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Practical Compliance

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In This Issue

HMDA Grows Again!

Regulation C has been significantly amended. First came the changes to Truth In Lending and RESPA, and now it's time to get ready for HMDA. The changes impact who reports, what applications are covered, what is reported, and how it is to be reported. Although generally effective January 2018, changes are phasing in from January 2017 through 2020. In case you have been living in the Integrated Disclosures rabbit hole for the past year, this article is your wake up call to redirect attention to HMDA. Far more guidance will come from the CFPB, from M&M Consulting, and from others in the months ahead.

The final rule, published in the Federal Register on October 28, 2015, comprises 214 pages of introduction, analysis, rule, and supplements. Already the CFPB has an Implementation section on its website with summaries, a compliance guide and timeline. The Compliance Guide at the CFPB is a mere 109 pages. The rule significantly expands what information will be reported, expands the types of reporting entities and types of loans, and also expands the exemption for smaller entities. We found lots of new data to be reported, and also lots of new commentary to clear up some historic topics of confusion.

Who must report?

In 2017 if your institution meets all the current size and location tests, and originates at least 25 home purchase loans (including purchase refinances) you must report. Then in 2018, a depository institution must report which originated at least 25 covered closed end mortgage loans in each of the two preceding years, *or* at least 100 covered open-end lines of credit in each of the two preceding years, as well as meeting the size, location, activity and federally related tests currently in place. For non-depository institutions the same transaction thresholds apply with just the location test. The CFPB has provided handy coverage charts at the implementation site.

What Loans are covered?

Starting in 2018, the definitions for the types of covered loans will change. The regulation will then apply to consumer, closed end loans and to open end lines of credit secured by a dwelling. However, a home improvement loan will no longer be covered unless it is secured by a dwelling. In addition, the regulation will apply to business closed end loans and open-end lines that are dwelling-secured and are home purchase loans, home improvement loans, or refinancings. This is quite a big change coming as the whole purpose driven requirement is going away for consumer loans. It will no longer need to be determined whether the consumer application is for the purpose of purchase, home improvement or refinance to determine whether it gets reported. Commercial applications will still retain the purpose test for reporting. The rule has far more detail on when assumptions, preapprovals and reverse mortgages must be reported, and how. Further guidance is also added about modifications. The critical decision point will now be meeting the definition of an "extension of credit".

What new reporting is required?
The new and revised data fields must be collected for applications on which final action is taken on or after January 1, 2018, to report in 2019. You will need to be ready to collect the data prior to the start of 2018.

Two new fields are the Legal Entity Identifier and the Universal Loan Identifier (ULI). Instead of using whatever application number works for your institution, the ULI will be formatted and constructed according to specific criteria, and will follow the application if it is sold.

New requirements will apply for collecting and reporting ethnicity, race and sex. Reporting how the data was collected will be required. Guidance is added for when you must ask for the information, and more about internet applications, partial completion, and collecting the information after the initial application. Also, more possibilities for racial data are available from which the applicant can select.

Currently Regulation C requires reporting of approximately 35 separate pieces of information, and allows for optional reporting of three denial reasons. Starting with data collection in 2018 that list will expand greatly. The CFPB has already provided a Summary of Reportable HMDA DATA at the implementation site.

As described in the CFPB Executive Summary, "The HMDA Rule adds new data points for applicant or borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate, and loan originator identifier as well as other data points."

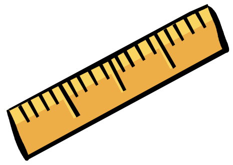
Reporting when and how?
Starting in 2018 institutions must report electronically. In 2019 a new web based tool must be used to submit the entire new dataset following revised procedures. Beginning in 2020 larger reporters will be required to file quarterly.

Once reported, starting in 2018 a new disclosure statement will be required telling the public how to access the modified LAR data at the CFPB website. That will replace the current responsibility for each institution to make the modified LAR available.

What to do?
The current experience with the integrated disclosures has taught institutions that waiting for your vendor is not the best idea. While you may be highly dependent on the software and the service provider, you must start making your internal plans soon. The rule is final, though some adjustments may be forthcoming.

- Start reading now if you are the Compliance Officer, or "HMDA Guru".
- Determine that your institution is covered, and whether any new areas will need to be brought into the HMDA fold (HELOCs and Commercial).
- Study the CFPB timeline for compliance, and use it to back into your own preparation timeline.
- Study the new definitions and fields, and start work with your vendors as soon as possible.
- Determine what new information gathering documents or tools will be needed and start development.
- Train management, train HMDA staff, train lenders, and then do it again.

Short Clips



CFPB Issues EFTA Bulletin

On November 23, 2015 the CFPB issued Compliance Bulletin 2015-06 which “summarizes the current law, highlights relevant supervisory findings, and articulates the CFPB’s expectations for entities obtaining consumer authorizations for preauthorized EFTs to help them ensure their compliance with Federal consumer financial law.” While the bulletin is generally aimed at companies that obtain the authorizations from customers for ongoing authorizations, our clients should be aware of the concerns being raised.

CFPB Agency Rule List–Unified Agenda

The Bureau has updated its portion of the Unified Agenda at Reginfo.gov which provides some indication of when the CFPB plans to act on various regulatory initiatives. In the final rule stage are proposed amendments to the Servicing Rules with a final rule anticipated in June 2016. Updates to Funds Availability are slated for Fall 2016; however, the Federal Reserve takes the lead on Reg. CC, so the CFPB can only assist. A long awaited final rule regarding prepaid accounts is expected this coming Spring in March.

Also in process, either still being studied or with proposals expected in 2016, are appraisal requirements around automated valuation models, payday loans, pre-dispute arbitration, debt collection practices, and government monitoring under Reg. B for small business lending.

Non–bank Payday Lenders

Are you providing bank services to a payday lender? Then, this FIL-52-2015 from the FDIC is for you.

The FDIC is reissuing FIL-14-2005, "Payday Lending Programs: Revised Examination Guidance," and its attachment, "Revised Guidelines for Payday Lending," (collectively, the 2005 Payday Lending Guidance) to ensure that bankers and others are aware that it does **not** apply to banks offering products and services, such as deposit accounts and extensions of credit, to non-bank payday lenders. Financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of business customers or individual customers operating in compliance with applicable state and federal laws.

Loan Purchases and Participations

The FDIC has issued FIL-49-2015 on November 6 to update previous guidance on risk management for purchasing loan participations. The *FDIC Advisory on Effective Credit Risk Management Practices for Purchased Loan Participations* (FIL-38-2012) is updated and replaced reminding institutions to underwrite and administer these purchased credits as if the loans were their own, and also to maintain an effective third party risk management process regarding third parties that facilitate these purchases.

Rural or Underserved Counties–CFPB

The CFPB has updated the list for 2016 of rural or underserved counties posted in the Guidance section of the website. These lists are relevant for Qualified Mortgage requirements and for mandatory escrow requirements.

Consumer Loans Exempt From Regulation Z

The CFPB and other agencies are published final rules on November 27 amending the official interpretations and commentary for the agencies’ regulations that implement the Truth in Lending Act (TILA). The dollar threshold above which consumer credit transactions are exempt is adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the Board and Bureau will not adjust this exemption threshold from the prior year. Based on the annual percentage decrease in the CPI-W as of June 1, 2015, the exemption threshold will remain at $54,600 through December 31, 2016.

FDIC Expectations For TRID Compliance

The FDIC described its expectations for good faith by member banks in the effort to comply with the new TILA/RESPA disclosure rules. In FIL-43-2105 published October 2, 2015 the FDIC states:

- If mortgage loans are part of the scope of an FDIC consumer compliance examination, examiners will use interagency examination procedures to evaluate financial institutions for compliance with the TRID Rule. These procedures are available in the FDIC's Compliance Examination Manual.
- During initial examinations for compliance with the TRID Rule, FDIC examiners will evaluate an institution's compliance management system and overall efforts to come into compliance, recognizing the scope and scale of changes necessary for each supervised institution to achieve effective compliance.
- Examiners will expect supervised entities to make good faith efforts to comply with the TRID Rule's requirements in a timely manner. Specifically, examiners will consider the institution's implementation plan, including actions taken to update policies, procedures, and processes, its training of appropriate staff, and its handling of early technical problems or other implementation challenges.
- The FDIC's supervisory approach regarding the TRID Rule will be similar to the approach the FDIC took in initial examinations for compliance with the Ability-to-Repay/Qualified Mortgage rules that became effective in January, 2014.

We certainly anticipate other regulators will follow the same concept. We urge all our clients to document that “good faith” effort. Keep a notebook or file of all communications with your vendors, track issues raised and resolution, document your own testing of various loan scenarios, and maintain a record of training you have attended and training you have provided. Review your initial loans carefully, explaining any issues and steps taken to resolve them.

Higher Priced Loan Appraisals

Regulation Z Section 1026.35 applies special appraisal requirements to higher priced mortgages loans (HPML). Numerous exemptions are provided, including Qualified Mortgages, and mortgages for amounts below a stated threshold amount which revised every year based on the Consumer Price Index. The exemption amount is located in the Official Interpretations for §1026.35(c)(2)(ii) set currently at $25,500 through year end. The CFPB and other agencies published on November 27 in the Federal Register the amount for 2016, which will remain at $25,500.

Comptroller’s Handbook–Credit Cards

The OCC updated the booklet regarding credit card risk in November. The booklet outlines the exam process, and provides a good overall discussion of credit card risk. This is not the compliance exam booklet so it is light on actual regulatory information, but certainly helpful about overall credit card portfolio management.

Proposals–Not Final Rules

Brokered Deposits

On November 13 the FDIC issued FIL 51-2015 seeking comment for 45 days (closing 12-28-2015) on a proposed update to a series of frequently asked questions (FAQs) and an accompanying introductory letter regarding identifying, accepting and reporting brokered deposits that were issued in January 2015 through FIL-2-2015. While this guidance is directed mostly at safety and soundness risks, it does provide an excellent outline of how the brokered deposit process works, which might prove useful to Compliance and BSA Officers.

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.

Q: On the new TRID Disclosures, must we itemize the recording fees? We see the deed and mortgage listed on the samples, but what about a discharge of an old mortgage, or a release deed?

A. Extra recording fees should not be itemized. On the Loan Estimate, the Official Interpretations for the section containing transfer taxes and recording fees are clear that no further itemization is permitted, "The lines and labels required by §1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in §1026.37(g)(1)."

The instructions for the Closing Disclosure in §1026.38(g) are less explicit. That paragraph contains the same items discussed for the Loan Estimate. Perhaps the key instruction in that section is that the items in sections (f) and (g) are to be listed in the same manner and the same order as they were in §1026.37. From that, the reasonable conclusion is that the specific items listed for the recording fees on the Loan Estimate are to be listed in the same manner exactly on the Closing Disclosure with no additional itemization.

Q. In a refinance, must we show both the property insurance and the property taxes on the LE and the CD if we are not requiring escrow? Are both subject to tolerance?

A. Generally, show estimates for taxes and insurance. On the Loan Estimate Page One the estimated costs for the homeowner must be shown. Even if no escrow is needed in the Payments section, the total monthly cost for taxes, insurances, and other assessments (for example, owners' association) must be combined as a rounded amount in the Estimated Taxes, Insurance and Assessments. The CFPB noted in the preamble to the final rule:

> Therefore, as noted in the proposal, even when no escrow account is established for the payment of taxes and insurance, the Bureau believes that this is an important measure of the consumer's ability to afford the transaction. For this reason, the Bureau believes that consumers will benefit from the disclosure of the amounts that will required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts.

On the Loan Estimate on Page Two in the Prepaids, show any amounts "to be paid by the consumer in advance of the first scheduled payment." Both the sample Loan Estimate and Closing Disclosure for Refinance transactions include labels for taxes and insurance. If insurance is already in place, and you have sufficient proof of coverage for safety and soundness, the next question is when the next premium will be due. If it is coming due within the next month or so, you should probably list that premium on the Loan Estimate and also on the Closing Disclosure. If the coverage is current, with no premium coming due, there is no need to include it. The same goes for the taxes. The examples actually state that any taxes due within 60 days should be shown. Of course if you have an escrow, you put the amounts in that section with any amounts already due in the Prepaids.

The second part of the question is what tolerances apply for each. Generally items in the Prepaids section are not subject to tolerances. According to §1026.19 (e)(3)(iii) the property insurance is in good faith if the estimate was reasonably based on good information, even if the amount varies on the Closing Disclosure. Property insurance is in the same tolerance category as prepaid interest, escrows, and services for which the borrower elects a provider not on the provider list.

The tolerance regarding property taxes requires a bit more discussion. And, we have no firm answer. The preamble states:

> As is currently the case under Regulation X, final § 1026.19(e)(3)(iii) provides that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate. The final rule also mirrors current

> Regulation X in that property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees are subject to tolerances whether or not they are placed into an escrow, impound, reserve, or similar account.

Since we know that property insurance and escrows specifically are *not* subject to tolerances, many believe that last sentence is missing the word "not". In addition, the sample forms appear to indicate taxes are not subject to tolerance as no adjustment is made. *However*, we give the caveat that it is definitely not clearly stated in the regulation itself. Some threads we have seen say that someone from the CFPB and some vendors insist the taxes in the prepaid section are zero tolerance! They explain that the regulation says that unless an item is clearly in either the 10% or the not applicable sections, then zero tolerance applies. Our logic would go with the first conclusion, but there is definite substance on either side. Certainly, the cautious approach is to treat those taxes in the prepaid section as zero tolerance until we see something in writing from the CFPB.

Q. We are confused about Lender Credits. If we offer a low cost equity where we pay for closing costs, how do we show it on the LE and the CD? Can the amount of credit change? If the costs go up due to a changed circumstance, can we revise to cover those costs? And, say the cost of the appraisal comes in $50 lower than expected, can we adjust the credit to match? Finally, where do we show Lender Credit, whether for individual items, or to cure a tolerance issue?

A. You are not alone in your confusion! We must say we hope this area will be explained, clarified and even amended by the CFPB.

We see three separate issues here: 1) Where are Lender Credits placed on the LE and CD? 2) Can Lender Credits be lowered? 3) How should a tolerance cure be shown?

1) Lender Credits come in two types according to the CFPB, either a lump sum credit that is general in nature, or a specific credit connected to a specific cost. On the Loan Estimate the sum of specific and general Lender Credits are shown in Section I as a reduction to the Closing Costs. On the Closing Disclosure the item specific credits can be shown in the column Paid by Others next to the cost. So, if the Lender agrees to pay for the appraisal, or a portion of the title costs, at some point in the underwriting, put that amount next to the appraisal or the title.

2) Unfortunately, in the no cost/low cost loans where the lender states that closing costs will be paid and shows an amount on the LE to cover those costs, the credit cannot generally be reduced, even with a change of circumstance or with a lower amount actually paid for the service. This reflects the prior rules. The CFPB stated in the preamble that the old rule should be continued. The commentary to Section 1026.19 actually insists that a reduction in the lender credit, even if the costs it was to cover were reduced, still fails the "good faith" test because it is an increase cost to the borrower. This math just does not compute, but there it is.

Changed circumstances are discussed in §1026.19(e). The credit is permitted to be reduced in only one situation: when the credit relates to interest rate dependent charges and the rate has yet to be locked. If the rate then locks, that change of circumstance allows for a change to the related credit. This reasoning did not translate to any other changed circumstances according to the CFPB.

We found nothing to prevent a lender from disclosing the LE without any credit, then applying a specific "coupon" amount dependent upon the loan going to closing. However, that clearly is avoiding the issues noted above, which may not be acceptable to examiners.

3) When the credit needed is for to cure a tolerance issue, we recommend following carefully the examples provided by the CFPB in the sample forms. Those examples show the cure amount on the lender credit line on the CD, with a clear notation. See the sample language in the Regulation at Appendix H 25-F, which says, "Includes $200 credit for increase in Closing Costs above legal limits."

Good Bye from Martha!
This is my last newsletter for M&M Consulting as I am retiring at the end of this year. It has been a joy to work with you all and also to compile the ***Practical Compliance*** *for 8 years. Thank you.*

Important Dates– Don't Forget!

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

11/23/2015 NCUA IRPS amended. Increases small entity asset threshold to $100 Million
01/01/2016 Flood Insurance Regulations. Escrow rules effective
01/01/2016 Regulation Z. Small Creditor, Rural and Underserved Areas definitions revised
01/01/2016 Rural and Underserved Counties lists at the CFPB for 2016
01/01/2016 Regulation Z. Higher Priced Mortgage Loan Appraisal Threshold $25,500
10/01/2017 Military Lending Act Regulation. Sections on credit card accounts become mandatory
01/01/2017 HMDA, Regulation C. Low volume institutions further excluded from coverage
01/01/2018 HMDA, Regulation C. Revised transaction coverage and expanded fields effective
01/01/2019 HMDA, Regulation C. Quarterly reporting starts

Enjoy the New England Holiday Season!