

Compliance Update



COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

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FDIC Reaches RESPA Settlement with Seattle Bank

By Karen S. Clower, CRCM; Director of Compliance

The Federal Deposit Insurance Corporation (FDIC) announced a settlement with HomeStreet Bank (Seattle, WA) for violations of the Real Estate Settlement Procedures Act (RESPA) and ordered the bank to pay a Civil Money Penalty (CMP) of \$1,350,000.

Section 8(a) of the RESPA prohibits giving or accepting a thing of value for the referral of a settlement service involving a federally related mortgage loan. RESPA was enacted to enable consumers to better understand the home purchase and settlement process, and where possible, to reduce settlement costs.

The FDIC determined that HomeStreet Bank, through its now discontinued mortgage banking business line that was based in its Home Loan Center, entered into certain co-marketing arrangements in which the bank and real estate brokers agreed to market their services together using online platforms.

The FDIC also determined that the bank entered into desk rental agreements whereby the bank rented space in the offices of real estate brokers and home builders. These arrangements and agreements resulted in the payment of fees by the bank to real estate brokers and home builders for their referrals of mortgage loan business, in violation of RESPA.

HomeStreet Bank has terminated all of the co-marketing and desk rental agreements.

The FDIC stated that co-marketing arrangements and desk rental agreements are permissible where the fees paid bear a reasonable relationship to the fair market value of marketing or rental costs. However, such arrangements and agreements violate RESPA when the amounts paid exceed fair market value and the excess is for referrals of mortgage business.

This is a good reminder for banks to review any co-marketing arrangements or desk rental agreements they may have with third-party settlement service providers to ensure that they are not in violation of Section 8 of RESPA.

The Order to pay the CMP can be found at https://www.fdic.gov/news/news/press/2019/pr19103a.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery. □

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CFPB Assessing TRID Rule

By William J. Showalter, CRCM, CRP; Senior Consultant

The Consumer Financial Protection Bureau (CFPB) is requesting public comment on an assessment it will conduct on the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule – more commonly known as the TILA-RESPA Integrated Disclosure (TRID) Rule. As part of its assessment, the CFPB intends to address the TRID Rule’s effectiveness in meeting the purposes and objectives of Title X of the Dodd-Frank Act, the specific goals of the rule, and other relevant factors.

Background

The Dodd-Frank Act (DFA) requires the CFPB to conduct an assessment of each significant rule or order adopted by the agency under federal consumer financial law. The CFPB must publish a report of the assessment not later than five years after the effective date of such rule or order.

The assessment must address, among other relevant factors, the rule or order’s effectiveness in meeting the purposes and objectives of title X of the DFA and the specific goals stated by the CFPB. The assessment also must reflect available evidence and any data that the agency reasonably may collect. Before publishing a report of its assessment, the CFPB must invite public comment on recommendations for modifying, expanding, or eliminating the rule or order.

The TRID Rule was issued in November 2013 and became effective, after some implementation-related delays, on October 3, 2015. That means that the report of the CFPB’s assessment will be due by October next year.

Assessment process

Assessments pursuant to section 1022(d) of the DFA are for informational purposes only and are not part of any formal or informal rulemaking proceedings. The CFPB does not anticipate that the assessment report will include specific proposals by the agency to modify any rules, although the findings made in the assessment will help to inform its general understanding of implementation costs and regulatory benefits for future rulemakings. When the assessment is complete, the CFPB anticipates that it will issue an assessment report not later than October 3, 2020.

This assessment must address, among other relevant factors, the TRID Rule’s effectiveness in meeting the purposes and objectives of title X of the DFA and the specific goals of the TRID Rule as stated by the CFPB.

The DFA set forth the following two goals for the TRID Rule:

- To facilitate compliance with the disclosure requirements of TILA and RESPA, and
- To aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures

The CFPB stated the following goals when it issued the final TRID Rule to reflect the goals set forth in the DFA. In promulgating the TRID Rule, the CFPB sought to:

- Aid consumers in understanding their mortgage loan transactions
- Facilitate cost comparisons, and
- Assist consumers in making decisions regarding their mortgage loans, including helping consumers decide whether they can afford a loan as offered

By combining the TILA and RESPA disclosures, the TRID Rule also sought to identify and reconcile inconsistencies between TILA and RESPA requirements to reduce regulatory burdens.

Comments

The CFPB is requesting comments on, among other questions and issues:

- The feasibility and effectiveness of the assessment plan
- Recommendations to improve the assessment plan, and
- Recommendations for modifying, expanding, or eliminating the TRID Rule

Comments, identified by Docket No. CFPB–2019–0055, may be submitted by any of the following methods:

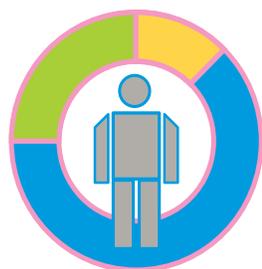
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions there for submitting comments.
- *E-mail:* 2019-RFI-TRID@cfpb.gov. Include Docket No. CFPB–2019–0055 in the subject line of the e-mail.
- *Mail/Hand Delivery/Courier:*

Comment Intake – TRID Assessment

Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

The Request for Information is available at <https://www.govinfo.gov/content/pkg/FR-2019-11-22/pdf/2019-25260.pdf>. Comments are due by January 21, 2020. □



Use of Alternative Credit Data

By William J. Showalter, CRCM, CRP; Senior Consultant

Five federal financial supervisors issued an interagency statement focused on the consumer protection implications of the use of alternative data in credit underwriting, highlighting potential benefits and risks. The Interagency Statement on the Use of Alternative Data in Credit Underwriting has been issued because the agencies are aware of the continuing evolution of automated underwriting and credit score modeling.

The agencies joining in this release 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 Consumer Financial Protection Bureau (CFPB).

The agencies note they recognize that use of alternative data may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Using alternative data may enable consumers to obtain additional products and/or more favorable pricing or terms based on enhanced assessments of repayment capacity. The agencies believe these innovations offer the potential to lower the cost of credit and increase access to credit.

To the extent financial firms (banks and non-banks) are using or contemplating using alternative data, the agencies encourage responsible use of such data. In addition, the agencies are aware that the use of certain alternative data may present no greater risks than data traditionally used in the credit evaluation process.

An example of such use discussed by the agencies is evaluation of borrowers' cash flows. The evaluation of a borrower's income and expenses to help determine repayment capacity is a well-established part of the underwriting process. Improving the measurement of income and expenses through cash flow evaluation may be particularly beneficial for consumers who demonstrate reliable income patterns over time from a variety of sources rather than a single job. Cash flow data are specific to the borrower and generally derived from reliable sources, such as bank account records, which may help ensure the data's accuracy. Consumers can expressly permit access to their cash flow data, which enhances transparency and consumers' control over the data.

The manner in which alternative data are used in relation to traditional data also can provide benefits, assert the agencies. For example, some firms may choose to use alternative data only for those applicants who would otherwise be denied credit in "second look" programs. Such use may improve credit opportunities, but must also comply with applicable consumer protection laws.

The agencies point out that many factors associated with the use of alternative data may increase or decrease consumer protection risks. For example, using alternative data, such as cash flow data, that are directly related to consumers' finances and how consumers manage their financial commitments may present lower risks than other data.

A well-designed compliance management program provides for a thorough analysis of relevant consumer protection laws and regulations to ensure firms understand the opportunities, risks, and compliance requirements before using alternative data. Based on that analysis, data that present greater consumer protection risks warrant more robust compliance management, according to the agencies. Robust compliance management includes appropriate testing, monitoring, and controls to ensure consumer protection risks are understood and addressed.

The interagency statement may be read at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf. □

Required Consumer Compliance Policies

By Dale Neiss, CRCM; Consultant

The Federal Reserve Bank of Minneapolis published a *Consumer Affairs Update* bulletin in October 2018. The bulletin lists acts or regulations that specifically require banks to adopt certain policies and procedures. This information also supplements the Fourth Quarter 2019 Community Bankers for Compliance (CBC) Main Manual topic “Policies.” The bulletin article – found at <https://www.minneapolisfed.org/publications/banking-in-the-ninth/required-consumer-compliance-policies-and-procedures> – follows in its entirety.

Do you know that some consumer protection acts and regulations require banks to have policies and procedures? Policies are one way that management communicates its commitment and expectations related to compliance, while procedures provide personnel with guidance on how to complete transactions or other processes. Generally, banks should adopt and implement policies and procedures that are appropriate for managing their risks. In addition, an act or regulation might specifically require the bank to adopt certain policies and procedures, as shown in the table below.

Examiners have identified some findings relating to these types of regulatory requirements. This article discusses violations of two regulations, their root causes, and key takeaways.

Regulation V

What are the regulatory requirements? As stated in Regulation V [12 C.F.R. 1022.42], banks must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information furnished to credit bureaus.¹ The regulation also states that the policies and procedures must be appropriate to the nature, size, complexity, and scope of the bank’s activities. These policies and procedures must be periodically reviewed and updated as necessary. In an appendix, the regulation states guidelines that banks should consider when developing their policies and procedures.

What factors contributed to the violations? Violations resulted from gaps in change management processes, periodic policy and procedure reviews, and training. For example, a bank’s change management process might not be sufficiently comprehensive in tracking changes or updates to regulations. Also, a bank’s periodic policy and procedure review processes might not be sufficiently comprehensive and detailed. Lastly, the bank might fail to comply with policy and procedure requirements if the person (or persons) responsible for creating or maintaining policies or procedures is not sufficiently trained.

Regulation Z

What are the regulatory requirements? Regulation Z [12 C.F.R. 1026.36(j)], requires written policies and procedures covering a variety of topics: loan originator compensation practices, steering, loan originator registration, and identification requirements.² The policies and procedures must be designed to ensure and monitor compliance. They also must be commensurate with the nature, complexity, size, and scope of the bank’s mortgage lending activities.

What factor led to the violations? Violations typically result from misunderstanding of the regulatory requirement in terms of the bank’s compensation practices. As an example, some banks pay their loan originators’ salaries but do not pay any incentives or commissions. In such cases, the bank might not realize that the bank is still required to have loan originator compensation or steering policies and procedures, often because the person responsible for the bank’s policies and procedures is not familiar with this requirement.

To help ensure compliance, bank management should consider reviewing the bank’s compliance risk management system and addressing any gaps that have resulted or could result in the bank violating policy and procedure requirements stated in consumer protection acts or regulations.

Act/Regulation	Cite(s)	Subject
CC (Availability of Funds and Collection of Checks)	12 CFR 229.19(f)	Establish and maintain procedures designed to ensure and monitor employee compliance with requirements related to funds availability, payment of interest, holds, and related disclosures, for example.
V (Fair Credit Reporting)	12 CFR 1022.42	Implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information furnished to credit bureaus.
X (Real Estate Settlement Procedures Act)	12 CFR 1024.38(a) and (b)	Maintain reasonable policies and procedures to achieve compliance with general mortgage servicing requirements (small servicers are exempt).
Z (Truth in Lending)	12 CFR 1026.36(j)	Establish and maintain written policies and procedures to ensure and monitor compliance with requirements applicable to loan originator compensation practices, prohibited steering, SAFE Act requirements, and name and NMLRS ID disclosures.
G (SAFE Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators)	12 CFR 1007.104	Maintain written policies and procedures to carry out SAFE Act responsibilities.
Federal Deposit Insurance Act	12 USC 1831r-1	Maintain policies for closing branches.

Editor’s Note: Each banking agency has issued its own regulation to implement the statutory requirements regarding proper agency and public notifications when closing a branch. These rules may be found on each agency’s website or at www.ecfr.gov. □

Endnotes

¹ Federal Reserve Consumer Regulation V information in the Second Quarter 2012 *Consumer Compliance Outlook*

² *Regulation Z Small Entity Guide – Loan Originator Rule* dated November 8, 2013



NMLS Annual Renewal Period Underway

The National Mortgage Licensing System and Registry (NMLS) Annual Renewal Period began on November 1 and ends on December 31. According to federal regulations, both institutions and most individual mortgage loan originators (MLOs) must be renewed through NMLS annually.

If the renewal process is not completed by December 31st, the MLO is placed in an “Inactive” registration status both on NMLS and NMLS Consumer Access. Inactive registrations must be reactivated in order to have an “active” registration status.

NMLS requires a \$30 processing fee for each MLO seeking to renew or reactivate a registration. MLOs who are submitted for renewal but did not complete renewal attestation by December 31 need to be reactivated, incurring an additional \$30 processing fee at the time of reactivation. □

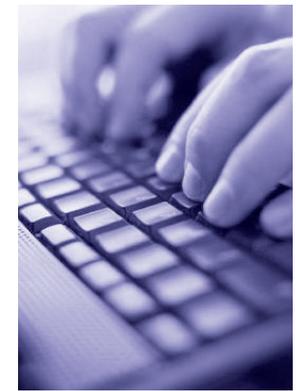
Proposed Remittance Transfer Rule Changes

The Consumer Financial Protection Bureau (CFPB) issued a Notice of Proposed Rulemaking relating to Subpart B of Regulation E, known as the Remittance Rule.

The proposed changes:

- Would allow certain banks and credit unions to continue to provide estimates under certain conditions where it could be economically infeasible for these institutions to provide exact disclosures
- Would increase the safe harbor threshold that determines whether a company makes remittance transfers in the normal course of its business and is subject to the Rule to 500 or fewer transfers annually in the current and prior calendar years. The CFPB said this would reduce the burden on over 400 banks and almost 250 credit unions that send a relatively small number of remittances (less than 0.06 percent of all remittances).
- Requests comment on a permanent exception in the Rule permitting providers to use estimates for transfers to certain countries and the process for adding countries to the safe harbor countries list maintained by the CFPB

Comments are due by January 21, 2020. The proposed rule may be read at <https://www.govinfo.gov/content/pkg/FR-2019-12-06/pdf/2019-25944.pdf>. □



**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>

FinCEN Reissues GTOs

The Financial Crimes Enforcement Network (FinCEN) announced the renewal of its Geographic Targeting Orders (GTOs) that require U.S. title insurance companies to identify the natural persons behind shell companies used in all-cash purchases of residential real estate.

The renewed GTOs are identical to the May 2019 GTOs (see our June 2019 issue) with one modification: the new GTOs will not require reporting for purchases made by legal entities that are U.S. publicly-traded companies. Real estate purchases by such entities are identifiable through other business filings.

The terms of this Order were effective beginning November 12, 2019 and ending on May 9, 2020. It applies to purchases made without a bank loan or other similar form of external financing and paid for, at least in part, using currency or a cashier's, certified, traveler's, personal or business check, a money order in any form, a funds transfer, or virtual currency.

The GTOs cover certain counties within the following major U.S. metropolitan areas: Boston; Chicago; Dallas-Fort Worth; Honolulu; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; and Seattle. □

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.

December 2019

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

January 2020

- Amended thresholds for HMDA coverage and incorporation of 2018 Rule into Regulation C effective January 1, 2020.
- Rural residential appraisal exemption and requirement to review appraisals for compliance with the USPAP effective January 1, 2020.
- Increased thresholds for Regulations Z and M coverage, as well as for exemption from the HPML appraisal requirement, increase effective January 1, 2020.
- Comments on proposed Regulation E remittance transfer rule changes due to CFPB by January 21, 2020.
- Comments on CFPB assessment of TRID Rule due by January 21, 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 use 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].

September 2021

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2021) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2021.

November 2021

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2021.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 7, 2021 (e.g., EST, CST, etc.).

December 2021

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2021.