

# Compliance Update



## COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

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## Vendor Management Considerations for Flood Insurance

By Dee Bedell, CRCM; Consultant

The Federal Reserve System posted an article in its *Consumer Compliance Outlook*, second issue 2019, reminding financial institutions of flood insurance requirements, particularly when it comes to outsourcing flood hazard determination and monitoring of insurance functions.

The article discussed specific provisions of federal flood insurance requirements affecting loan origination and servicing, as well as potential risks vendors pose in these areas.

The article reviewed requirements, for commercial loans, that the contents of the building located in a special flood hazard area (SFHA) be adequately insured when both the building and the contents secure the loan. The article then examined using vendors to help comply with the requirement that a lender or servicer notify borrowers when a policy lapses or has insufficient coverage. Finally, it reviewed the use of vendors for initial and life-of-loan flood insurance determinations.

### Commercial contents

Violations can occur when an institution engages vendors that lack awareness or understanding of the regulatory requirements for flood insurance. Failing to monitor the work performed by the vendor can exacerbate the risk.

According to Question #39 of the Interagency Questions and Answers Regarding Flood Insurance, “flood insurance is required for a building located in a [SFHA] and any contents stored in that building.” More specifically, contents coverage is required when the institution has a security interest in the building and its contents and when the contents are within a building located in a SFHA.

The type of instrument used to secure the collateral (for example, a mortgage or a security

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agreement) does not determine if flood insurance is required. Instead any instrument creating a security interest triggers flood insurance requirements.

Similarly the lien on the property does not need to be legally perfected for the flood insurance requirements to apply.

The purpose of the lien does not matter. Whether the security interest is taken as the primary source of collateral or as an abundance of caution, the flood insurance requirements are the same.

Although an institution may intend to secure the loan with real estate only, the institution's settlement attorney may include language in the security instrument that references the institution's security interest in "all inventory" or "all business assets." If your settlement attorney has the license to alter the security instrument, and the institution does not oversee this function, it increases the risk of violations.

Further if the institution fails to effectively monitor its portfolio of loans secured by property located in a SFHA, the contents may remain underinsured for an extended period.

### Force place coverage

Financial institutions often use third parties to monitor loans including tracking policy expirations, notifying borrowers when coverage will lapse, if necessary. One common violation noted during consumer compliance examinations is the third party's failure to send a timely notice to the borrower that flood insurance coverage has lapsed.

As a courtesy, some vendors send notices in advance of a policy expiring to remind the borrower to renew the policy.

### Initial flood insurance determinations & life-of-loan monitoring

Some institutions rely on vendors at loan origination to determine if a property securing the loan is located in a SFHA and to monitor if the Federal Emergency Management Agency (FEMA) changes the flood insurance rate for the property during the life of the loan.

If a lender outsources for life-of-loan coverage to monitor whether a property is later remapped into an SFHA and the vendor communicates the change to the lender, the lender is required to insure that flood insurance is obtained. If the lender or servicer fails to act on the vendor's notification, the institution faces another violation of flood insurance regulations.

### Conclusion

Lenders that outsource flood insurance functions need to remember an important fact that is true for any outsourcing relationship. While the financial institution can outsource the performance of a task, it cannot outsource the responsibility for compliance with related regulatory requirements. That liability continues to reside with the financial institution, so that these relationships require ongoing monitoring. □

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## Recent CFPB Examination Findings

Examinations completed between December 2018 and March 2019 by the Consumer Financial Protection Bureau (CFPB) included findings in the areas or activities listed here.

### Automobile loan origination

- Abusive act or practice when selling add-on guaranteed auto protection (GAP) products

### Credit card account management

- Triggered disclosures for online credit card advertisements
- Offset of credit card debt against deposit accounts
- Deceptive threats of repossession or foreclosure in credit card collections
- Deceptive marketing regarding secured credit card accounts

### Debt collection

- False representation of the amount and legal status of debt

Furnishing information relating to consumers to consumer reporting companies (CRC) for inclusion in consumer reports (furnishers)

- Duty to complete dispute investigations timely
- Duty to provide results of dispute investigations to CRCs
- Duty to correct and update previously furnished information promptly
- Duty to provide notice of dispute
- Regulation V duty to establish and implement policies and procedures

#### Mortgage origination

- Inaccurate APR and total annual loan cost (TALC) disclosures in reverse mortgage transactions

This information may be of interest if your financial institution is involved in any of these areas, or activities, and the practices described sound familiar or raise concerns. To fully understand the examination findings, the entire report can be obtained at [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-19\\_092019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf). □

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## CFPB Issues SAFE Act FAQs

By Dale Neiss, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) has published four FAQs on the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and the impact of the amendments to the SAFE Act made by § 106 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).

The FAQs are effective as of November 24, 2019, the effective date of the 2018 EGRRCPA amendments to the SAFE Act.

Following are the questions and abridged versions of the answers from the CFPB.

### Types of loan originators

**Question 1:** What are the categories of loan originators in the SAFE Act?

**Answer:** There are three categories of loan originators:

1. Registered Loan Originator: For individuals who are employees of covered financial institutions (generally including employees of federally regulated depository institutions, such as banks or credit unions), loan originators must obtain and annually maintain registration with the National Mortgage Licensing System and Registry (NMLSR) system.
2. State-Licensed Loan Originator: For individuals who are not employees of a covered financial institution (in general, employees of non-depository institutions), loan originators must obtain and annually maintain a valid loan originator license from a state and obtain registration with the NMLSR system, which generally is accomplished through the licensing process. A loan originator should check with their state to determine the full set of state law requirements for obtaining a loan originator license.
3. Loan Originator with Temporary Authority: As of November 24, 2019, certain loan originators have temporary authority to act as a loan originator in a state for a limited period of time while applying for a state loan originator license in that state. Not all loan originators are eligible for temporary authority. Temporary authority applies to loan originators who were previously registered or state-licensed for a certain period of time before applying for a new state license. Additionally, loan originators are eligible for temporary authority only if they have applied for a license in the new state, are employed by a state-licensed mortgage company in the new state, and satisfy certain criminal and adverse professional history requirements described in the SAFE Act.

**Question 2:** Where can loan originators exercise temporary authority?

**Answer:** In a state where the loan originator has submitted an application for a state loan originator license.

### State transitional licenses

**Question 1:** What is the CFPB's guidance regarding state transitional license availability under the SAFE Act?

**Answer:** State transitional licenses are not available in every situation; in addition, not all states offer transitional licenses. A loan originator applying for a state license must follow the application procedures established by the state, and generally must wait to begin acting as a loan originator until the state grants the application, including in transitional license situations. Loan originators

who are eligible for temporary authority may act as a loan originator in the application state while the state is considering their application.

**Question 2:** Does the EGRRCPA impact the status of state transitional licenses under the SAFE Act?

**Answer:** No.

The complete answers to the FAQs may be obtained at [https://files.consumerfinance.gov/f/documents/cfpb\\_safe-act\\_frequently-asked-questions.pdf](https://files.consumerfinance.gov/f/documents/cfpb_safe-act_frequently-asked-questions.pdf). □



## Agencies Increase Appraisal Threshold

By Bill Elliott, CRCM; Director of Compliance Education

On September 27, 2019, the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and Federal Deposit Insurance Corporation (FDIC) adopted a final rule to amend the agencies' regulations requiring appraisals of real estate for certain transactions. This revision required the Consumer Financial Protection Bureau (CFPB) to concur with this change, which that agency did.

### Coverage

The rule increases the threshold level at which appraisals are required for residential real estate transactions from \$250,000 (which has been in place since 1994) to \$400,000.

This rule is for residential real estate transactions only. A residential real estate transaction is defined as a real estate-related financial transaction that is secured by a single one- to four-family residential property. Commercial properties are covered by separate limits, which are not impacted by this change.

For residential real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.

It is important to remember that the definition of evaluation also has not changed. Many institutions, when they complete an evaluation or have a third party complete the evaluation, do not fully comply with the evaluation requirements. While this may not have raised any red flags with examiners in the past, the increased limit may result in more regulator scrutiny of your evaluations and your process. You should consider the potential impacts to your evaluation program.

### Rural exemption

The rule also makes a conforming change to add to the list of exempt transactions those transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). In the EGRRCPA, Congress amended Title XI in 2018 to add a rural residential appraisal exemption.

Under this exemption, a financial institution need not obtain a Title XI appraisal if the following conditions are met:

- Property is located in a rural area
- Transaction value is less than \$400,000
- Financial institution retains the loan in portfolio, subject to exceptions, and
- Not later than three days after the Closing Disclosure form is given to the consumer, the financial institution or its agent has contacted not fewer than three state-certified or state-licensed appraisers, as applicable, and has documented that no such appraiser was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments

Given the general rule increase to \$400,000, essentially the requirements set forth in the previous paragraph become moot, as the \$400,000 limit is available to all financial institutions, without restrictions. However, as the law makes these conditions for rural situations, it is now part of the regulation, even though it can often be ignored based on the new threshold amount.

### Review process required

All evaluations are to be reviewed for completeness and accuracy. The rule also amends the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

For those institutions with robust review procedures in place, this will probably present no significant change. For those institutions that have not placed a priority on appraisal review, this will require a change in the process, as the regulations now require more efforts in this area.

### Conclusion

The increase in the limit does come with new responsibilities to assure the safety and soundness of the financial institution. So, some may find that this new flexibility comes at a price.

Also, based on the agencies' statistics, 74 percent of loans under \$250,000 received a full appraisal in years past. Therefore, this increase may not have any significant impact on your operation.

### Effective dates

The provisions of this joint final rule are effective on the day after publication on the *Federal Register*. This is anticipated during October 2019, but the actual date has not yet been determined.

The rural residential appraisal exemption and the requirement to review appraisals for compliance with the Uniform Standards of Professional Appraisal Practice are effective on January 1, 2020. □



## FDIC Insurance & Prepaid Cards

By Karen S. Clower, CRCM; Director of Compliance

If your bank offers prepaid cards, you may want to reference the recently issued “Consumer News” regarding prepaid cards and FDIC insurance. The article is addressed to the consumer, but, there is valuable information in the article for bank employees.

The article reminds the reader that a prepaid card allows you to use a card to make purchases at stores, withdraw cash from automated teller machines (ATM), or to pay bills online without accessing a bank account or line of credit. The Federal Deposit Insurance Corporation (FDIC) has found that often consumers ask, “Does the FDIC also insure the funds on my prepaid card?” The answer could be, “Yes,” when all the following conditions are met:

- The prepaid card is eligible for FDIC deposit insurance coverage.
- The owner properly registers the card.
- Specific deposit insurance requirements are met.

The Consumer Financial Protection Bureau’s (CFPB) final “prepaid card rule” that was effective April 1, 2019, requires financial institutions to provide a disclosure as to whether or not the prepaid card is insurable for those cards linked to an FDIC-insured bank.

The card must also be registered with the card issuer if the card is designed to be insurable, so that the FDIC can identify the consumer as the cardholder in the event the bank fails. If the card is issued by a third party (and not the bank), it is the third party’s responsibility to provide the FDIC with the information about the owners of the cards and the balance on each prepaid card at the time the bank fails.

The specific deposit insurance requirements include:

- The account must be appropriately titled (names the owner or owners of the account) in the bank’s records and indicate that the prepaid account provider is going to be acting as the cardholder’s agent, which could include duties such as transferring funds on the consumer’s behalf when they make a purchase, and keeping track of the balance on the prepaid card as the consumer adds or withdraws funds.
- If the bank fails, the card issuer, as the consumer’s agent, will need to provide the FDIC a list identifying each cardholder and the balance on each card at the time the bank fails.
- The contractual agreement among the financial institution, the prepaid card issuer, and the cardholders must indicate that the individual cardholders are the owners of the funds.

It is important to note that this information does not apply to gift cards. For information on gift cards, visit <https://www.consumerfinance.gov/about-us/blog/giving-or-receiving-gift-cards-know-the-terms-and-avoid-surprises/>.

For more information about prepaid cards and similar products, see the FDIC's webpage on prepaid accounts at <https://www.fdic.gov/deposit/deposits/prepaid.html>.

The full "Consumer News" can be found at <https://www.fdic.gov/consumers/consumer/news/september2019.pdf>. □

## Short Notes

**HMDA.** The Consumer Financial Protection Bureau (CFPB) has published its Filing Instructions Guide (FIG) for Home Mortgage Disclosure Act (HMDA) data collected in 2020 and a new resource for larger HMDA lenders, the Supplemental Guide for Quarterly Filers. Both are available on the agency's HMDA Help for Filers webpage at <https://ffiec.cfpb.gov/>.

**Compliance/Product Innovation.** The CFPB has issued three new policies to promote innovation and facilitate compliance: the No-Action Letter Policy, Trial Disclosure Program Policy, and Compliance Assistance Sandbox Policy.

No-action letters provide increased regulatory certainty through a statement that the CFPB will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances. Under the new TDP Policy, entities seeking to improve consumer disclosures may conduct in-market testing of alternative disclosures for a limited time upon permission by the agency. The CAS Policy enables testing of a financial product or service where there is regulatory uncertainty. After the CFPB evaluates the product or service for compliance with relevant law, an approved applicant that complies in good faith with the terms of the approval will have a "safe harbor" from liability for specified conduct during the testing period.

The CFPB announcement is available at [www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/](http://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/). □

## CFPB Updates HMDA Webinar Offerings

The Consumer Financial Protection Bureau (CFPB) previously presented two webinars related to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA):

- Webinar 1 – Overview of the Final Rule – originally published August 16, 2016
- Webinar 2 – Overview of identifiers and data points related to applicants and borrowers – originally published February 8, 2017

Both of these webinars have been updated as of August 29, 2019 to reflect amendments to HMDA made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), and the interpretive and procedural rule issued by the CFPB in August 2018.

In addition, a new HMDA webinar has been issued that provides an overview of the data points not covered in the first two webinars:

- Webinar 3 – Overview on reporting certain application or covered loan features, pricing information, features of the property, and transaction indicators – published August 29, 2019

The three webinars can be accessed at <https://www.consumerfinance.gov/policy-compliance/guidance/hmda-implementation/webinars/>. You have the option for each webinar to: watch the webinar; download the video; or view the webinar transcripts and slides. □



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 Institutions  
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>

## 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.*

### October 2019

- Comments on proposed HMDA changes relating to permanent coverage thresholds for closed-end mortgage loans and open-end lines of credit due to CFPB by October 15, 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.).

### December 2019

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

### January 2020

- Rural residential appraisal exemption and requirement to review appraisals for compliance with the USPAP effective January 1, 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

- Mandatory of the updated URLA form was to begin on February 1, 2020 for all new applications (to be sold on the secondary market) – has been delayed (no new date set).

### 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 information in CRA public file by of April 1, 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**

- Every-five-year inflation adjustments to amounts in Regulation CC effective July 1, 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.).

**April 2021**

- Update information in CRA public file by of April 1, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2021.
- Update FHHLDS home loan activity format with first calendar quarter 2021 data by April 30, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

**July 2021**

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