

Consumer Compliance Hot Topics 2013 Year in Review

Outlook Live Webinar
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Jason Lew, Compliance Risk Coordinator

Kenneth Benton, Senior Consumer Regulations Specialist

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Agenda

- **Lending Updates**
 - Mortgage Rules and Foreclosure Guidance
 - Credit Card Fee Limits
 - Flood/Biggert-Waters Act
- **Deposit/Bank Operations Updates**
 - Remittance Rule
 - Garnishment of Accounts
 - ATM Fee Notice
 - Guidance on Privacy and Reporting of Financial Elder Abuse
 - Social Media Guidance
- **Pending Regulatory Changes**
- **CRA Interagency Q&A**
- **Federal Reserve Policy and Guidance**

Mortgage Rules

Rule	Effective Date	Compliance Guide	Video
Ability to Repay/Qualified Mortgage	1/10/14	Read/Download	Watch , Transcript , Outlook Live
2013 HOEPA Rule (High Cost Mortgage/Homeownership Counseling)	1/10/14	Read/Download	Watch , Transcript
Loan Originator Rule	Various	Read/Download	Watch , Transcript
ECOA Valuations	1/18/14	Read/Download	Watch , Transcript
TILA HPML Appraisals	1/18/14	Read/Download	Watch , Transcript
Escrows	6/1/13	Read/Download	Watch , Transcript
TILA and RESPA Servicing	1/10/13	Read/Download	Watch , Transcript

*Additional info/resources available on the CFPB's [Regulatory Implementation Page](#)

Sample CFPB Resources

Mortgage Origination Rules: Transaction Coverage and Exemptions¹

Transaction Type	Ability-to-Repay (Reg Z) ²	HOEPA (Reg Z)	Pre-loan counseling list (Reg X, per HOEPA Rule)	Escrows (Reg Z)	Appraisals (Reg Z)	Valuations (Reg B)
Purchase mortgages, refinancings, home equity loans	Covered if secured by dwelling § 1026.43(a)	Covered if secured by principal dwelling § 1026.32(a)	Covered § 1024.20(a)	Covered if secured by first lien on principal dwelling and exceed certain rate thresholds § 1026.35(b)	Covered if non-QM and not otherwise exempt § 1026.35(a)-(c))	Covered if secured by first lien on a dwelling § 1002.14(a)
HELOCs	Exempt § 1026.43(a)(1)	Covered § 1026.32(a)	Covered § 1024.20(b)	Exempt § 1026.35(a)	Exempt § 1026.35(a)	Covered if secured by first lien on a dwelling § 1002.14(a)
Manufactured housing Loans	Covered § 1026.43(a)	Covered § 1026.32(a)	Covered § 1024.20(a)	Covered if secured by first lien on principal dwelling and exceed certain rate thresholds § 1026.35(b)	Subject to limited exemptions § 1026.35(c)(2)(ii) and (iii)	Covered if secured by first lien on a dwelling § 1002.14(a)
Construction Loans (Initial Construction)	Exempt § 1026.43(a)(3)(ii)-(iii)	Exempt § 1026.32(b)(2)	Exempt to the extent not federally related mortgage loans § 1024.20(a)	Exempt § 1026.35(b)(2)(i)(B)	Exempt § 1026.35(c)(2)(iv)	Covered if secured by first lien on a dwelling § 1002.14(a)
Loans Made by Small Creditors Predominantly Serving Rural or Underserved Areas	QM balloon loans permitted if other criteria met ² § 1026.43(f)	Exempt from balloon prohibition if other criteria met ² § 1026.32(d)(1)(C)	Covered § 1024.20(a)	Exempt from escrow requirement if other criteria met § 1026.35(b)(2)(ii)-(v)	Covered § 1026.35(a)	Covered if secured by first lien on a dwelling § 1002.14(a)
Bridge Loans (12 months or less)	Exempt § 1026.43(a)(3)(ii)	Exempt from balloon prohibition § 1026.32(d)(1)	Exempt to the extent not federally related mortgage loans § 1024.20(a)	Exempt § 1026.35(b)(2)(i)(C)	Exempt § 1026.35(c)(2)(v)	Covered if secured by first lien on a dwelling § 1002.14(a)
Timeshares	Exempt § 1026.43(a)(2)	Exempt to the extent not principal dwellings § 1026.32(a)	Exempt § 1024.20(c)(2)	Exempt to the extent not principal dwellings § 1026.35(a)	Exempt to the extent not principal dwellings § 1026.35(a)	Covered if secured by first lien on a dwelling § 1002.14(a)
Reverse Mortgages Subject to § 1026.33	Exempt § 1026.43(a)(3)	Exempt § 1026.32(a)(2)(f)	Exempt § 1024.20(c)(1)	Exempt § 1026.35(b)(2)(i)(D)	Exempt § 1026.35(c)(2)(vi)	Covered if secured by first lien on a dwelling § 1002.14(a)

Sample CFPB Resources *(continued)*

MORTGAGE SERVICING RULES: Coverage¹

Regulation X (12 CFR 1024)	Closed-End, Principal Residence	Closed-End, Non-Principal Residence	Open-End	Servicers and Loan Types Exempt from Coverage
Error Resolution and Information Requests (.35 and .36)	X	X		
Force-Placed Insurance (.37)	X	X		Small Servicer ² must comply with requirements of 1024.37 but, per 1024.17(k)(5)(iii), is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower's hazard insurance.
Policies, Procedures, and Requirements (.38)	X	X		Small Servicer, Reverse Mortgages, Qualified Lender³
Early Intervention (.39)	X			Small Servicer, Reverse Mortgages, Qualified Lender
Continuity of Contact (.40)	X			Small Servicer, Reverse Mortgages, Qualified Lender
Loss Mitigation Procedures (.41)	X			Small Servicers (except, per 1024.41(j), small servicers may not file for foreclosure if borrower is performing pursuant to a loss mitigation agreement OR is 120 or fewer days delinquent), Reverse Mortgages, Qualified Lender
Mortgage Servicing Transfers (.33)	X	X		Certain Transfers: between affiliates; resulting from servicer/subservicer mergers or acquisitions; OR between master servicers without changing subservicer. Servicing Disclosure Statement required for first lien only.
Escrow Accounts (.17 and .34)	X	X	X (.17 only)	Small servicer is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower's hazard insurance, per 1024.17(k)(5)(ii).

Sample CFPB Resources *(continued)*

MORTGAGE SERVICING RULES: Coverage¹

Regulation Z (12 CFR 1026)	Closed-End, Principal Residence	Closed-End, Non-Principal Residence	Open-End	Servicers and Loan Types Exempt from Coverage
Periodic Statement (.41)	X	X		Small Servicer, Reverse Mortgages, and Timeshares. Fixed-Rate Loans with Coupon Books exempt from some requirements.
ARM Disclosures (.20(c) and (d))	X			ARM with term of 1 year or less
Prompt Crediting (.36)	X		X (principal dwelling only)	
Payoff Statement (.36)	X	X	X	

¹ This chart is not a substitute for the rules. Only the rules and the Official Interpretations can provide complete and definitive information regarding their requirements. The complete rules, including the Official Interpretations and small entity compliance guide, are available at <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedure-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>.

² Small Servicer (1026.41(e)(4)(ii)): Servicer or affiliate services 5,000 or fewer mortgage loans and the servicer or affiliate owns or originated all 5,000 loans OR the servicer is a Housing Finance Agency per 24 CFR 226.5.

³ Qualified Lender per 12 CFR 617.7000.

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CFPB Contact:

CFPB_reinquiries@cfpb.gov or call 202-435-7700

ATR/QM and Fair Lending

- [CA 13-15](#) Interagency Statement on Fair Lending Compliance and the ATR and QM Standards Rule
- Statement discusses liability under disparate impact:
 - Requirements of ATR/QM Rule, ECOA (Regulation B) are compatible
 - Agencies do not anticipate that a creditor's decision to offer only QMs would, absent other factors, elevate a supervised institution's fair lending risk
- Similar statement is expected for ATR/QM and CRA

Integrated Mortgage Disclosures

- CFPB's [Integrated Mortgage Disclosures Rule](#)
 - Issued November 20, 2013; effective August 1, 2015
 - Combines certain loan disclosures under TILA and RESPA
 - Explains of how forms should be filled out and used
 - Applies to most closed-end consumer mortgages
- [Loan Estimate](#) – replaces the GFE/early TILA disclosure
- [Closing Disclosure](#) – replaces the HUD-1 (settlement statement)/final TILA disclosure

Foreclosure Guidance

- [CA 13-6/SR 13-9](#) Minimum Standards for Prioritizing and Handling Borrower Files with Imminent Scheduled Foreclosure Sale
- Applies to all Fed-supervised institutions
 - Minimum standards for reviewing files subject to an imminent (within 60 days) scheduled foreclosure sale
 - Exceptions should cause servicer to postpone, suspend, or cancel a scheduled foreclosure until standards are satisfied
 - Independent control functions should confirm and document servicer adherence

Credit Card Fee Limits

- [Credit Card Fee Limit Rule](#)
 - 2010: Regulation Z amended to limit fees to “25% of credit limit in effect when the account is opened”
 - 2011: Fee limitation was amended to include fees paid prior to account opening and during the first year after account opening
 - 2011: District court grants preliminary injunction – rule expanding fee limitations postponed
 - 2013: Regulation Z amended to apply limitation to fees during the first year after account opening

Interagency Statement on Impact of Biggert-Waters Act (BWA)

<u>Change</u>	<u>Effective date</u>
Civil money penalties: statutory cap removed and maximum per violation increased from \$385 to \$2,000	7/6/12
Lenders may assess borrower the premiums for forced-placed insurance and related fees during 45-day force-placement insurance notice period	7/6/12
For force-placed insurance, when borrower provides proof of insurance, lender must, within 30 days of notice, end force-placed policy and refund premiums/fees for period of duplicate coverage	7/6/12
Lenders must accept as proof of existing coverage the flood insurance policy declarations page with policy number and contact information for the insurance company or agent	7/6/12
Mandatory escrow requirement	7/6/14
Private flood insurance: lenders must accept private policy to satisfy mandatory purchase requirements if it meets designated standards	TBA

Rulemaking Proposal to Implement BWA

The proposal:

- Would require regulated lending institutions to accept private flood insurance to satisfy the mandatory purchase requirements
- Would require regulated lending institutions, effective July 6, 2014, to escrow payments and fees for flood insurance for new or outstanding **residential** loans unless institutions qualify for statutory exception based on asset size
- Includes sample notice forms concerning availability of private flood insurance coverage and the escrow requirement

Rulemaking Proposal to Implement BWA *(continued)*

The proposal *(continued)*:

- Would clarify that regulated lending institutions can charge borrowers for cost of force-placed flood insurance coverage beginning on the date on which the borrower's coverage lapsed or became insufficient
- Would identify circumstances under which a lender must terminate force-placed flood insurance coverage and refund payments to a borrower for duplicate coverage
- Proposal includes new and revised sample notice forms and clauses for availability of private flood insurance coverage and escrow requirement

BWA and Homeowner Flood Insurance Affordability Act

- Congress passed the BWA to address the National Flood Insurance Program's large deficit resulting from Hurricane Katrina and other storms
- The BWA phases out subsidies and grandfathering provisions and directs FEMA to update flood insurance rate maps (FIRMs) based on the actuarial risk of flood claims
- FEMA has begun updating FIRMs, and premiums have or will increase significantly in some areas
- Congress is considering legislation ([Homeowner Flood Insurance Affordability Act](#)) that would delay implementation of rate increases by four years and require FEMA to examine affordability issue

Amended Remittance Rule

CFPB issued [amended final rule](#) to make three changes:

- Making it optional to disclose certain fees and foreign taxes, provided consumer receives disclaimer
- Clarifying that provider is not liable when funds are sent to wrong account because consumer provided incorrect account number or institution identifier
- Delaying effective date until October 28, 2013

Amended Remittance Rule

(continued)

Revised [model form](#) A-33 for pre-payment disclosures with disclaimer

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

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

Transfer Amount:	\$100.00
Other Fees:	-\$4.00
Total to Recipient:	\$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

Remittance Rule Resources

- [CFPB Compliance Guide \(updated August 2013 to reflect recent amendment\)](#)
- [CFPB August 2013 video on the final rule](#)
- [CFPB August 2013 unofficial text of remittance rule regulation and interpretation](#)
- [CFPB eRegulation tool for Regulation E](#)

Garnishment Rule for Accounts with Federal Benefits

- [Final rule](#) effective June 28, 2013
- Applies to social security benefits, veterans' benefits, federal railroad benefits, and federal retirement benefits — except garnishment orders with “Notice of Right to Garnish Federal Benefits” are **exempt**
- Institutions must conduct account reviews generally no later than 2 days after garnishment, examining 2 month period before account review (lookback period) to see if benefits were deposited into account
- If benefits were deposited, account holder must have access to the lesser of 1) balance in account on date of review or 2) sum of all benefits deposited during lookback period

Garnishment Rule *(continued)*

- Institutions should perform their regular garnishment procedures for amounts in excess of protected amount
- Notice must be provided to consumer when a covered benefit was deposited into the account during the lookback period, and the funds in the account exceed the protected amount
- Model notice form: [Appendix A to 31 C.F.R. Part 212](#)
- Financial institutions cannot freeze amounts deposited **after** account review unless the institution is served a new or different garnishment order against the same account holder
- Garnishment fees cannot be charged or collected against protected amount

Resources for Garnishment Rule

- [Garnishment Rule for Accounts with Federal Benefits](#)
- *Consumer Compliance Outlook* article: [New Compliance Requirements Under the Garnishment Rule for Accounts Receiving Certain Federal Benefits](#)
- [Treasury Department FAQ](#)
- [Updated FFIEC Examination Procedures](#)

ATM Fee Notice

- [ATM Fee Notice](#) - Regulation E was amended in March 2013 to eliminate fee notice on or at ATMs – Effective March 26, 2013
- Amendment leaves in place the requirement for a specific fee disclosure to appear on the screen of the ATM or on paper issued from machine
- Regulation E amended to conform to EFTA amendment signed into law in December 2012

Reporting Financial Elder Abuse

- [CA 13-14](#) Interagency Guidance on Privacy Laws and Reporting Financial Elder Abuse of Older Adults
- Clarifies that reporting suspected financial elder abuse does not, in general, violate the provisions of the GLBA
- Informs institutions of the GLBA exemptions that permit sharing of nonpublic personal information
- Describes possible signs of financial elder abuse
- Refers to information about using SARs for reporting

Social Media Guidance

- [Final Guidance on Social Media](#) was issued December 11, 2013
- FFIEC hosting “Interagency Financial Institution Teleconference on Social Media and Consumer Compliance”
 - December 19, 2013, 1:00 p.m. – 2:30 p.m. (Eastern)
 - Registration information is available through <https://fdicsurvey.inquisiteasp.com/fdic/cgi-bin/qwebcorporate.dll?idx=Y5D5JD>

CFPB Regulatory Agenda

Regulatory issue	Issues under consideration
Regulation C (HMDA)	Dodd-Frank Act adds new HMDA data collection fields: the ages of loan applicants, points and fees payable at origination, difference between loan APR and benchmark rates for all loans, the term of any prepayment penalty, the value of real property to be pledged as collateral, loan term and any introductory rate, the presence of contract terms allowing non-amortizing payments, the origination channel, and the credit scores of applicants and mortgagors. CFPB expects to issue proposal in February 2014
Regulation P (GLBA)	GLBA requires financial institutions to provide annual privacy notices to customers. CFPB is working on rulemaking proposal to eliminate requirement to provide annual notices where policies would have not changed. CFPB expects to issue proposal in January 2014.

CFPB Regulatory Agenda *(continued)*

Product or service	Issues under consideration
Payday Loans and Deposit Advance Products	CFPB has highlighted consumer protection concerns for payday loans. The CFPB is considering whether rules governing these products are warranted, and if so what types of rules would be appropriate. Rulemaking might include disclosures or address acts or practices in connection with these products. CFPB expects to issue proposal in March 2014.
Debt collection	Government receives more consumer complaints about debt collectors than about any other single industry. The CFPB is considering a debt collection rulemaking that might include disclosures or address acts or practices in connection with debt collection activities.

CFPB Regulatory Agenda *(continued)*

Product or service	Issues under consideration
Overdrafts	CFPB white paper highlighted possible consumer protection concerns. CFPB is considering rulemaking, which might include disclosures or address specific acts or practices. CFPB expects to issue proposal in July 2014.
Mortgage rules	CFPB is considering possible amendments to definitions of "rural" and "underserved," for purposes of certain exemptions from several otherwise applicable requirements; additional guidance that would facilitate the development of automated underwriting systems for purposes of calculating debt-to-income ratios in connection with qualified mortgage determinations; and other topics. CFPB expects to issue proposal in June 2014.

CRA Interagency Q&As

- [CA 13-18](#) Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment
 - Revisions focus primarily on community development (CD) and supplement the Q&As issued through [CA 10-2](#)
- The new and revised CRA Q&As:
 1. Expand examples of ways to determine if community services are targeted to LMI (.12(g)(2) – 1)
 2. Clarify the evaluation of CD activities that benefit a broader statewide or regional area (.12(h) – 6)
 3. Revise the term “regional area” (.12(h) – 7)

CRA Interagency Q&A *(continued)*

- The new and revised Q&As *(continued)*:
 4. Clarify that serving on the board of a CD organization and providing services reflecting financial institution's employees' areas of expertise at the institution, are considered technical assistance (.12(i) – 3)
 5. Address the evaluation of loans or investments to organizations that, in turn, invest in instruments that do not have a CD purpose (.12(t) – 9)
 6. Clarify the impact of CD lending performance on the large bank lending test rating (.22(b)(4) – 2)
 7. Address documentation for nationwide funds (.23(a) – 2)

Federal Reserve Policy Updates

- [CA 13-19](#) Community Bank Risk-Focused Consumer Compliance Supervision Program
 - State member banks (SMBs) with < \$10 billion in assets
 - Outlook Live webinar planned for first quarter 2014
- [CA 13-20](#) Consumer Compliance and Community Reinvestment Act Examination Frequency Policy
 - Policy covers mandated exam frequency for:
 - Consumer compliance and CRA examinations of SMBs
 - Assessments of non-state member bank entities regulated by the Federal Reserve

Federal Reserve Guidance

- [CA 13-21 / SR 13-19](#) Guidance on Managing Outsourcing Risk
- Guidance describes:
 - Risks from use of service providers: Discusses potential risks arising from service provider relationships
 - Board of directors and senior management responsibilities: Outlines supervisory expectations in managing risks associated with service providers
 - Service provider risk management programs: Describes the broad framework and processes to effectively manage risks associated with service provider relationships

Parting Comments

Regulatory change to continue for foreseeable future

- 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
 - Include vendor risk management
- Monitor for effectiveness
 - Not only implement, but administer (i.e., ensure effective compliance management)

Questions

