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Flood Reform Ebbs and Flows

Background

The Biggert-Waters Flood Insurance Reform Act of 2012 is found in Division F Title II of [Public Law 112-141](#). The legislation amended flood requirements for lenders, insurers, and communities, as well as setting up numerous studies and reports, in a general effort to make the NFIP sustainable. Many of the revisions were far reaching. Very soon the political push back began. While the extension of the flood insurance program through 2017 was welcomed, the increased premiums and other reforms were clearly not. Both FEMA and our federal regulators held off revising regulations necessary to implement many of the provisions. Many Biggert-Waters changes are not yet implemented.

Interagency Proposed Regulation

On October 30, 2013 the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, and the Farm Credit Administration published in the [Federal Register](#) a joint notice of proposed rulemaking to amend their respective regulations regarding loans in special flood hazard areas. The proposed rule would implement certain provisions of Biggert-Waters regarding acceptance of private flood insurance, escrowing flood insurance payments, and force-placement of flood insurance. The proposal contains model language for notices including the borrower notification, and the availability of private flood insurance. At this point the comment period has been closed for six months, and the April target for the final rule has passed. Given the mood in Congress as expressed by the new 2014 revisions, this entire proposal may be back on the drawing board.

Home Owners Flood Insurance Affordability Act of 2014

Congress passed the Home Owners Flood Insurance Affordability Act to roll back Biggert-Waters, and it was signed by the President in late March 2014 as [Public Law 113-89](#). The news was all about rolling back or at least delaying increases to insurance premiums, but there are numerous other adjustments to the flood reforms of Biggert-Waters.

The legislation reduced the previously announced increase in premiums, and directed FEMA to work with the agents to make that effective quickly. In bulletin [W-14014](#) FEMA required its NFIP agents to revert to the rates of October 2013, beginning May 1, 2014. Indeed, refunds of previously increased premiums may be available to some property owners.

The cost of coverage on previously subsidized policies (only a portion of all policies) will increase gradually over several years, with primary dwellings as much as 18% per year and others up to 25%. However, now home purchasers will be able to assume the lower premium policy of the seller, rather than facing an immediate large increase in premium. For properties determined to be newly in a flood hazard zone, the first year premium will be at the preferred risk rate, with increases after that made gradually until the full rate is reached. To alleviate the costs to the NFIP, the law added a surcharge of \$25 on primary homes, and up to \$250 on secondary homes and commercial properties for all new and renewing policies.

The law extends the effective date for new escrow rules required under Biggert-Waters Section 100209 from July 6, 2014, to January 1, 2016, and expands the list of exceptions from the requirement.

Other topics include:

- high deductibles available up to \$10,000 for residential properties,
- under residential coverage detached outbuildings are not required to be covered at all (though the lender may still require it),
- reinstated grandfather provisions allow those with older conforming properties to continue at reduced rates,
- studying the potential for community based flood insurance, and
- studying the impact of rate increases on low value homes, very small businesses, houses of worship and non-profits.

FEMA Changes as of June 1, 2014

In [Letter W-13070](#) to Write Your Own Coordinators and NFIP Servicing Agents issued on December 16, 2013, FEMA described the changes to be implemented on June 1, 2014, pursuant to Biggert Waters. The letter has several attachments which provide details. The planned changes will be made to the NFIP Insurance Manual and other procedural documents, and include:

- New maximum limits for Other Residential buildings under the SFIP General Policy;
- Revised non-primary residence definition;
- Revised deductible amounts and changes to minimum deductible;
- Clarification on the maximum coverage available for commercial properties and new process to ensure that only one policy per building is being issued under the NFIP;
- New declaration page requirement for Pre-FIRM subsidized policies;
- Clarification on subsidy elimination and grandfathering procedures;
- Revised SFIP forms.

First on the list in the FEMA letter is the move of multifamily dwellings (5 or more units) to the non-residential category so the coverage on those apartment buildings will increase to \$500,000. Agents were required to send notices to policyholders about the availability of the higher coverage. For any new loans or increased exposure, the higher amount should be used in the calculation for required coverage. In addition, the FDIC, the OCC, the Federal Reserve, the NCUA and the Farm Credit Administration issued an [interagency statement](#) on **May 30, 2014** to provide guidance. The key point is that a review of current outstanding loans is needed. The agencies said:

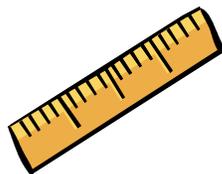
If, as a result of the increase in the maximum limit of building coverage for these buildings, a lender or its servicer determines on or after June 1, 2014, that the building securing the designated loan is now covered by flood insurance in an amount less than required by federal flood insurance regulation, it should take steps to ensure that the borrower obtains sufficient coverage, including force placing insurance pursuant to federal law.

The second change is the standard for being a primary residence. This is very important as the rate increases, and the new surcharges, are applied differently for the primary residence. Effective June 1, 2014, the NFIP will define a "primary residence" as a building that will be lived in by the insured or the insured's spouse for more than 50 percent of the 365 days following the policy effective date. Check with your snowbirds! If they fly south for over half the year, they may have a problem. Even further, to be eligible for recovery at the replacement cost value the dwelling must be the "principal dwelling", which requires that the insured live there for 80 percent, not just 50 percent, of the 365 days preceding the loss, and the coverage must be at least 80 percent of the full replacement cost. So, if your borrower has coverage only in the amount of an equity loan rather than the full 80% of the RCV, the payout in the event of a flood will be only at actual cash value. Agents were required to send notices to single family dwelling policy holders regarding the changes, but we know how well most folks read letters from insurers.

Steps to Take Now

- *Review coverage amounts for loans secured by multifamily dwellings to determine whether higher coverage is needed given the new \$500,000 limit. Notify any such borrowers of the higher amount required, and follow with the force placement process.*
- Require coverage on properties in flood hazard zones as you always have done, being open to hearing of possible new exceptions or higher deductibles which you should confirm when they are raised.
- Expect agents to be requiring elevation certificates to determine the risk level and required premiums, which may delay the policy. Treat the temporary declaration the same as an application; require proof of payment, and follow up for the actual policy.
- Expect premiums to be higher, but not as bad as previously predicted, and happening over time.
- Warn new home buyers in flood zones to anticipate increases, and to expect escrowing.
- Watch for the proposed regulations to be finalized or further revised.

Short Clips



ATM AND CARD AUTHORIZATION SYSTEMS CYBER- ATTACKS

On April 2 the Federal Financial Institutions Examination Council released a [Joint Statement](#) to make institutions aware of the risks of cyber-attacks on automated teller machines and card authorization systems. This category of ATM cash-out fraud where criminals are able to extract funds beyond the cash balance or beyond other ATM withdrawal limits from customer accounts is known

as Unlimited Operations. Institutions are expected to review the adequacy of controls over their information technology network, card issuer authorization systems, systems that manage ATM parameters, and fraud detection and response processes consistent with the FFIEC IT Examination Handbook and applicable industry standards. To assist in this review, the Federal Deposit Insurance Corporation (FDIC) published [FIL-13-2014](#) to provide additional guidance for technology outsourcing.

BEIGE BOOK

The Federal Reserve updated the [Beige Book](#) as of April 16, which summarizes current economic conditions based on reports from Bank and Branch Directors and interviews with key business contacts, economists, market experts, and other sources.

FCRA REQUIREMENT TO CONDUCT INVESTIGATIONS ON DISPUTED INFORMATION

According to the [Consumer Response Annual Report](#) issued by the CFPB for 2013, consumers commonly complain about credit reporting errors, specifically incorrect information reported. The CFPB stresses the importance of conducting an adequate investigation on a consumer's dispute, instead of simply telling the CRA to delete the item. The investigation may help identify inaccuracies and systemic issues. The Consumer Financial Protection Bureau issued [Bulletin 2013-09](#) on September 4, 2013, and [Bulletin 2014-01](#) on February 27, 2014 to highlight the obligation of those who furnish information to credit reporting agencies (CRAs) to investigate disputed information.

TILA-RESPA INTEGRATED DISCLOSURE RULE

In March, the CFPB released the [TILA-RESPA Integrated Disclosure Compliance Guide](#) to provide an easy-to-use summary of the TILA-RESPA rule that will be effective August 1, 2015. The guide is intended to help small entities comply with the new regulations and to help identify and plan for any necessary changes. In April, the CFPB released another guide to be used in conjunction with the Compliance Guide, [TILA-RESPA Integrated Disclosure Guide to the Loan Estimate and Closing Document Forms](#) to provide instructions on how to complete the Loan Estimate and Closing Disclosure and to highlight common situations that may arise. These guides provide a summary of the new rules, but do not replace the rules. The CFPB also provides [integrated loan disclosure forms and samples](#).

FDIC RELEASES RESOURCE GUIDE TO CDFIS

The FDIC issued [FIL-26-2014](#) on May 8 to provide FDIC-supervised institutions with strategies to meet community credit and development needs. The Strategies for Community Banks to Develop Partnerships with Community Development Financial Institutions (CDFIs) [guide](#) contains information to help community banks identify and evaluate opportunities to collaborate with CDFIs that provide financial products and services to underserved markets to receive consideration under

the Community Reinvestment Act. The guide presents the key characteristics of CDFIs and discusses items to consider when assessing bank/CDFI relationships and how these activities may enhance CRA performance.

REGULATIONS DD, P AND V

The Federal Reserve published the repeal of its versions of [Regulation DD](#) (Truth in Savings Act) and [Regulation P](#) (Privacy Act) in the Federal Register on May 29. The Dodd Frank Act transferred rule making authority for these regulations to the CFPB.

In the same Federal Register issue the Board amended the definition of a "creditor" in [Regulation V](#) (Identity Theft Red Flags), which implements 615(e) of the Fair Credit Reporting Act. By narrowing the definition in the Red Flags rule the intention was to exclude from coverage those persons that sell a product or service for which the consumer can pay later, such as lawyers and doctors. The change will not impact financial institution creditors.

These final rules will be effective June 30, 2014.

TRUTH IN LENDING (REGULATION Z) eREGULATIONS

On May 12, the CFPB announced that they launched an easy-to-navigate electronic format of Truth in Lending regulations to make it easier to implement and use the recently adopted mortgage rules. The web-based [eRegulations tool](#) is intended to make regulations easier to find, read, and understand. Some of the features include official interpretations, the highlighting of defined terms, and enabling the user to compare different versions of the regulations to identify changes. This tool is still a work in progress and is not an official legal edition of the Code of Federal Regulations or the Federal Register.

INTEGRATION OF NATIONAL BANK AND SAVINGS ASSOCIATION REGULATIONS

The Office of the Comptroller of the Currency is combining certain rules of the OCC with respect to national banks and by the former Office of Thrift Supervision with respect to savings associations.

The final rule was published on May 16 in the [Federal Register](#). The OCC is combining rules related to Bank Secrecy Act compliance, appraisals, disclosure and reporting of Community Reinvestment Act, and the Fair Credit Reporting Act which will create efficiencies by establishing a single set of these rules for all entities supervised by the OCC. Since these were originally joint agency rules, there are no substantive changes made by eliminating one regulatory listing of each.

CFPB FAIR LENDING REPORT

The CFPB released a [Fair Lending report](#) in April to cover the period between July 2012 and December 2013. The report provides an update on the Bureau's fair lending efforts. The report covers key developments to increase efficiencies in fair lending activity, provide guidance on supervisory reviews, and identify supervision and enforcement priorities.

The report states that the required expansion of the data collection fields in HMDA and also the expansion of data collection under the ECOA are still in the "pre-rule" stages. The HMDA data would include far more fields concerning the credit, the loan features and the collateral. The ECOA data would include information on small businesses, and on women and minority owned businesses.

The Bureau primarily focused enforcement on mortgage lending and auto finance, particularly indirect lending. The Bureau did conclude that many lenders have strong fair lending compliance and had no violations of ECOA and HMDA; however, a few enforcement actions were taken. Just to give you an idea of issues that resulted in enforcement action:

- One mortgage lender was charging higher prices on mortgage loans to African-Americans and Hispanic borrowers.
- Two mortgage lenders had significant HMDA errors.
- An indirect auto lender charged minority borrowers higher interest rates than a non-Hispanic white borrower with similar credit.
- A credit card company discriminated on the basis of age in credit decisions.

Proposals–Not Final Rules

AMENDMENT TO THE ANNUAL PRIVACY NOTICE REQUIREMENT (REGULATION P)

On May 28, the CFPB published proposed amendments in the [Federal Register](#) to create an alternative delivery method for the annual privacy disclosure as required per Regulation P, 12 CFR Part 1016. This would allow institutions to avoid the annual mailing under certain conditions. The comment period closes on July 14.

MINOR CHANGES TO MORTGAGE RULES TO ENSURE ACCESS TO CREDIT

The CFPB proposed minor adjustments to its ability to repay mortgage rules in Regulation Z to ensure access to credit. The [proposed rule](#) published May 6 includes three potential changes to the rule.

Two changes would help certain nonprofit organizations continue to provide mortgage credit and servicing to underserved populations by further refining definitions.

The other proposed amendment is to provide a limited, post-consummation cure mechanism for loans that are originated with the good faith expectation of qualified mortgage status, but that actually exceed the points and fees limit for qualified mortgages. The Bureau is proposing to permit a creditor or assignee to cure an inadvertent excess over the qualified mortgage points and fees limits by refunding to the consumer the amount of excess, under certain conditions.

In the States

MAINE– PROPOSAL REGARDING REGULATION 18

The State of Maine Bureau of Financial Institutions has proposed to repeal and replace [Regulation 18](#) (Funds Availability and Truth in Savings). The purpose of the proposal is to conform Regulation 18 to the most up-to-date regulations, including references to the related sections of the CFPB.

MASSACHUSETTS– PROPOSED AMENDMENTS TO 209 CMR 43.00, 48.00 & 53.00

The Massachusetts Division of Banks has recently [proposed amendments](#) to several regulations that may apply to some of our clients.

The proposed amendments to 209 CMR 43.00, Audit Requirements for Credit Unions, will both clarify and change the existing regulation for state-chartered credit unions and their audit committees.

The proposed amendments to 209 CMR 48.00 are designed to better address electronic records and require up-to-date information in the Nationwide Multi-State Licensing System.

Lastly, the Division is proposing to amend 209 CMR 53.00 to meet the definition of a “Qualified Mortgage” in accordance with the CFPB’s Reg. Z.

Good To Know

Send your questions to the answerperson@mmconsulting.info

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received five days a week. Call the answer person toll free at (888) 483-4333.

Q. On which applications must we provide the list of homeowners counseling agencies, and when must it be provided?

A. RESPA generally applies to federally related mortgage loan applications, with a list of well-known exceptions such as temporary loans, business loans and land loans. Note that home equity lines of credit are included. When we talk about the GFE and the HUD we know those are for closed end loans only, but RESPA generally is more broad.

Federally related mortgage loan is defined in RESPA. To summarize, it includes any loan (other than temporary financing, such as a construction loan) that is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is or will be a 1-4 family dwelling. The lender must either be a regulated lender, or have insured deposits, or the loan must be guaranteed or insured by any of the usual federal agencies.

According to RESPA, Reg. X, Section 1024.20 the list must be provided “not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application.” So, provide the list with the GFE and TIL on closed end applications. For HELOCs provide the list either with the application or along with the early disclosures.

The list of homeowners counseling organizations must be ones who provide relevant counseling services in the loan applicant's location and must be current within 30 days. You can get the list using the tool provided on the CFPB web site.



Important Dates- Don't Forget!

(Generally we retain the prior month, and go forward for a year as known. Dates are either effective dates of final rules, or end of the comment period for proposed rules.)

- 5/27/2014 [Regulation E](#). Comments close on proposed extension of the permission to use estimates for pricing disclosures on remittance transfers.
- 6/01/2014 Flood Insurance. NFIP coverage rate changes take effect. See FEMA's WYO [Bulletin W-13070](#).
- 6/01/2014 [Flood Insurance](#). Coverage for multifamily buildings increases to \$500,000 maximum.
- 6/05/2014 [Regulation Z](#). Comments close for proposed amendments to ability to repay rules.
- 6/16/2014 [Combining rules](#). OCC is combining regulations from the OTS to reduce duplication.
- 6/30/2014 [Regulation DD](#). Federal Reserve version repealed as rule was transferred to the CFPB.
- 6/30/2014 [Regulation P](#). Federal Reserve version repealed as rule was transferred to the CFPB.
- 6/30/2014 [Regulation V](#). Federal Reserve amended definition of a "creditor" for Red Flags rule.
- 7/14/2014 [Regulation P](#). Comments close for proposed amendments to Regulation P.
- 11/30/2014 [Form -92070](#). HUD form re Servicemember Civil Relief Act expires.
- 8/01/2015 [Integrated Disclosures](#). TILA and RESPA combined disclosures required.
- 1/01/2016 Flood Insurance. Escrow rules effective date as delayed by [HR3370](#) in Sec. 25.

The 2014 M&M Consulting Compliance School

When? September 23, 24 & 25 (Tuesday - Thursday)

Where? Doubletree by Hilton, Milford, Massachusetts

What's special this year

- ❖ First feedback from the exam & audit fronts on the Ability to Repay determination and Servicing requirements, as well as best practices in these areas
- ❖ First comprehensive look at the new Integrated Mortgage Loan Disclosures
- ❖ 5% "skin in the game" risk retention requirement and Qualified Residential Mortgages (QRMs)
- ❖ Status of Flood Reform Act changes
- ❖ Special Focus on HMDA
- ❖ A close look at Compliance Management System expectations
- ❖ Dealing with "Legalized" Marijuana

If you did not receive our announcement at the end of April, or would like more information, please contact Jay Friedland at jbanker@mmconsulting.info or at (207) 650-4665.