

December 24, 2010

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Federal Issues

Federal Reserve Board Approves Interim Rule Amending Regulation Z Disclosure

Requirements. On December 22, the Federal Reserve Board (FRB) approved a new interim rule amending Regulation Z, which implements the Truth in Lending Act (TILA). The new interim rule clarifies aspects of a previous interim rule issued on September 24, 2010, implementing provisions of the Mortgage Disclosure Improvement Act (MDIA), which amended TILA to require mortgage lenders to disclose examples of how a loan's interest rate or payments can change. Those MDIA provisions become effective January 30, 2011. Under the September interim rule, lenders' cost disclosures must include a payment summary in the form of a table stating the initial rate and corresponding periodic payment and, for adjustable rate loans, the maximum rate and payment that can occur during the first five years as well as a "worst case" example showing the maximum rate and payment possible over the life of the loan. The new interim rule clarifies that creditors' disclosures should reflect the first rate adjustment for a 5/1 adjustable rate mortgage, and should show the earliest date the consumer's interest rate can change rather than the due date for making the first payment under the new rate for interest-only loans. The rule also clarifies which mortgage transactions are covered by the special disclosure requirements for loans that allow minimum payments that cause the loan balance to increase. Creditors may comply with either the September interim rule or the new interim rule until October 1, 2011, at which time compliance with the new interim rule will become mandatory. The FRB is accepting public comment on the interim rule for 60 days after publication in the *Federal Register*. [For a copy of the press release, please click here;](#) [for a copy of the notice please see here.](#)

Federal Reserve Requests Comment On Proposed Rule Regarding Debit Card Interchange

Fees. On December 16, the Federal Reserve Board (FRB) requested comment on a proposed rule that would establish standards for debit card interchange fees and prohibit network exclusivity arrangements and routing restrictions. The FRB's proposal would implement the debit card interchange fee and routing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Debit card interchange fees are established by payment card networks and paid by merchants to card issuers for each transaction. The proposed new Regulation II, Debit-Card Interchange Fees and Routing, would determine whether the fees received by card issuers are reasonable and proportional to the cost incurred for the transaction and would apply to issuers that have assets of \$10 billion or more. Certain government-administered payment programs and reloadable general-use prepaid cards would be exempt from the interchange fee limitations. The FRB is requesting comment on two alternative interchange fee standards that would apply to all covered

issuers: one based on each issuer's costs, with a safe harbor (initially set at 7 cents per transaction) and a cap (initially set at 12 cents per transaction); and the other a stand-alone cap (initially set at 12 cents per transaction). Under both alternatives, circumvention or evasion of the interchange fee limitations would be prohibited. The FRB also is requesting comment on possible frameworks for an adjustment to the interchange fees to reflect certain issuer costs associated with fraud prevention. Either alternative would set the maximum allowable interchange fee received by covered issuers for debit card transactions at 70 percent lower than the 2009 average, once the new rule takes effect on July 21, 2011. Additionally, the proposed rule would prohibit all issuers and networks from restricting the number of networks over which debit card transactions may be processed, and the FRB requested comment on two alternative approaches: one which would require at least two unaffiliated networks per debit card, and the other which would require at least two unaffiliated networks per debit card for each type of cardholder authorization method (such as signature or PIN). Under both alternatives, the issuers and networks would be prohibited from inhibiting a merchant's ability to direct the routing of debit card transactions over any network that the issuer enabled to process them. Comments on the proposed rule are due by February 22, 2011. [For a copy of the press release, please click here.](#)

FHA Extends Deadlines for Delaware Mortgagee Approval Requirement for Principal Mortgagee. On December 20, the Federal Housing Authority (FHA) issued waivers regarding two regulations. First, the effective date for the requirement that an FHA-approved mortgagee have unconditional Direct Endorsement approval in order to serve as the principal in a Principal-Authorized Agent origination was waived until July 1, 2011 for Delaware mortgagees. Accordingly, a loan correspondent with FHA approval as of May 20, 2010 will maintain his or her FHA approval past December 31, but in no event past March 31, 2011, solely for purposes of closing mortgage loans in his or her name which, as of December 31, 2010, either (i) the U.S. Department of Housing and Urban Development has issued a firm commitment for insurance, or (ii) a Delaware underwriter has approved the mortgagor for such mortgage. FHA approval of the loan correspondence will expire on December 31 for all other purposes. For a copy of waiver, please see <http://www.hud.gov/offices/hsg/sfh/waivers122010.pdf>.

FTC Launches Website and Blog for National Consumer Protection Week 2011. On December 21, the Federal Trade Commission (FTC) announced the launch of a website and blog for National Consumer Protection Week 2011, which will be held March 6-12. The annual event is hosted by the FTC and approximately 30 other government agencies, consumer groups, and national organizations. The new National Consumer Protection Week website, which can be found at www.ncpw.gov, offers information and resources to help consumers protect their privacy interests, manage credit and debt, avoid identity theft, understand mortgages, and recognize frauds and scams. Consumer experts will also provide blog posts on a similar variety of subjects. The FTC asks government agencies and organizations that are planning an event for National Consumer Protection Week to visit the website and send an email containing the details of their event. A copy of the press release regarding National Consumer Protection Week is available at <http://www.ftc.gov/opa/2010/12/ncpw.shtm>.

Agencies Announce Asset-Size Threshold Adjustments for Small and Intermediate Small Institutions. On December 21, the federal bank regulatory agencies (the Federal Reserve Board, the FDIC, OCC, and OTS) announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank, and intermediate small savings association under the Community Reinvestment Act. The adjustments are effective January 1, 2011. For more details, please see a copy of the press release at <http://www.federalreserve.gov/newsevents/press/bcreg/20101221a.htm>.

FTC Submits Comments to Federal Reserve on Mortgage Disclosure Law, Approves Increase in Credit Report Fees. On December 17, the Federal Trade Commission (FTC) announced that it has submitted comments to the Federal Reserve Board (FRB) recommending ways the FRB could strengthen the rules under the Home Mortgage Disclosure Act's Regulation C. FTC staff suggested that the FRB expand the number of mortgage lenders required to report loan data by modifying the criteria for determining which lenders are required to report. FTC staff also suggested that the FRB require lenders to report on additional types of loans, including reverse mortgages and home equity lines of credit, and to report additional data for all reported loans. In addition, FTC staff suggested that the FRB make its mortgage data available to the public while protecting the mortgage applicants' privacy. Lastly, the FTC approved an increase in the maximum fee consumer reporting companies can charge consumers for an extra copy of their credit report from \$10.50 to \$11.00, effective January 1, 2011. For a copy of the press release, please see http://www.ftc.gov/opa/2010/12/hmda_fcra.shtm, and for a copy of the FTC staff comments to the FRB, please see <http://www.ftc.gov/os/2010/12/101217federalreserveregulation.pdf>.

Agencies Expand Scope of CRA Regulations to Support Stabilization of High-Foreclosure Communities. On December 15, the federal bank and thrift regulatory agencies (the Federal Reserve Board, the FDIC, OCC, and OTS) announced changes to the Community Reinvestment Act (CRA) regulations aimed at supporting stabilization of communities affected by high foreclosure levels. The final rule, which is substantially the same as the proposed rule published for comment on June 24, 2010, encourages depository institutions to support eligible development activities in areas designated under the Neighborhood Stabilization Program (NSP) administered by the U.S. Department of Housing and Urban Development (HUD). The NSP is a HUD program that provides funds to state and local governments and nonprofit organizations to purchase and redevelop abandoned and foreclosed properties. The new rule encourages depository institutions to make loans and investments and provide services to support NSP activities in certain areas. [For a copy of the press release, please click here.](#)

Firm News

[Andrew Sandler](#) was named to the Board of Advisors of the American Association of Bank Directors.

[James Parkinson](#) will be speaking at the web conference "FCPA Compliance: Best Practices for Your Anti-Corruption Compliance Program," hosted by National Constitution Center Conferences on January 19, 2011.

[Donna Wilson](#) will be speaking at the ACI Privacy & Security of Consumer & Employee Information Conference on January 25-26, 2011 in Washington, DC. The topic will be "Responding to the Latest Cyber Threats: Mobile Workforces, Technology, Data Thefts, and Cloud Computing."

[Andrew Sandler](#) will be speaking at the American Conference Institute's 10th Annual Advanced Forum on Consumer Finance Class Actions & Litigation on January 27, 2011 at 11am. The conference is taking place at The Helmsley Park Lane Hotel, 36 Central Park South, NYC. The topic will be Emerging Federal and State Regulatory and Enforcement Initiatives: FTC, DOJ, SEC, FRB, and State AGs Perspectives. Also on the panel with Andy will be Attorney General William Sorrell, AG, State of Vermont and Attorney General Greg Zoeller, AG, State of Indiana.

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