

Lenders Compliance Group

Wednesday, January 9, 2013

CFPB's Regulatory Agenda - 2013

As we begin a new year and prepare ourselves for the blizzard of new and revised regulations coming our way, I think it is important for us to consider the regulatory agenda that the Consumer Financial Protection Bureau (CFPB) has set for itself.* As you've heard me say so many times, preparation is protection. So, please undertake a review of the agenda that the CFPB has promised to pursue in the coming months, especially with the view of how best to prepare for the changes that are sure to follow.

It is worth noting that the CFPB reasonably anticipates having certain regulatory matters under consideration during the period from October 1, 2012 to October 1, 2013. And the CFPB will publish updates to its agenda periodically through October 1, 2013. These matters will be under consideration by the CFPB, primarily including various rulemakings mandated by the Dodd-Frank Act, such as several mortgage-related rulemakings and rulemakings to implement the CFPB's supervisory program for nondepository covered persons by, among other things, defining "larger participants" in certain consumer financial product and service markets.

The CFPB is completing several mortgage-related rulemakings in January 2013, even as it continues to assess the need and resources available for additional rulemakings. For instance, the Dodd-Frank Act mandates rulemakings to implement amendments to the Home Mortgage Disclosure Act, and to the Equal Credit Opportunity Act to create a data reporting regime concerning small, women-owned, or minority-owned business lending. Also, the CFPB has inherited proposed rules concerning mortgage loans, home equity lines of credit, and other topics from other agencies as part of the transfer of authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). All of these regulatory changes will require careful planning and clear guidance with respect to implementation.

In this article, I am going to highlight the regulatory changes that the CFPB has moved into their final stages. I offer a brief outline of the regulatory issues and the CFPB's likely resolution. Each of these regulations, now approaching the status of Final Rule, is extraordinarily significant and, in some instances, constitutes formidable challenges.

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**Chart: Consumer Financial Protection Bureau
Final Rule Stage (Selected Rules)**

Consumer Financial Protection Bureau--Final Rule Stage				
Title	Regulation	Stage	Date	Citation
Loan Originator Compensation	Regulation Z	NPRM	09/07/12	77 FR 55272
		Comment	10/16/12	
		Final Rule	01/00/13	
Mortgage Servicing	Regulation X Regulation Z	NPRM	09/17/12	77 FR 57200
		(Regulation X)	09/17/12	
		NPRM	09/17/12	77 FR 57318
		(Regulation Z)	09/17/12	
		Comment	10/09/12	
Period End	10/09/12			
Final Rule	01/00/13			
Requirements for Escrow Accounts	Regulation Z	NPRM	03/02/11	76 FR 11598
		Comment	05/02/11	
		Final Rule	01/00/13	

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TILA Ability to Repay	Regulation Z	NPRM Comment Period End Supplemental NPRM	05/11/11 07/22/11 06/05/12	76 FR 27390 77 FR 33120
TILA/RESPA Mortgage Disclosure Integration	Regulation X Regulation Z	NPRM Comment Period Extended Comment Period End Final Rule	08/23/12 09/06/12 11/06/12 09/00/13	77 FR 51116 77 FR 54843
<small>Data source: Semiannual Regulatory Agenda, Fall 2013 Unified Agenda of Federal Regulatory and Deregulatory Actions, Consumer Financial Protection Bureau, Federal Register Volume 78, Number 5, January 8, 2013 *NPRM: Notice of Proposed Rulemaking.</small>				

This chart provides a quick overview of certain regulatory changes that the CFPB will promulgate this year. The chart also provides the anticipated Final Rule dates.

Loan Originator Compensation (Regulation Z)

The CFPB published for public comment in August 2012 a proposed rule amending Regulation Z to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Act.

The proposal would:

- 1) Implement statutory changes made by the Dodd-Frank Act to Regulation Z's current loan originator compensation provisions, including a new additional restriction on the imposition of any upfront discount points, origination points, or fees on consumers under certain circumstances.
- 2) Mandate additional requirements imposed by the Dodd-Frank Act concerning proper qualification and registration or licensing for loan originators.
- 3) Place restrictions on mandatory arbitration and the financing of certain credit insurance premiums, in accordance with the requirements of the Dodd-Frank Act.
- 4) Provide additional guidance and clarification under the existing regulation's provisions restricting loan originator compensation practices, including guidance on the application of those provisions to certain profit-sharing plans and the appropriate analysis of payments to loan originators based on factors that are not terms but that may act as proxies for a transaction's terms.

The comment period for the proposed rule ended on October 16, 2012.

Note: the CFPB will issue at a later time proposed regulations on anti-steering provisions that TILA section 129B(c)(3) requires the CFPB to adopt.

Mortgage Servicing (Regulation X, Regulation Z)

The CFPB has proposed to amend Regulation Z and the official interpretation of the regulation. The proposed amendments would implement the Dodd-Frank Act provisions regarding mortgage loan servicing.

Specifically, the CFPB's Regulation Z proposal implements Dodd Frank Act sections addressing initial rate adjustment notices for adjustable-rate mortgages (ARMs), periodic statements for residential mortgage loans, and prompt crediting of mortgage payments and response to requests for payoff amounts. The proposed revisions would also amend current rules governing the scope, timing, content, and format of current disclosures to consumers occasioned by interest rate adjustments of their variable-rate transactions.

The CFPB also has proposed to amend Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 (RESPA) and add a supplement setting forth an official interpretation of the regulation. The proposed amendments implement the Dodd-Frank Act provisions regarding mortgage loan servicing.

Specifically, the proposal requests comment regarding proposed additions to Regulation X to address six servicer obligations:

- (1) Correct errors asserted, and provide information requested, by mortgage loan borrowers;
- (2) Alert consumers to possible servicer imposition of force-placed insurance and ensure that a reasonable basis exists to charge for it;
- (3) Establish reasonable information management policies and procedures;
- (4) Provide information about mortgage loss mitigation options and foreclosure to delinquent borrowers;
- (5) Provide delinquent borrowers access to servicer personnel with continuity of contact about the borrower's mortgage loan account; and,
- (6) Evaluate borrowers' complete applications for available loss mitigation options.

The Regulation X proposal would also modify and streamline certain existing general and servicing-related provisions of Regulation X. For instance, the proposal would revise provisions relating to a mortgage servicer's obligation to provide disclosures to borrowers in connection with a transfer of mortgage servicing, and a mortgage servicer's obligation to manage escrow accounts, including the obligation to advance funds to an escrow account to maintain insurance coverage and to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan.

The comment period for the proposed rules ended on October 9, 2012.

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Note: the CFPB is also participating in an interagency process among Federal financial services regulators to consider broader issues regarding national servicing standards.

Requirements for Escrow Accounts (Regulation Z)

The Board of Governors of the Federal Reserve System (Board) published in the Federal Register on March 2, 2011, a proposed rule to implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Act that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained.

In addition, the Board's proposal would implement the Dodd-Frank Act's disclosure requirements regarding escrow accounts.

The Board's proposal also would exempt certain loans from the statute's escrow requirement, pursuant to authority in the Dodd-Frank Act. The primary exemption would apply to mortgage loans extended by creditors that operate predominantly in rural or underserved areas and meet certain other prerequisites.

Pursuant to the Dodd-Frank Act, the rulemaking authority for the TILA generally transferred from the Board to the CFPB on July 21, 2011.

Note: the CFPB, in a separate rulemaking, issued a final rule postponing the implementation of the disclosures included in the Board's proposal.

TILA Ability To Repay (Regulation Z)

The Board of Governors of the Federal Reserve System (Board) published for public comment on May 11, 2011, a proposed rule amending Regulation Z to implement amendments to the Truth in Lending Act made by the Dodd-Frank Act.

Regulation Z currently prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The proposal would implement statutory changes made by the Dodd-Frank Act that expand the scope of the ability-to-repay requirement to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan).

In addition, the proposal would establish standards for complying with the ability-to-repay requirement, including by making a "qualified mortgage."

The proposal also implements the Dodd-Frank Act's limits on prepayment penalties.

Finally, the proposal would require creditors to retain evidence of compliance with this rule for three years after a loan is consummated.

Pursuant to the Dodd-Frank Act, the rulemaking authority for the TILA generally transferred from the Board to the CFPB on July 21, 2011. On June 5, 2012, the CFPB issued a notice to reopen the comment period until July 9, 2012, to seek comment on certain new data and information submitted during or obtained after the close of the original comment period.

TILA/RESPA Mortgage Disclosure Integration (Regulation X, Regulation Z)

Sections 1032(f), 1098, and 1100A of the Dodd-Frank Act direct the CFPB to issue proposed rules and forms that combine certain disclosures that consumers receive in connection with a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).

Consistent with this requirement, the CFPB has proposed to amend Regulation X (the implementing regulation of RESPA) and Regulation Z (the implementing regulation of TILA) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property.

In addition to combining the existing disclosure requirements and implementing new requirements in the Dodd-Frank Act, the CFPB's proposed rule provides extensive guidance regarding compliance with those requirements.

The proposal had two comment periods. Comments on the proposed revisions to the definition of the finance charge and the proposed compliance date for the new Dodd-Frank Act disclosures were due September 7, 2012. Comments on all other aspects of the proposal were due November 6, 2012. On September 6, 2012, the CFPB issued a notice extending the comment period to November 6, 2012, for the proposed revisions to the definition of the finance charge.

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Consumer Financial Protection Bureau

Semiannual Regulatory Agenda

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