

Consumer Compliance Hot Topics – 2014 Year in Review

Outlook Live Webinar – December 4, 2014

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Agenda

- Applications - Supervisory Guidance / Semiannual Report
- New Rules / Proposals / Rulemaking Agenda
 - Regulation P – Annual Privacy Notice Amendment
 - Flood Insurance Update
 - Mortgage Rules – Updates and Resources
 - HMDA Proposal
 - CFPB's Rulemaking Agenda
- Hot Topics
 - HELOCs Nearing the End-of-Draw Period
 - Same Sex Marriage
 - Recent Court Cases (Regulation B / FHA / Rescission)
 - Efforts Related to Community Banks / EGRPRA Process

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Applications: Statutory Factors

- Federal Reserve Applications:
 - Proposals relating to formations, acquisitions, and mergers
- Statutory Factors Considered:
 - Competitive effects
 - Financial and managerial resources and future prospects, including consumer compliance
 - Convenience and needs, including Community Reinvestment Act (CRA) performance
 - Anti-money laundering record
 - Financial stability
 - Source of strength

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Applications: Enhancing Transparency

- [Supervisory Letter SR14-2/CA14-1](#) issued February 24, 2014 to:
 - Improve transparency in the applications process
 - Provide financial institutions and the public with an understanding of the Federal Reserve's views on proposals that do not meet certain statutory requirements
- CRA Considerations:
 - A less-than-satisfactory CRA rating has been an impediment to favorable action on an application or notice
 - Consideration may be given for a branch opening that addresses a weakness in CRA performance or for a branch opening in a low- or moderate-income or minority census tract, provided the branch opening addresses an unmet need for banking services and not detract from efforts to address non-branch related CRA deficiencies

Applications: Enhancing Transparency (continued)

- Consumer Compliance Considerations:
 - Proposals involving less-than-satisfactory consumer compliance ratings or other significant consumer compliance issues face barriers to approval and have been discouraged
 - Under limited circumstances, however, the Federal Reserve considers a number of factors, including:
 - Nature and severity of the issues
 - Corrective action taken to date
 - Size of the institution relative to the organization's consolidated assets
 - Whether the proposal would pose a material distraction to management in its efforts to achieve corrective action

Applications: Enhancing Transparency (continued)

- Consumer Compliance Considerations (cont.):
 - Near term or in process consumer compliance or CRA examinations could cause a delay in the applications decision process
 - The Board requires conclusion for in-process matters, such as matters that will result in a less-than-satisfactory CRA or consumer compliance and/or the issuance of a formal enforcement action

Impact of Adverse Comments

- Adverse public comments often require extensive analysis:
- HMDA/fair lending comments trigger extensive analysis of the supervisory record of the institutions that have received comments
 - Applicant will be required to respond point-by-point to the issues raised
 - For state member banks, Board staff will work with Reserve Bank examiners to gain a better understanding of the bank's supervisory position
 - For other entities, staff coordinates with the primary regulatory (FDIC, OCC, CFPB) to obtain their supervisory views
 - Board involvement generally includes requests for information and briefings to provide our analyses of the allegations and recommendations
 - Process is multifaceted, which may impact application timing

Semi-Annual Reporting

- The Federal Reserve publishes a semi-annual report with information on applications and notices filed with the Federal Reserve
 - The report includes statistics on processing timeframes and the overall volume of approvals, denials, and withdrawals, and will provide the primary reasons for withdrawn applications
 - The report provides information on applications filed by Federal Reserve-supervised banking organizations as of June 30 and December 31 of each calendar year
- The [first report](#) was published on November 24, 2014
- As highlighted in the report, adverse public comments have resulted in extended processing times

Recommendations Prior to Filing

- Address significant outstanding supervisory issues prior to engaging in expansionary activities
- Discuss potential issues with Reserve Bank applications staff prior to announcing a deal publicly
- Consider using the pre-filing process described in [SR 12-12 / CA 12-11](#) "Implementation of a New Process for Requesting Guidance from the Federal Reserve Regarding Bank and Nonbank Acquisitions and Other Proposals" for feedback on a specific issue
- Consider being proactive in addressing potential weaknesses in lending data, and incorporate ongoing feedback from your community ahead of submitting expansionary proposals

Regulation P Annual Privacy Notice

- [Regulation P – Annual Privacy Notice Amendment](#)
 - Effective October 28, 2014
 - Creates alternative delivery method for annual privacy notice (i.e., posting to website), if certain conditions met
- May use alternative delivery method if:
 - No opt-out rights are triggered under GLBA or FCRA section 603, and opt-out notices required by FCRA section 624 have previously been provided, if applicable, or the annual privacy notice is not the only notice provided to satisfy those requirements;
 - Information in privacy notice has not changed; and
 - Financial institution uses model form



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Regulation P Annual Privacy Notice

(continued)

- To use alternative delivery method, institution must:
 - Continuously post annual privacy notice on its website
 - Mail annual notices to customers who request them by telephone, within 10 days of request
 - Insert statement at least once per year on other notice or disclosure the institution issues under any provision of law (e.g., periodic statement, coupon book, etc.)
- Institution is required to use a delivery method that predates the rule if, among other things, the institution changes its privacy practices or opt-out is triggered



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Flood Insurance Update

- [Proposed Flood Insurance Rule](#)
 - Proposal would implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA)
 - Comment period ends December 29, 2014
- HFIAA Provisions Addressed in Proposal would:
 1. Delay the mandatory escrow requirement until January 1, 2016
 2. Apply mandatory escrowing only when triggering event occurs or upon borrower request -- previously under Biggert-Waters, institutions would have been required to use escrow accounts for every outstanding covered loan in their portfolio, unless they qualified for the small lender exemption (less than \$1 billion in assets)



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Flood Insurance Update *(continued)*

- HFIAA Provisions Addressed in Proposal would (cont.):
 3. Add exemptions to escrow requirement for:
 - i. Home equity lines of credit
 - ii. Loans with a term of 12 months or less
 - iii. Business-purpose loans
 - iv. Non-performing loans
 - v. Subordinate liens loans where flood insurance is provided in connection with the senior-lien loan
 - vi. Loans secured by property in a condo or co-op where sufficient flood insurance is purchased by HOA
 4. Eliminate flood insurance requirement for detached non-residential structures on residential property



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Flood Insurance Update *(continued)*

- [CA 14-3 Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings](#)
 - Biggert-Waters increased the maximum limits of coverage for certain multifamily buildings (“other residential”) from \$250,000 to \$500,000
 - Increased maximum limits effective June 1, 2014
 - FEMA required notice to other residential policy holders of new policy limits
 - Financial institutions expected to take steps to determine whether property will require increased coverage
 - If coverage is insufficient, steps should be taken to ensure borrower obtains sufficient coverage, including utilizing force placement procedures



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Flood Insurance Update *(continued)*

- [FDIC Banker Teleconference: Interagency Update on Mandatory Flood Insurance Purchase Requirements](#)
 - December 9, 2014 from 11:00 a.m. – 12:30 p.m. Pacific (2:00 p.m. – 3:30 p.m. Eastern)
 - Session will include discussions about statutory changes to mandatory flood insurance purchase requirements and an update on agency flood insurance rulemaking
 - Advance registration required - [Register](#) by December 5
 - Submit questions in advance to: BankerTeleconference@FDIC.gov



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Mortgage Rules – Updates and Resources

- [Applicability of Ability-to-Repay Rule \(ATR Rule\) to Certain Successors-in-Interest](#)
 - Effective July 17, 2014 and applicable on July 8, 2014
 - Clarifies that certain successors-in-interest are not subject to the ATR Rule, because these transactions are not considered “assumptions”
 - Provides Examples: Death of obligor and separation or divorce

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Mortgage Rules – Updates and Resources (continued)

- [Amendments to the 2013 Mortgage Rules under TILA](#)
 - Two provisions that broaden for certain nonprofit entities the small servicer exemption from certain servicing and disclosure requirements and the small creditor exemption from the ability to repay requirement
 - Limited provision for refunding excessive points and fees on qualified mortgages (QMs)
 - Cure mechanism for QMs that exceed the 3% points and fees threshold, but meet all other requirements for being a QM at consummation
 - Excess points and fees must be refunded within 210 days of consummation and before certain cutoff events
 - Effective for transactions consummated on or after November 3, 2014, and expires on January 10, 2021

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Mortgage Rules – Updates and Resources (continued)

TILA-RESPA Integrated Disclosures Rule - Outlook Live Sessions

| | |
|-------------------|---|
| June 17, 2014 | TILA-RESPA Integrated Disclosures Rule, Part 1 – Overview of the Rule |
| August 26, 2014 | FAQs on the TILA-RESPA Integrated Disclosures Rule, Part 2 – Topics Covered: <ul style="list-style-type: none"> • Application • Scope • Record retention • Timing for Delivery and Redisclosure • Tolerance • Basic Form Contents |
| October 1, 2014 | FAQs on the TILA-RESPA Integrated Disclosures Rule, Part 3 – Completing the Loan Estimate |
| November 18, 2014 | TILA-RESPA Integrated Disclosures, Part 4 – Completing the Closing Disclosure |

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HMDA Proposal

- HMDA [proposal](#) published on August 29, 2014
- Proposed amendments would:
 - Clarify several existing requirements
 - Change the institutional and transactional coverage under Regulation C
 - Add several new reporting requirements
- Institutional Coverage: Proposal would adopt a uniform loan volume threshold of 25 covered loans, excluding open-end lines of credit
- Transactional Coverage: Proposal would expand transactional coverage to include all mortgage loans secured by a dwelling, regardless of loan purpose, except for the loans specifically excluded in section 1003.3(c)

HMDA Proposal (continued)

- The Dodd-Frank Act directs the CFPB to expand the scope of data collected and submitted under HMDA:
 - Age of applicant
 - Rate spread (expanded to all loans)
 - Credit score
 - Non amortizing payment features
 - Total points and fees
 - Prepayment penalty term
 - Property value
 - Introductory rate term
 - Loan term
 - Application channel
 - As appropriate, identifiers for loan originators, loans, and property parcels
 - Other information, as the CFPB may require

HMDA Proposal (continued)

- The CFPB used its discretionary authority to propose additional HMDA data points including:
 - Debt-to-income (DTI) ratio
 - Qualified mortgage (QM) status of the loan
 - Combined loan-to-value (CLTV) ratio
 - Automated underwriting systems results
 - Pricing information including total origination charges; total discount points; borrower's risk-adjusted, pre-discounted interest rate; and interest rate
 - Certain multifamily housing data
 - Certain manufactured housing data
- The comment period ended on October 29, 2014. [Public comments](#) are posted to www.regulations.gov

Fair Lending Update: HUD's Disparate Impact Regulation

- HUD issued a [final rule](#) in 2013 to provide consistency in applying disparate impact liability under the Fair Housing Act (FHA) [24 C.F.R. §100.500](#)
- An insurance trade group sued HUD to invalidate the regulation alleging the FHA does not cover disparate impact claims
- In October 2014, a federal judge ruled in favor of the trade group and [vacated](#) the regulation

Fair Lending Update: Disparate Impact under the FHA

- In a separate case, the U.S. Supreme Court will hear arguments in [Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project](#) whether the FHA encompasses disparate impact claims
- This issue was before the Court in two prior cases, but they settled before a decision was issued
- If the Court determines the FHA does not cover disparate impact claims, it may also have implications for these claims under the Equal Credit Opportunity Act (ECOA)

Fair Lending Update: Regulation B Spousal Signature Rule

- Eighth and Sixth Circuits issued conflicting decisions whether ECOA's definition of "applicant" includes guarantors
- Eighth Circuit held in [Hawkins v. Community Bank of Raymore](#) that guarantors are not "applicants" under ECOA. Decision applies in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota
- Sixth Circuit in [RL BB Acquisition, LLC v. Bridgemill Commons Dev. Group, LLC](#) concluded to the contrary that meaning of "applicant" under ECOA was ambiguous and agency interpretation was entitled to deference
- Petition to the [U.S Supreme Court](#) to review *Hawkins* is pending

Truth in Lending Act Update: Right of Rescission

- The right of rescission expires three business day after consummation but can be extended to three years if material TILA disclosures are inaccurate or if two copies of the notice of the right to rescind are not provided
- Federal courts are divided whether a borrower must file a lawsuit within three years of consummation to preserve the statute of limitations or must send notice to the creditor in three years
- The U.S. Supreme Court recently heard oral [arguments](#) on this issue in [Jesinoski v. Countrywide Home Loans, Inc.](#) and will render a decision before June 30, 2015

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Efforts Related to Community Banks

- The Federal Reserve [revised](#) its consumer compliance supervision program for community banks:
 - In January 2014, the Board introduced its [Community Bank Risk-Focused Consumer Compliance Supervision Program](#), which ties examination intensity to a bank's risk profile and reduces time examiners spend on low-risk compliance issues at community banks
 - The Board has also increased its use of off-site supervisory activities to reduce time examiners spend on site at a bank

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Efforts Related to Community Banks *(continued)*

- The Federal Reserve System has extensive outreach efforts, including:
 - [Consumer Compliance Outlook](#) newsletter on consumer compliance issues
 - [Outlook Live](#) compliance webinars
 - [Community Banking Connections](#) newsletter on safety/soundness issues for community banks
- The Federal Reserve System held its annual conference on community banking in [September 2014](#), addressing many issues including regulatory burden

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EGRPRA Process

- The Federal Reserve, OCC, and FDIC are required under the [Economic Growth and Regulatory Paperwork Reduction Act](#) (EGRPRA) to review their regulations every 10 years to identify outdated or unnecessary regulatory requirements on the institutions they supervise. The EGRPRA does not apply to the Consumer Financial Protection Bureau or the NCUA
- The agencies' current EGRPRA review includes regulations in applications and reporting, and CRA

EGRPRA Process (continued)

- The Board, OCC, and FDIC are conducting [outreach meetings](#) with bankers, consumer and community groups, and other interested parties to inform their review. The first meeting was held on December 2 in Los Angeles, and additional meetings are scheduled in 2015 in Dallas, Boston, Chicago, and Washington, DC
- The National Credit Union Administration is also conducting a simultaneous review of its regulations
- The Consumer Financial Protection Bureau is required under [Section 1022\(d\)](#) of the Dodd-Frank Act to review its significant regulations five years after they become effective to assess their effectiveness and publish a report based on its review

Concluding Remarks

- The pace of regulatory change in consumer compliance has increased in response to the financial crisis
- 2014 was a challenging year because of the new mortgage regulations that became effective in January 2014
- Despite the lower number of regulatory changes in 2014, the TILA-RESPA Integrated Disclosures Rule, which is effective August 1, 2015, is viewed by many in the industry as being more challenging to implement than the 2013 mortgage rules


