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Practical Compliance

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In This Issue

2016 Mortgage Servicing Rule

On August 4, 2016, the CFPB issued a Final Rule, referred to as the *2016 Mortgage Servicing Rule*.

The key components of the *2016 Mortgage Servicing Rule* are:

- **Multiple changes relating to "successors in interest";**
- **Definition of "delinquency";**
- **Requests for information;**
- **Force-placed insurance;**
- **Early intervention;**
- **Loss mitigation;**
- **Prompt payment crediting;**
- **Periodic statements; and**
- **Revised definition of "Small servicer"**

In conjunction with the issuance of the Final Rule, the CFPB issued an interpretive Rule under the Fair Debt Collection Practices Act (FDCPA) on August 4, 2016, referred to as the *2016 FDCPA Interpretive Rule*. The Interpretive Rule provides safe harbors from liability for servicers taking certain actions which comply with Regulation X or Regulation Z, as amended by the 2016 Mortgage Servicing Rule.

Compliance with the various aspects of the Final Rule is required 12-18 months (the specific time periods are noted within this article) after the publication of the 2016 Mortgage Servicing Rule in the Federal Register.

As of this writing, the 2016 Mortgage Servicing Rule has not yet been published in the Federal Register.

Key Components

Successors in Interest – Identification and Confirmation

The Final Rule includes various rule changes relating to the identification and confirmation of successors in interest:

1. Definitions of "successor in interest" have been added to subpart C of Regulation X and to Regulation Z, respectively. The two definitions vary slightly, however, to account for the different terms used in the two regulations (e.g., use of the terms "borrower" and "a property securing a mortgage loan is transferred from a borrower" in Regulation X, and the terms "consumer" and "a dwelling securing a closed-end consumer credit transaction is transferred from a consumer" in Regulation Z).

   For example, under Regulation X a person is a successor in interest if "a borrower transfers an ownership interest in a property securing a

mortgage loan to the person" by:

- a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- a transfer to a relative resulting from the death of a borrower;
- a transfer where the spouse or children of the borrower become an owner of the property;
- a transfer resulting from a dissolution of marriage decree, a legal separation agreement, or from an incidental property settlement agreement, by which the spouse borrower becomes an owner of the property; or
- a transfer into an inter vivos trust, in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

A person does not have to assume or otherwise be liable on the mortgage loan in order to be a successor in interest under the Final Rule.

2. A servicer is required to confirm a successor in interest's identity and ownership interest in the property securing the mortgage loan. Basically, a servicer must respond to a written request from a person indicating that they may be a successor in interest, if that request includes two key pieces of information; (1) the name of the borrower from whom the person received an ownership interest, and (2) information that enables the servicer to identify the mortgage loan. Similarly, in responding to such requests, a servicer must also provide two key pieces of information; (1) a written description of the documents it requires to reasonably confirm the identify of that person and their ownership interest in the property, and (2) contact information for that person to use in future communications and correspondence with the servicer.

   Further, servicers, other than small servicers and qualified lenders, must maintain certain policies and procedures with respect to successors in interest that are reasonably designed to ensure that, upon receiving notice of the existence of a potential successor in interest, the servicer can: (1) promptly provide a potential successor in interest with a description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and (2) upon receiving those documents, the servicer can promptly notify a potential successor in interest of the servicer's determination regarding the potential successor's "status" with respect to the person's identity and their ownership interest in the property (*i.e.*, the confirmation of the person's status as a successor in interest, a request for additional documents needed to make a determination, or a determination that the person is not a successor in interest).

3. The Regulation X and Z mortgage servicing rules both apply to successors in interest once a servicer has confirmed the successor in interest's status. A confirmed successor in interest is considered a "borrower" for Regulation X's mortgage servicing provisions (e.g., the servicing transfer, error resolution, request for information, early intervention, continuity of contact, loss mitigation, force-placed insurance, and escrow provisions). and a "consumer" for 'Regulation Z's mortgage servicing provisions (e.g., the periodic statement requirements for mortgage loans, provisions on interest rate adjustment notices, the payment processing and payoff statement requirements, and the mortgage transfer notice requirement).

   The rights discussed in these provisions generally apply to confirmed successors in interest in the same way that they would apply to another borrower or consumer. For, example, if a servicer, such as a small servicer, is otherwise exempt from a particular requirement, such as the early intervention requirement, it need not comply with that requirement with to a confirmed successor in interest.

Successors in Interest – Handling Requests

A servicer must respond to a confirmed successor in interest's request for information or assertion of an error, however, it may omit location, contact, and personal financial information *(other than information about the mortgage loan's terms, status, and payment history)* if that information pertains to a borrower who is not the confirmed requesting successor in interest. Similarly, in response to a borrower's request for

information, a servicer may omit location, contact, and personal financial information *(other than information about the mortgage loan's terms, status, and payment history)* that pertains to a non-requesting potential or confirmed successor in interest.

With respect to loss mitigation, unless a servicer is exempt from those requirements, it must review and evaluate a loss mitigation application received from a confirmed successor in interest in accordance with Regulation X's loss mitigation procedures, if the property involved is their principal residence. This requirement includes a loss mitigation application that a servicer received, but did not review and evaluate, prior to confirmation of a successor interest. While a servicer cannot require a confirmed successor in interest to assume the mortgage loan before evaluating a complete loss mitigation application, the Final Rule does not prohibit conditioning an offer for a loss mitigation option on the successor in interest assuming the mortgage loan under state law.

Successors in Interest – Notices and Disclosures

A servicer is not required to send specific written disclosures or notices to a confirmed successor in interest, if the servicer provides the same written disclosure or notice to another borrower or consumer, including another confirmed successor in interest.

However, a confirmed successor in interest who does not receive servicing communications because the servicer is providing them to another borrower on the account can request additional information, as needed, through the request for information process under Regulation X described in the previous section.

All changes relating to successors in interest are effective 18 months after publication of the Final Rule in the Federal Register.

Delinquency

The term delinquency is defined using a "rolling calendar" approach. It applies to all of the servicing provisions of Regulation X, and the provisions regarding periodic statements for mortgage loans in Regulation Z. Specifically, delinquency is defined as a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, until such time as no periodic payment is due and unpaid.

To illustrate how the term delinquency is applied, consider a borrower has mortgage loan that requires periodic payments of principal, interest, and escrow be made by the first of each month. The borrower fails to make the payment that is due on January 1. On January 31, the borrower is 30-days delinquent. On February 3, the borrower makes a periodic payment, and the servicer applies payments to the oldest outstanding periodic payment (i.e., the periodic payment that was due on January 1). On February 4, the borrower is 3-days delinquent for purposes of Regulation X's specified mortgage servicing provisions and Regulation Z's periodic statement provision.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Requests for Information

There are specific responses a servicer is required to provide to requests for ownership information when *Fannie Mae* or *Freddie Mac* is the owner of the loan or the trustee of the securitization trust in which the loan is held. Specifically:

- if the request expressly asks for the name or number of the trust or pool when *Fannie Mae* or *Freddie Mac* is the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer must provide the name of the trust, and the trustee's name, address, and appropriate contact information.
- If the request does not expressly ask for the name or number of the trust or pool when *Fannie Mae* or *Freddie Mac* is the owner of the loan or the trustee of the securitization trust in which the loan is held,

the servicer complies by providing the name and contact information for *Fannie Mae* or *Freddie Mac*, as applicable.

For any other request for ownership information where neither *Fannie Mae* or *Freddie Mac* is not the owner of the loan or the trustee of the securitization trust in which the loan is held, the servicer must provide the name of the trust and the trustee's name, address, and appropriate contact information.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Force-Placed Insurance

Force-placed insurance disclosures and model forms have been modified to account for situations when a servicer wishes to force-place insurance because the borrower has insufficient, rather than expiring or expired, hazard insurance on the property. Additionally, servicers now have the option to include a borrower's mortgage loan account number on the force-placed insurance notices required under § 1024.37.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Early Intervention

A servicer's obligations for early intervention live contact and written notices have been clarified in the Final Rule. In addition, the exemption from early intervention for borrowers who are in bankruptcy or who have invoked cease communication protection under the Fair Debt Collection Practices Act (FDCPA) has been revised.

Specifically, a servicer must establish or make good faith efforts to establish live contact so long as the borrower remains delinquent and must provide multiple early intervention written notices in certain circumstances. A servicer is not required to provide more than one written notice within a 180-day period. Thus, under the Final Rule:

- If the borrower is 45-days or more delinquent at the end of any 180-day period, a servicer must provide the written notice again no later than 180-days after providing the prior written notice;
- If the borrower is less than 45-days delinquent at the end of any 180-day period, a servicer must provide the written notice again no later than 45-days after the payment due date.

A servicer is exempt from the early intervention live contact requirements for a mortgage loan when either the following conditions is met: (1) any borrower on the loan is in bankruptcy; or (2) the servicer is a debt collector under the FDCPA with respect to the mortgage loan, and any borrower on the loan has invoked the FDCPA's cease communication protection with respect to that loan.

With respect to the written notice requirements for the mortgage loan, the servicer is exempt if either of these two conditions is met and there is no loss mitigation option available. If a loss mitigation option is available, the servicer must comply with modified written notice requirements for the mortgage loan, unless both of the above conditions are met.

Further, a servicer is required to resume compliance with the early intervention requirements once the bankruptcy case is closed or dismissed, or the borrower reaffirms personal liability for the mortgage loan. In addition, for "ride through" borrowers who have discharged personal liability for a mortgage loan, a servicer is required to resume compliance with the written notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after commencement of the borrower's bankruptcy case.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Loss Mitigation

The following loss mitigation requirements under Regulation X have been revised and clarified:

- A servicer is required to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between a borrower's prior complete loss mitigation application and a subsequent loss mitigation application.
- An existing exception to the 120-day prohibition on foreclosure filing has been modified to allow a servicer to join the foreclosure action of either a superior or subordinate lienholder.
- There is now a methodology a servicer must use to select the reasonable date by which a borrower should return documents and information to complete a loss mitigation application.
- A servicer's obligations have been clarified in cases where a borrower submits a complete loss mitigation application more than 37 days before the foreclosure sale. The servicer must not move for a foreclosure judgment, move for an order of sale, or conduct a foreclosure sale, even where a third party conducts the sale proceedings, unless the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement. Absent one of the specified circumstances, conduct of the sale violates Regulation X.

  Additionally, the servicer must promptly instruct foreclosure counsel not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met. Counsel's failure to follow these instructions does not relieve a servicer of its obligations not to move for foreclosure judgment or order of sale, or conduct a foreclosure sale.
- Servicers must provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after it receives a complete loss mitigation application. The notice must indicate that the servicer has received a complete application and provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under state or federal law. The notice also must clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested.
- Servicers must follow certain procedures in attempting to obtain documents or information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information. In particular, servicers are required to exercise reasonable diligence in obtaining the documents or information. Servicers are prohibited from denying borrowers solely because they lack these documents, except under limited circumstances. Servicers must promptly provide a written notice to the borrower they lack required third party information within 30 days after receiving the borrower's complete application and cannot determine which loss mitigation options, if any, they will offer the borrower. In this circumstance, servicers are required to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third party information. Servicers must notify borrowers of the loss mitigation determination in writing promptly upon receipt of the third party information they lacked.
- Servicers may offer a short-term payment forbearance program or short-term repayment plan based upon an evaluation of an incomplete loss mitigation application. Servicers must provide a written notice promptly after offering a short-term payment forbearance program or short-term repayment plan, unless the borrower has rejected the offer. The notice must state the specific payment terms and duration of the program or plan and include other specified information.
- Servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option. However, servicers may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference, but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by requirements established by the owner or assignee of the mortgage loan.

- Loss mitigation procedures and timelines that apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer have been addressed and clarified.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Prompt Payment Crediting

Servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications as follows:

- Periodic payments made pursuant to temporary loss mitigation programs must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments.
- Periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement.

These changes are effective 12 months after publication of the Final Rule in the Federal Register.

Periodic Statements

Certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, have been permanently modified, or are in temporary loss mitigation programs have been modified as follows:

- Servicers are required to send modified periodic statements (or written notices, where servicers are otherwise permitted to send coupon books and written notices instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exemptions. There are two sample forms provided in the Final Rule; one that is used when the consumer is a debtor in a Chapter 7 or 11 bankruptcy case, and the other that is used when the consumer is a debtor in a Chapter 12 or 13 bankruptcy case.
- Servicers are exempt from the periodic statement requirement for charged-off mortgage loans, if they will not charge any additional fees or interest on the account, and they provide a periodic statement including additional disclosures related to the effects of charge off.

The changes regarding the bankruptcy periodic statement exemption and modified statements for consumers in bankruptcy are effective 18 months after publication of the Final Rule in the Federal Register. The periodic statement changes for charged-off mortgage loans are effective 12 months after publication of the Final Rule in the Federal Register.

Small Servicers

The criteria for qualifying as a small servicer has been modified to also exclude certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000 loan limit.

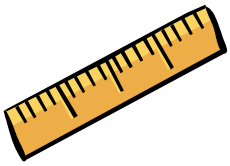
This changes are effective 12 months after publication of the Final Rule in the Federal Register.

Interpretive Rule

The 2016 FDCPA Interpretive Rule provides safe harbors from liability for servicers taking the following actions in compliance with Regulation X or Regulation Z, as amended by the 2016 Mortgage Servicing Rule:

(1) communicating about a mortgage loan with a confirmed successor in interest as required or authorized by specified mortgage servicing rules in Regulation X or Z;
(2) providing a written early intervention notice to a borrower who has invoked cease communication protection under the FDCPA; or
(3) responding to borrower-initiated communications concerning loss mitigation after the borrower has invoked cease communication protection under the FDCPA.

Short Clips



FDIC Announces a New Affordable Mortgage Lending Resource

On September 15, 2016, the FDIC published FIL-60-2016, announcing the availability of its Affordable Mortgage Lending Guide, Part I (Guide). The Guide organizes information about single-family mortgage products from federal agencies and government sponsored enterprises and provides technical assistance for community banks on affordable mortgage credit options.

Institutions can use this Guide as a one-stop resource to gain an overview of a variety of program resources, compare different products, and understand Community Reinvestment Act implications. The Affordable Mortgage Lending Center provides a program matrix, program descriptions, data, and fact sheets from the FDIC and other federal resources. Quick Links for each housing product enable institutions to identify the next steps for program participation.

Fair Housing Guidance Encompasses Those Not Fluent in English

On September 15, 2016, the Department of Housing and Urban Development (HUD) issued Guidance stating that discrimination or "discriminatory effects" toward those with limited English proficiency is forbidden under the Fair Housing Act. While the FHA does not specifically state that having limited English ability constitutes protected status, it does cover national origin, "which is closely linked to the ability to communicate proficiently in English," HUD said. At this point, it is not clear whether this guidance may apply to lenders in addition to housing providers.

Agencies Revise Information Security Guidance

On September 9, 2016, the federal banking agencies issued a revised version of the FFIEC Information Security Booklet, which is part of the FFEIEC Information Technology Examination Handbook. The revised booklet addresses necessary factors in assessing the level of risk to a financial institution's IT systems, and provides a description of an effective information security risk management program, which includes risk identification, risk measurement, risk mitigation, and risk monitoring and reporting.

FinCEN Issues Advisory on FATF-Identified Jurisdictions with AML/CFT Deficiencies

On September 7, 2016, the Financial Crimes Enforcement Network (FinCEN) issued FIN-2016-A004, an advisory to financial institutions regarding the Financial Action Task Force's (FATF) updated list of jurisdictions with strategic anti-money laundering / counter-terrorist financing (AML / CFT) deficiencies. These changes may affect U.S. financial institutions' obligations and risk-based approaches regarding relevant jurisdictions.

FinCEN Issues Advisory on E-Mail Compromise Fraud Schemes

On September 6, 2016, FinCEN issued FIN-2016-A003, an advisory to help financial institutions guard against a growing number of e-mail fraud schemes in which criminals misappropriate funds by deceiving financial institutions and their customers into conducting wire transfers. This advisory also provides red flags—developed in consultation with the Federal Bureau of Investigation and the U.S. Secret Service—that financial institutions may use to identify and prevent such e-mail fraud schemes. Business E-mail Compromise (BEC) and E-mail Account Compromise (EAC) schemes are among the growing trend of cyber-enabled crime adversely affecting financial institutions. Availability and effectiveness of retail banking services.

Agencies Issue Fact Sheet on AML, Sanctions Enforcement

On August 30, 2016, the Treasury Department and the federal banking agencies issued a Fact Sheet to communicate expectations about anti-money laundering and sanctions enforcement. The document also outlined AML supervision and exam processes, enforcement actions by prudential regulators and the intersecting roles of the regulatory agencies and Treasury entities.

The agencies noted that approximately 95% of BSA / OFAC compliance deficiencies identified by the FBAs, FinCEN, and OFAC are corrected by the

institution's management without the need for any enforcement action or penalty.

Pentagon Issues Guidance on MLA Changes

August 26, 2016, the Department of Defense (DoD) issued an Interpretive Rule clarifying several elements of the changes.

The Interpretive Rule clarifies that financial institutions may:

- Continue to provide credit secured by a bank account to military personnel and their spouses and dependents;
- Provide generic oral disclosures about payment obligations, rather than the specific payment obligation of the individual borrower.
- Rely on information about military status that is obtained through DoD or a credit bureau up until the time the account is opened.

Compliance with the MLA changes remains mandatory on October 3, 2016.

FDIC Updates Video Resources on ATR, QM Rules

On August 17, 2016, the FDIC released updated videos on the Ability to Repay and the Qualified Mortgage rules. The updated videos provide bank management and compliance staff with resources to better help them understand the rule, and reflect changes in federal laws and regulations since their original release in 2014. Specifically, the updated videos reflect changes with respect to small creditors and operations in rural areas.

Agencies Announce Availability of 2015 Small Business, Small Farm, and Community Development Lending Data

On August 18, 2016, the Board of Governors of the Federal Reserve System, the FDIC, and the OCC announced the availability of data on small business, small farm, and community development lending reported by certain commercial banks and savings associations, pursuant to the CRA.

An FFIEC disclosure statement on the reported 2015 CRA data, in electronic form, is available for each reporting commercial bank and savings association. In addition, there are aggregate disclosure statements of small business and small farm lending for all of the metropolitan statistical areas and nonmetropolitan counties in the United States and its territories.

CFPB Issues Final Rule Amending Mortgage Servicing Rule

On August 4, 2016, the CFPB issued a Final Rule amending its mortgage servicing rules, and an Interpretive Rule under the Fair Debt Collection Practices Act (FDCPA). The key components of these Rules are discussed in the lead article in this edition of *Practical Compliance*.

CFPB Outlines Guiding Principles for the Future of Foreclosure Prevention

On August 2, 2016, the CFPB issued an outline of its consumer protection principles to guide mortgage servicers, investors, government housing agencies, and policymakers as they develop new foreclosure relief solutions. This action comes as the Department of Treasury's Home Affordable Modification Program, a foreclosure relief program put in place in response to the financial crisis, is nearing its expiration date. The CFPB's proposed principles are meant to inform the discussion of potential options to help prevent avoidable foreclosures.

CFPB Proposes Amendments to TRID Rule

On July 29, 2016, the CFPB issued proposed amendments to the TRID Rules, which are intended to improve the ability of lenders to comply with TRID and avoid unnecessary constrictions of mortgage credit.

Among the items included in the proposal are:

- Establishment of tolerance provisions that make the treatment of the disclosed Total of Payments consistent with pre-TRID practices, and parallel the TRID tolerances for disclosures of finance charges;
- Additional commentary facilitating the customary sharing of disclosures with third parties (such as sellers and real estate brokers);
- Providing partial exemptions for certain housing assistance loans from TRID requirements; and
- Extends the rule's coverage to all cooperative units.

Comments on the proposal are due by October 18, 2016.

Good to Know

Send your questions to the answerperson@mandm.consulting

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received and responded to five days a week.

Q: I am trying to determine if the Total of Payments stated on the CD is correct. The Total of Payments is disclosed as $321,187.10 and the Finance Charge is disclosed as $120,097.10. The loan is a 7/1 ARM, 30-year term, with an Initial Rate of 3.625%, a Minimum Rate of 2.75%, and Rate adjustment caps of 2% (per adjustment) and 6% (maximum life of loan).

How is this calculated when the rate can go up or down through the term of the loan?

A: Using your example, the TRID "Total of Payments" calculation consists of:

- the total of all P&I payments made at 3.625% for the initial 7-year fixed rate period; plus
- the total of all P&I payments made at the fully indexed rate for the remainder of the loan (23 years); plus
- the total "loan costs" reflected on the CD; plus
- any per diem interest reflected on the CD.

Q: Under Regulation E, if we require that a customer provide us with a written statement in connection with an unauthorized transaction, and they don't provide it, what is our liability at that point? I know we don't have to provide provisional credit, but do we have to continue with the investigation?

A: Per Regulation E, if a customer provides a verbal unauthorized transaction claim, and you notify them that they to provide a written statement in connection with the unauthorized transaction, you are still required to start the investigation pending the receipt of the written notification *(Comments 1005.11(b)(1)-2 and 1005.11(c)-2)*.

Q: Some of our Settlement Agents' have been listing the real estate commission as "Broker Commission" versus "Real Estate Commission" on the Seller's CD. Is that acceptable?

All examples of completed CDs on the CFPB site use the description "Real Estate Commission".

Section 1026.38 Comment #7 also refers to "Real Estate Commission". So, if our Settlement Agent, lists Broker Commission, do we need to fix it?

A: Since the H-25 Model Forms in Appendix H of Regulation Z describe the charge as "Real Estate Commission", we recommend that you use that description in your Closing Disclosures going forward. If your settlement agent has used the phrase "Broker Commission" and provided the company name of the broker, you likely do not need to provide corrected CDs for loans that already closed. However, using the exact language on your CDs that is used in the Model Forms provides a safe harbor to the bank, and eliminates the potential for any issues involving examiner interpretation.

Q: Is the MAPR calculation required on closed-end and open-end periodic statements?

I understand that we have to provide the Statement of MAPR and Payment Obligation orally and in in writing. Do we have to provide the Reg. Z disclosure orally as well?

A: MAPR calculations on periodic statements only apply to open-end credit.

The true "Reg. Z" disclosures required at application only need to be provided in writing, as has always been the case. The MLA does not alter this disclosure requirement in any way.

Q: Our system provider is telling me that late fees are part of the MAPR calculation. They are proposing to make changes to the loan record that would enable MAPR calculations to be performed monthly, and provide us with a report so that we can monitor and make maintenance changes when needed so as to not violate the MAPR. I looked in the federal register, but could not find anything that indicated whether late fees are part of this calculation. Can you help?

A: It looks like your system provider is basing their statement on the existing (pre-October 2, 2016) rule, which will be superseded by the amended MLA rule beginning in October. The Section-by-Section Analysis of the Final Rule states:

> *"Section 232.4(c)(1)(iii) describes the charges that must be included in the MAPR in light of the definition of consumer credit, which would chiefly consist of "finance charges",*

consistent with Regulation Z. In general, a charge that is excluded as a ''finance charge'' under Regulation Z also would be excluded from the charges that must be included when calculating the MAPR. As a result, whereas the Department's existing rule had provided exclusions from the MAPR for late payment fees and taxes required to be paid, §232.4(c) omits these provisions because these charges (as well as other charges) are not finance charges under Regulation Z."

So while your system provider may be correct as for as MAPR calculations up to this point, these parameters will not be correct come October.

Q: If we have an amortization schedule produced at origination from which we can clearly determine when the loan is "scheduled" to reach 78% LTV, shouldn't we just be using that date to terminate the PMI as long as the account is paid current (regardless of what the actual LTV is on that date)? That may be the actual intent of the regulation now that I have read it more closely.

A: Per the Homeowners Protection Act, the PMI termination date for residential mortgage transactions is defined as follows:

- *With respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and*
- *With respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.*

If the borrower is current on the loan as of the scheduled termination date, the servicer must automatically terminate PMI. If the borrower is not current on that date, the servicer must automatically terminate PMI on the first day of the first month following the date that the borrower becomes current.

Q: If the bank requires a borrower to escrow for flood insurance, is it also required to have the borrower escrow for taxes and hazard insurance?

A: We are aware of no federal law that mandates lenders to require a borrower escrow for taxes and hazard insurance simply because they require the borrower to escrow for flood insurance.

Q: With the Military Lending Act changes coming up, can you clarify whether overdraft programs fall within the new guidelines? I would think that the MLA would not apply to overdrafts, but wanted to be sure.

A: Based on the interpretive Rule that was issued in the Federal Register on August 26, 2016, the MLA does not cover certain overdraft products. Specifically, the MLA does not cover those products not considered consumer credit under Regulation Z.

The supplementary information to the Rule states that, consistent with Reg. Z, an overdraft line of credit with a finance charge is a covered consumer credit product when:

- It is offered to a covered borrower;
- the credit extended by the creditor is primarily for personal, family, or household purposes;
- it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and,
- the extension of credit for the item and the imposition of a fee were previously agreed upon in writing.

Other types of overdraft products not pursuant to a written agreement typically are not considered consumer credit *''because Regulation Z excludes from 'finance charge' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing."*

Thus, whether a particular overdraft product or service is "consumer credit" under the MLA depends on whether the product or service meets all elements of the definition of ''consumer credit" and whether an MLA account exception applies.

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.)

09/23/2016 Federal Reserve, Same-Day ACH Service and Schedule. Effective date ACH enhancements.
10/01/2016 Military Lending Act Regulation. Expanded "consumer credit" account coverage mandatory.
10/01/2017 Military Lending Act Regulation. Sections on credit card accounts become mandatory.
10/18/2016 CFPB, Reg. Z Proposed Updates to TRID Rules. End of Comment period.
01/01/2017 CFPB, Reg. Z Adjusted Dollar Thresholds for Certain Credit Transactions. Effective date.
01/01/2017 NCUA, Final Member-Business Lending Rule. Provides CUs greater business lending flexibility.
01/01/2017 HMDA, Regulation C. Low volume institutions further excluded from coverage.
09/29/2017 NACHA Rule on Registration of Third Party Senders. Effective date for compliance by ODFIs.
01/01/2018 HMDA, Regulation C. Revised transaction coverage and expanded fields effective.
05/11/2018 FinCEN, CDD / Beneficial Ownership Rules. Mandatory compliance date.
01/01/2019 HMDA, Regulation C. Effective date for changes to enforcement and reporting provisions.
01/01/2020 HMDA, Regulation C. Quarterly reporting for high volume reporters starts.

