February 2019

Compliance Update

Community Bankers for Compliance Newsletter

INSIDE

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Private Flood Insurance Rule Issued

By Bill Elliott, CRCM; Manager of Compliance Services

As you are aware, the issue of flood insurance has been unsettled for the last 18 months, and the formal Federal Emergency Management Agency (FEMA) flood program, the National Flood Insurance Program (NFIP), is approved only to May 31, 2019. While there has not been any fanfare yet, the FDIC is the first of the federal financial institution regulators to approve a final rule concerning private flood insurance.

The federal agencies involved in the joint rulemaking are the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), and Farm Credit Administration (FCA).

The final rule is to be effective July 1, 2019.

Summary of the final rule

The final rule implements a provision of the Biggert-Waters Act and requires regulated lending institutions to accept "private flood insurance." It also includes a streamlined compliance aid provision to assist regulated lending institutions in evaluating whether a flood insurance policy meets the definition of "private flood insurance," and allows a regulated lending institution to conclude that a private flood insurance policy meets the definition of "private flood insurance," without further review of the policy, if certain conditions are met.

The joint final rule also permits regulated lending institutions to exercise discretion to accept flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of private flood insurance, provided the policies meet certain conditions. This, of course, is a much more risky proposition, and many banks may choose not the exercise this option.

Finally, the rule allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by mutual aid societies. Perhaps the most common of mutual aid societies is "Amish Aid." It would appear that this mutual aid society would qualify under the rule.

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Before accepting any mutual aid society plan, your regulator must determine that the plan is acceptable. As this rule is not quite finished by all the agencies, we caution against using this feature just yet.

Requirement to purchase flood insurance

The agencies' final rule requires all regulated lending institutions to accept "private flood insurance," if the policy meets the requirements for coverage under the flood insurance purchase requirement. The policy must cover the building or mobile home and any personal property securing the loan in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the federal flood insurance statutes with respect to the particular type of property, whichever is less. This matches the current requirement for government-based policies.

To determine if a private flood insurance policy meets the requirements, the rule essentially allows the bank to make that decision, and even makes it easier. If the following statement appears in the policy, the bank can accept the insurance without additional review:

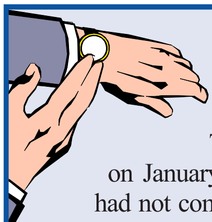
"This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

If a policy includes this statement, the regulated lending institution may rely on the statement and would not need to review the policy to determine whether it meets the definition of "private flood insurance." However, the institution could choose not to rely on this statement and instead make its own determination.

Conclusion

It is anticipated that all regulators will adopt this approach, effective July 1, 2019. Normally we do not include items in *Compliance Update* that are not final. However, given the instability of the federal flood insurance system, and the likelihood of passage, we determined that this information should be presented at this time.

Lenders have a relatively short time to study and implement this new rule, but, fortunately, it is not a long one. The FDIC is the first agency to make the final rule release available at www.fdic.gov/news/board/2019/2019-01-25-notational-fr.pdf. ❑



Reinstatement Period Open for Lapsed MLOs

The Nationwide Multistate Licensing System (NMLS) posted a notice that the Reinstatement Period began on January 2, 2019, for mortgage loan originators (MLO) whose registrations lapsed on December 31 because they had not completed the annual renewal process, and will run through midnight EST on February 28. MLOs with lapsed registrations should check the NMLS's Federal Registry annual renewal page for guidance on reactivation at fedregistry.nationwidelicensingsystem.org/Institutions/Pages/Renew.aspx. ❑

CFPB Issues Complaint Snapshot

By Dale Neiss, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) issued a report, "Complaint Snapshot: Mortgage" that provides a high-level overview of trends in consumer complaints for the period November 1, 2016 through October 31, 2018. Mortgage complaint volume was the primary focus of the report.

During the reporting period, the CFPB received approximately 71,000 mortgage complaints, representing 11 percent of total complaints received. Types of mortgages about which consumers complained are as follows:

- Conventional home mortgage (50 percent)
- Other type of mortgage (25 percent)
- FHA mortgage (13 percent)
- Home Equity Line of Credit (HELOC) (six percent)

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- VA mortgage (four percent)
- Reverse mortgage (two percent)

The types of complaints reported by consumers are categorized as follows:

- Trouble during payment process (42 percent)
- Struggling to pay mortgage (36 percent)
- Applying for, or refinancing, an existing mortgage (12 percent)
- Closing on a mortgage (seven percent)
- Problem with a credit report or credit score (two percent)
- Other (one percent)

Complaints submitted about trouble during the payment process were related to periodic statements, application of payments, escrow accounts, and payoff requests. Complaints related to struggling to pay their mortgage included difficulty receiving assistance on their loan following a financial hardship, illness, natural disaster, and other difficulties. Some consumers also stated they disagreed with, or were confused by, the servicer's denial of their request for a loan modification. Other consumers described challenges while attempting to obtain assistance, complaining that their single point of contact had been unresponsive and about having to respond to multiple document requests. Some consumers also described the communications received from their servicer about loan assistance as confusing.

With respect to the geographic distribution of the complaints, a table in the report shows the mortgage complaint volume by state, measured by complaints per 100,000 population. And, another table shows the percentage change in mortgage complaint volume by state for the report period.

The remainder of the report summarizes the 646,200 complaints received during the report period, as follows:

- Prepaid card complaints showed the greatest percentage increase.
- Checking or savings account complaints showed the second greatest percentage increase.
- Student loan complaints showed the greatest percentage decrease.

The report, "Complaint Snapshot: Mortgage," can be found at s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortage_2019-01_liwsYNV.pdf. ❑

CFPB Publishes 2019 Edition of the HMDA Reference Chart

By Lindsay Nunn; Consultant

The Consumer Financial Protection Bureau (CFPB) published the 2019 edition of the "Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart." This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rules issued on October 15, 2015, and on August 24, 2017, and section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act as implemented and clarified by the interpretive and procedural rule issued on August 31, 2018 (2018 HMDA Rule).

Citations of relevant regulation and commentary sections are provided for ease of reference. The chart should be used as a guide for applications recorded on the 2019 HMDA reportable data which will be filed by March 1, 2020.

The chart also incorporates the information found in Section 4.2.2 of the 2019 Filing Instructions Guide (FIG) and provides guidance on when to report "not applicable" or "exempt," including the codes used for reporting not applicable or exempt from section 4 of the 2019 FIG for ease of reference.

This chart does not provide the full data fields or enumerations used in preparing the HMDA loan/application register (LAR).

The reference chart can be found at s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart-2019.pdf. ❑

CFPB Assesses ATR/QM & Mortgage Servicing Rules

By Dale Neiss, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) has published reports assessing the effectiveness of the Ability-to-Repay and Qualified Mortgage Rule and the mortgage servicing rule issued under the Real Estate Settlement Procedures Act (RESPA).

The Ability-to-Repay and Qualified Mortgage Rule, issued in January 2013, requires lenders, before making a residential mortgage loan, to make a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan. The rule took effect in January 2014.

The RESPA Mortgage Servicing Rule, also issued in January 2013, imposed new obligations on mortgage servicers who are generally responsible for billing borrowers for amounts due, collecting payments, disbursing funds, and providing customer service. The rule also added new protections which carry out the consumer protection purposes of RESPA. This rule also took effect in January 2014.

The Dodd-Frank Act requires the CFPB to conduct an assessment of each significant rule and to publish a report of its assessment no later than five years after the effective date of the significant rule. The assessment shall address, among other relevant factors, the effectiveness of the rule in meeting the purposes and objectives of the Dodd-Frank Act and the specific goals stated by the CFPB in issuing the rule in question. The assessment shall reflect available evidence and any data that the CFPB reasonably may collect. Before publishing a report of its assessment, the CFPB shall invite public comment on recommendations for modifying, expanding, or eliminating the rule.

The assessment of the Ability-to-Repay and Qualified Mortgage Rule uses a range of data sources, including a unique data set, to comprehensively examine the extent to which the rule has affected consumers' access to credit and the cost of credit.

The Ability-to-Repay and Qualified Mortgage Rule Assessment Report can be found at files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

The assessment of the Servicing Rule likewise uses a range of data, again including a unique data set, to thoroughly examine how the rule has affected the experiences and outcomes for consumers, with a particular focus on those who fall behind on their mortgage payments.

The RESPA Servicing Rule Assessment Report can be found at files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

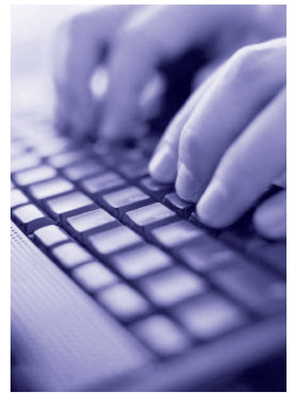
The issuance of these reports is not the end of the line for the CFPB. The agency is interested in hearing reactions from stakeholders to the reports' findings and conclusions. Continued interaction, with receipt of information from stakeholders about these rules, will help inform the CFPB's future policy decisions, including whether to commence a rulemaking proceeding to make the rules more effective in protecting consumers, less burdensome to industry, or both. ❑

TRID FAQs Issued

The Consumer Financial Protection Bureau (CFPB) has posted four Frequently Asked Questions relating to compliance with the TRID Rule. Three of the questions concern corrected closing disclosures and the three-business day waiting period before consummation.

The fourth question addresses use of a model form that does not reflect a TRID Rule change finalized in 2017. That question and the CFPB's answer provide "cover" for the creditor and the agency, since the CFPB did not update the sample TRID model forms in Appendix H. An example is model form H-24(C), which shows a "4.00%" interest rate in the prepaid interest disclosure, although the 2017 amendments (TRID 2.0) would call for it to be disclosed as "4%," with the trailing zeros to the right of the decimal point truncated.

These FAQs may be read at www.consumerfinance.gov/policy-compliance/guidance/tila-respa-disclosure-rule/tila-respa-integrated-disclosure-faqs/. ❑



Federal Deposit Insurance Corporation
http://www.fdic.gov

Office of the Comptroller of the Currency
http://www.occ.gov

Federal Reserve
http://www.federalreserve.gov

Housing and Urban Development
http://www.hud.gov

Federal Financial Instutions Examination Council
http://www.ffiec.gov

U.S. Department of Treasury
http://www.treas.gov

Financial Crimes Enforcement Network
http://www.fincen.gov

Consumer Financial Protection Bureau
http://www.consumerfinance.gov

Advisory on Voluntary Rehab for Private Education Loans

The Federal Deposit Insurance Corporation (FDIC) issued FIL-5-2019 with a joint advisory issued with the Federal Reserve Board (FRB) on Voluntary Private Education Loan Rehabilitation Programs to make financial institutions aware of an amendment to section 623 of the Fair Credit Reporting Act (FCRA). This amendment gives consumers the opportunity to rehabilitate a private education loan with a previously reported default under certain conditions.

Financial institutions that choose to establish a private education loan rehabilitation program under Section 602 of EGRRCPA that satisfies the statutory requirements, including written approval of the terms and conditions from their federal regulatory agency, are entitled to a safe harbor from potential claims under the FCRA related to removal of the reported default. The FIL is available at www.fdic.gov/news/news/financial/2019/fil19005.html. ❑

Compliance Calendar

This calendar is designed to help you address current and upcoming requirements related to compliance with federal consumer protection and other select rules. The calendar is not intended as general advice on when to perform ongoing compliance management functions, but as a reminder of due dates for completing these tasks. And, as always, consult the particular law or regulation for details on coverage, etc.

February 2019

- NMLS reinstatement period for lapsed MLOs ends February 28, 2019.

March 2019

- 2018 HMDA LAR must be submitted to the CFPB by March 1, 2019.
- 2018 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2019 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 10, 2019 (e.g., EDT, CDT, etc.).

April 2019

- Prepaid card rules effective April 1, 2019.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2019 by April 30, 2019.
- Update FHHLDS home loan activity format with first calendar quarter 2019 data by April 30, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2019

- Lenders may begin using redesigned Uniform Residential Lending Application (URLA) form on July 1, 2019.
- Final rule regarding use of private flood insurance policies effective July 1, 2019.
- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2019 by July 31, 2019.
- Update FHHLDS home loan activity format with second calendar quarter 2019 data by July 31, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

September 2019

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2019) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2019.

October 2019

- Update HMDA-LAR with loans and applications that reached final disposition in third calendar quarter 2019 by October 30, 2019.
- Update FHHLDS home loan activity format with third calendar quarter 2019 data by October 30, 2019 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

November 2019

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2019.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 3, 2019 (e.g., EST, CST, etc.).

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December 2019

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2019.

January 2020

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2019 by January 31, 2020.
- Update FHHLDS home loan activity format with fourth calendar quarter 2019 data by January 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2020

- Lenders must begin using the updated URLA form on February 1, 2020 for all new applications. Also, Pipeline Loan Transition Period begins for older loans (typically construction loans) with an application received date prior to 2/1/2020 – allowing lenders to complete processing of such loans with old forms 1003.

March 2020

- 2019 HMDA LAR must be submitted to the CFPB by March 1, 2020.
- 2019 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2020 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 8, 2020 (e.g., EDT, CDT, etc.).

April 2020

- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2020 by April 30, 2020.
- Update FHHLDS home loan activity format with first calendar quarter 2020 data by April 30, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2020

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2020 by July 31, 2020.
- Update FHHLDS home loan activity format with second calendar quarter 2020 data by July 31, 2020 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

September 2020

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2020) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2020.

November 2020

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2020.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 1, 2020 (e.g., EST, CST, etc.).

December 2020

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2020.

January 2021

- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.
- Update FHHLDS home loan activity format with fourth calendar quarter 2020 data by January 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2021

- Fannie Mae and Freddie Mac will no longer accept loans with the old form 1003 application.

March 2021

- 2020 HMDA LAR must be submitted to the CFPB by March 1, 2021.
- 2020 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2021 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 14, 2021 (e.g., EDT, CDT, etc.).