

LEGISLATIVE UPDATE

CONSUMER FINANCIAL PROTECTION BUREAU MORTGAGE SERVICING RULES

- WHO:** The Consumer Financial Protection Bureau (“CFPB”) has issued new Mortgage Servicing Rules.
- WHAT:** The Mortgage Servicing Rules apply to the making and servicing of mortgage loans, including first mortgages, second mortgages and home equity line-of-credit mortgage loans (HELOCs).
- WHEN:** Most of the Mortgage Servicing Rules are effective January 10, 2014.
- WHY:** The new Rules were required by the Dodd-Frank Reform and Consumer Protection Act which amended the Real Estate Settlement Procedures Act, and the Truth-in-Lending Law with regard to the making and servicing of mortgage loans.

SUMMARY.

The new Mortgage Servicing Rules are both numerous and in many cases lengthy. The rules are also confusing in that some of the rules apply to all types of consumer mortgages whereas other rules only apply to certain mortgages.

There is a small servicer exemption if the Credit Union has 5,000 or less loans. If the Credit Union is a small servicer, it is exempt from many of the lengthiest Mortgage Servicing Rules, but will still be subject to several of the rules as explained below.

The Credit Union must make an initial determination as to which rules apply to the Credit Union and then make certain that the Credit Union staff is familiar with the rules and implements the necessary procedures prior to January 10, 2014.

CFPB COMPLIANCE GUIDES.

The Mortgage Servicing Rules are numerous and complex; however, the CFPB has issued several Compliance Guides to assist lenders in complying with the new rules. All of the guides can be found on the CFPB web site and a copy of the Compliance Guide for most of the Mortgage Servicing Rules applicable to Credit Unions which are subject to the small servicer exemption is attached to this Legislative Update.

Summary of the Rules Applicable to Small Servicing Entities. The rules which are applicable to Credit Unions that are small servicer entities (5,000 or less loans) are as follows:

- Error Resolution and Information Requests
- Force-Placed Insurance
- Loss Mitigation Procedures

- Adjustable Rate Mortgage Disclosures
- Prompt Crediting of Payments
- Payoff Statement

If the Credit Union has more than 5,000 loans or is servicing at least one loan that the Credit Union does not own, it is subject to not only the Mortgage Servicing Rules referred to above, but also the following additional rules:

- Policies, Procedures and Requirements
- Continuity of Contact
- Loss Mitigation Procedures
- Mortgage Servicing Transfers
- Escrow Accounts
- Periodic Statement

MORTGAGE SERVICING RULES: Coverage

Regulation X (12 CFR 1024)	Closed-End, Principal Residence	Closed-End, Non-Principal Residence	Open-End	Loan Type
Error Resolution and Information Requests (.35 and .36)	X	X		
Force-Placed Insurance (.37)	X	X		Small Servicer 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.
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.
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	

CFPB MORTGAGE SERVICING RULES READINESS GUIDE.

Attached to this Legislative Update is **Part I – Summary of the Rules** from the CFPB Mortgage Rules Readiness Guide. Please note that a number of the rules contained in this Summary are not applicable to Credit Unions with less than 5,000 mortgages.

Note that the Readiness Guide refers to several additional Mortgage Servicing Rules which become effective on January 10, 2014, which are not addressed in this Legislative Update. These rules, which must be complied with by the Credit Union are as follows:

- Ability to Repay and Qualified Mortgage Standards (Regulation Z)
- ECOA Valuations for Loans Secured by a First Lien on a Dwelling (Regulation B)

CFPB SMALL ENTITY COMPLIANCE GUIDE FOR MORTGAGE SERVICING RULES APPLICABLE TO THE TRUTH-IN-LENDING ACT.

The CFPB has prepared a **Small Entity Compliance Guide** dated November 27, 2013. Please note that this consumer compliance guide covers a number of Mortgage Servicing Rules which are only applicable to Credit Unions with more than 5,000 mortgages. Each section will indicate whether the particular Mortgage Rule is applicable to a small entity (Credit Union with less than 5,000 loans, or to a financial institution which owns or services more than 5,000 loans. The Small Entity Compliance Guide is well-written and will help you understand how to comply with these new rules. The Small Entity Guide can be found at:

http://files.consumerfinance.gov/f/201311_cfpb_servicing-implementation-guide.pdf

Should you have any questions, please feel free to contact our office.

Peter J. Liska, Esq.
December 19, 2013

Part I – Summary of the Rules

In 2013, the Bureau issued several final rules concerning mortgage markets in the United States pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Public Law 111-203, 124 Stat. 1376 (2010) . The rules amend several existing regulations, including Regulation Z, X, and B. Below are summaries related to these rules. The headings are hyperlinks that will direct you to rule-specific CFPB website pages. An overview of rule content is also available in the Small Entity Compliance Guides. (See the last page for links to these guides). The CFPB will continue to provide updates to the rules where necessary. Updates will be posted, along with a summary of the changes, on the regulatory-implementation CFPB page.

Ability-to-Repay and Qualified Mortgage Standards (Regulation Z)

The CFPB amended Regulation Z, which implements the Truth in Lending Act (TILA). Before the amendment, Regulation Z prohibited a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The amendments implement Sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan) and establish certain protections from liability under this requirement for "Qualified Mortgages." The amendments also implement Section 1414 of the Dodd-Frank Act, which limits prepayment penalties. Finally, the amendments require creditors to retain evidence of compliance with the rule for three years after a covered loan is consummated.

This rule is effective for transactions for which the creditor received an application on or after January 10, 2014.

Escrow Requirements under Truth in Lending Act (Regulation Z)

The CFPB issued a final rule that amends Regulation Z (Truth in Lending Act) to implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Act. Regulation Z currently requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a principal dwelling. The rule implements statutory changes made by the Dodd-Frank Act that lengthen the time to 5 years from one year to maintain a mandatory escrow account established for a higher-priced mortgage loan. The rule also exempts certain transactions from the statute's escrow requirement. The primary exemption applies to mortgage transactions extended by creditors that operate predominantly in rural or underserved areas, together with their affiliates originate a limited number of first-lien covered transactions, have assets below a certain threshold, and together with their affiliates do not maintain escrow accounts on

extensions of consumer credit secured by real property or a dwelling that are currently serviced by the creditors or their affiliates (subject to certain exceptions).

This rule was effective June 1, 2013.

High-Cost Mortgage and Homeownership Counseling (Regulation Z) (Regulation X)

The CFPB issued this final rule to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act's amendments to the Truth in Lending Act and the Real Estate Settlement Procedures Act. The final rule amends Regulation Z (Truth in Lending Act) by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act of 1994 (HOEPA), revising and expanding the tests for coverage under HOEPA, and imposing additional restrictions on mortgages that are covered by HOEPA, including a pre-loan counseling requirement. The final rule also amends Regulation Z and Regulation X (Real Estate Settlement Procedures Act) by imposing certain other requirements related to homeownership counseling, including a requirement that consumers receive information about homeownership counseling providers.

This rule is effective for transactions for which the creditor received an application on or after January 10, 2014.

Mortgage Servicing Rules (RESPA) (Regulation X) (TILA) (Regulation Z)

The CFPB amended Regulation X, which implements the Real Estate Settlement Procedures Act of 1974, and implemented a commentary that sets forth an official interpretation to the regulation. The CFPB also amended Regulation Z, which implements the Truth in Lending Act and the official interpretation to the regulation, which interprets the requirements of Regulation Z. These final rules implement provisions of the Dodd-Frank Act regarding mortgage loan servicing.

Specifically, the Regulation X final rule implements Dodd-Frank Act sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule requires servicers to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; and to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions. The rule establishes procedures for the review of borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X.

The Regulation Z final rule implements Dodd-Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

These rules are effective January 10, 2014.

ECOA Valuations for Loans Secured by a First Lien on a Dwelling (Regulation B)

The CFPB amended Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and the Bureau's official interpretations of the regulation, which interpret and clarify the requirements of Regulation B. The final rule revises Regulation B to implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Act. In general, the revisions to Regulation B require creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly.

This rule is effective for loans to be secured by first liens on dwellings for which an application is received by the creditor on or after January 18, 2014.

TILA Appraisals for Higher-Priced Mortgage Loans (Regulation Z)

The CFPB issued a final rule to amend Regulation Z jointly with the Federal Reserve Board, FDIC, FHFA, NCUA, and OCC. This rule implements new appraisal provisions in the Truth in Lending Act (TILA) that were added by the Dodd-Frank Act. The rule requires creditors to obtain a full interior appraisal by a certified or licensed appraiser for non-exempt "higher-risk mortgage loans" (HPMLs). HPMLs are mortgages with an annual percentage rates that exceed the average prime offer rate by a specified percentage. The rule also requires a second such appraisal at the creditor's expense for certain properties held for less than 180 days. Exemptions include qualified mortgages, reverse mortgages, bridge loans, construction loans and certain manufactured homes. In addition, the rule requires creditors to provide the consumer a copy of all written appraisals performed in connection with the HPML at least 3 days prior to closing.

This rule is effective January 18, 2014.

Loan Originator Compensation Requirements (Regulation Z)

The CFPB amended Regulation Z to implement amendments to the Truth in Lending Act made by the Dodd-Frank Act. The final rule implements requirements and

restrictions imposed by the Dodd-Frank Act concerning loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of credit insurance. The rule revises or provides additional commentary on Regulation Z's definition of a loan originator, restrictions on loan originator compensation, including prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements. The rule did not prohibit payments to and receipt of payments by loan originators when a consumer pays upfront points or fees in the mortgage transaction. Instead the Bureau will first study how points and fees function in the market and the impact of this and other mortgage-related rulemakings on consumers' understanding of and choices with respect to points and fees.

The amendments to § 1026.36 are effective on three separate dates: the prohibition on mandatory arbitration was effective June 1, 2013; the provisions on financing credit insurance and including the loan originator's name and NMLSR ID on loan documents are effective January 10, 2014; and the loan originator compensation provisions are effective January 1, 2014.