance payments equaled or exceeded property's FMV
 - prospective policyholders who refuse to accept FEMA's mitigation offer of assistance after major disaster or repetitive or severe repetitive loss property

Biggert-Waters Compliance Highlights

(continued)

- Phases in premium increases for policies losing subsidies, with increases capped at 25% per year until premiums equal actuarial cost of policies
- Increases annual cap on rate increases from 10% to 20%; and allows the option of annual or installment payments by policyholder
- Requires risk premiums for properties located in participating area to be adjusted to reflect current risk of flood, with increase phased in over five-year period at the rate of 20% per year
- Areas newly designated as SFHAs will phase in the risk premium rate for flood insurance purchased on or after July 6, 2012 over a five-year period, at the rate of 20 percent for each year (§100207)

Biggert-Waters Compliance Highlights

(continued)

- Deductibles (§100210)
 - Pre-FIRM: deductible of (i) \$1,500 (policy coverage of \$100,000 or less) and (ii) \$2,000 (policy coverage greater than \$100,000)
 - Post-FIRM: deductible of (i) \$1,000 (policy coverage of \$100,000 or less , and (ii) \$1,250 (policy coverage greater than \$100,000)
- Effect of Biggert-Waters Act on October 2011 proposed interagency flood Q&As for force-placed insurance

Biggert-Waters Resources

- [Biggert-Waters Flood Insurance Reform Act of 2012](#)
(Pub. L. 112-141, Div. F, Tit. II, Sub. A)
- [FEMA “Changes in the Flood Insurance Program: Preliminary Considerations for Rebuilding”](#)

Servicemembers Civil Relief Act

What is the current rule?

- Servicemembers Civil Relief Act currently prohibits sale, foreclosure or seizure of real or personal property during the period of military service or within 9 months after the end of military service, without a court order or written agreement

What is the change?

- [Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012](#) was signed into law on August 6, 2012. It extends foreclosure protections from 9 months to 12 months after end of military service

Servicemembers Civil Relief Act

(continued)

When is it effective?

- Extension effective February 2, 2013 – 180 days after enactment. Provision sunsets December 31, 2014, so beginning on January 1, 2015, protection reverts back to 90 days after end of military service originally included in SCRA

Expiration of Unlimited Deposit Insurance

What are the current rules?

- Section 343 of the Dodd-Frank Act provides unlimited deposit insurance for noninterest bearing transaction accounts

What is the change?

- The unlimited deposit insurance coverage is due to expire on December 31, 2012
- FDIC issued [FIL-45-2012](#), *Notice of Expiration: Temporary Unlimited Coverage for Noninterest-Bearing Transaction Accounts*
- Outlines expected steps to be taken by insured depository institutions

Expiration of Unlimited Deposit Insurance

(continued)

What actions will be expected?

- Provide written advance notice in writing that temporary coverage is scheduled to expire on December 31, 2012
- Remove from offices/branches/website the "Notices of Changes in Temporary FDIC Insurance Coverage for Transaction Accounts"
- Review and modify account agreements and related disclosure statements as necessary to reflect accurate FDIC coverage
- State law may require insured depository institutions set aside sufficient collateral to secure accounts of government deposits in excess of \$250,000
- File March 31, 2013 Call Report according to revised instructions

Regulation Z and M Updates

- Regulation Z and M thresholds for exempt consumer credit and lease transactions increased to \$53,000 for 2013
 - Exemption does not apply to private education loans and loans secured by real property
- CFPB also adjusted HOEPA fee trigger – increasing it from \$611 in 2012 to \$625 in 2013
- [Board press release](#)

Supervisory Hot Topics

- New products and services
 - Revenue enhancement strategies
- Third party risk management
 - Can't delegate compliance responsibilities
- Fair lending and UDAP compliance
 - Technical compliance not enough
 - Consider whether disclosures are clear
 - Ensure product/service passes "smell test"
 - Impact on consumers
 - Clear and understandable terms and conditions

Closing Comments

- Regulatory change to continue for foreseeable future
 - Can create earnings pressures
- Stay ahead of the rules
 - Track regulatory changes so nothing falls through the cracks
 - Comment whenever possible
 - Provide feedback to your regulator
- Implement an effective change control process
 - New products and services
 - Vendor / third part risk management
 - Look for Outlook Live on change control process next year
- Monitor for effectiveness
 - Not only implement, but administer

Questions

