Mortgage Lending Compliance Issues:

Mortgage Servicing & ECOA Appraisal Rules

Today's Topics

- Important and complicated new rules regarding the servicing of mortgage loans take effect on Jan. 10, 2014
- This session will review the new servicing rules and what exemptions may exist for small servicers
- Under ECOA and Appraisals, new rules also become effective regarding disclosures to applicants in January. We will review the timing and content of these disclosures and procedures.

CFPB January Rulemaking

- In January 2013, the Consumer Financial Protection Bureau (CFPB) issued 8 distinct final rules that apply to consumer mortgage transactions
- The rules amend several existing regulations, including Regulations Z, X and B. Most are effective in January of 2014 though the escrow rule went into effect in June 2013.

CFPB January Rulemaking

- The rules implement the:

1. High-Cost Mortgage and Homeownership Counseling Amendments to TILA
2. Homeownership Counseling Amendments to RESPA
3. Escrow Requirements under TILA
4. Ability to Repay and Qualified Mortgage Standards under TILA

CFPB January Rulemaking

5. Mortgage Servicing Provisions under RESPA & TILA
6. Appraisal Requirements for Higher-Priced Mortgage Loans under TILA
7. Appraisal Requirements under ECOA
8. Loan Originator Compensation Requirements under TILA

CFPB January Rulemaking

- The scope of each of the rules varies considerably. For example, some rules apply to only closed end credit transactions.
- Others apply to both closed end and open end transactions
- Some apply only to transactions secured by the consumer's principal residence, while others apply to any consumer dwelling
- Moreover, some apply only to dwellings secured by real property, while others also apply to personal property used as a dwelling

CFPB January Rulemaking

- Since the release of the initial Final Rules in January, the CFPB has issued additional clarifications and supplemental guidance
- Several rule amendments have been issued between May 16, 2013 and September 13, 2013
- These amendments have made additional changes to ECOA, RESPA and TILA and are primarily set to go into effect in January 2014

Mortgage Lending Compliance Issues:

Mortgage Servicing Rules

Servicing Rules Background

- On January 17, the CFPB issued final rules implementing various mortgage servicing requirements under Dodd-Frank and addressing other perceived deficiencies in the mortgage servicing industry. The Final Rules create new requirements covering nine broad topics.
- Three of these topics arise out of provisions added by the Dodd-Frank Act to the Truth in Lending Act ("TILA") and, therefore, will reside within TILA's implementing regulation, Regulation Z
- The remaining six topics arise out of Dodd-Frank Act amendments to the Real Estate Settlement Procedures Act ("RESPA") and will reside in RESPA's implementing regulation, Regulation X

Servicing Rules Background

- While acknowledging the role that other regulators have played in the standardization of the servicing market through initiatives like the FRB/OCC Servicer Consent Orders and the 49 AG Servicer Settlement, the Bureau views the Final Rules as the culmination of recent efforts to craft national mortgage servicing standards
- in its Final TILA Servicing Rules, the CFPB argues that "the market failure in mortgage servicing provides an economic rationale for establishing nation servicing standards, including standards for disclosures, with a limited number of exceptions

Servicing Rules Background

- With one notable exception, the provisions in the Final TILA Rules discussed below apply not only to a loan's "servicer" but also to the "creditor" (if it still owns the loan) and to any "assignee" (if it purchased and still owns the loan).
- This means that while only one such party need comply, each may be held liable if none comply. The one exception is the rule regarding Prompt Payment Crediting, which applies to "servicers" only.

ARM Servicing Disclosures

- Currently, Reg. Z requires that a consumer be provided with notice of an interest rate adjustment for an ARM at least 25, but no more than 120, calendar days before a payment at a new level becomes due
- The Final TILA Rules will require earlier and more comprehensive notices of ARM payment changes, as described in the following detail

ARM Servicing Disclosures

- Reg Z also requires servicers to provide consumers with an adjustment notice at least once each year during which an interest rate adjustment is implemented without resulting in a corresponding payment change.
- The Final TILA Rules will eliminate that requirement, because the Bureau deems it unnecessary in view of other amendments made by the Final TILA Rules, particularly the enhanced billing statement requirements contained in § 1026.41.

ARM Initial Adjustment Notice

- The Final TILA Rules substantially increase the minimum time for providing advance notice to consumers of an initial interest rate adjustment (whether it results in a payment change or not), from 25 calendar days to 210 (but no more than 240) days before the first payment at the adjusted level is due
- This change means that the notice must be delivered or placed in the mail between 210 and 240 days prior to the due date for the first payment at the newly adjusted rate
- If the first payment at the newly adjusted rate is due within 210 days of consummation, then the initial notice must be provided at consummation

ARM Initial Adjustment Notice

- If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the initial notice, then an estimate, labeled as such, must be provided.
- The estimate must be based on a calculation of the pertinent index or formula within 15 business days prior to the date of the disclosure
- The Final TILA Rules also add model and sample initial notices (Forms H-4(D)(3) and (4)). The contents and format of the notices are prescribed in § 1026.20(d)(2)(i)-(xi), § 1026.20(d)(3) and in the model and sample forms

ARM Payment Adjustment Notice

- The Final TILA Rules change the minimum time for providing advance notice of all adjustments that result in a payment change from 25 to 60 calendar days before payment at a new level is due (including payments that change due to the conversion of an ARM to a fixed-rate transaction)
- The maximum time for advance notice remains the same, 120 days
- In all cases, and as with the initial adjustment notice, a requirement to deliver the notice within a certain timeframe means that it must be delivered or placed in the mail within that timeframe

ARM Disclosure Requirements

- The adjustment notice requirements apply to "creditors, assignees and servicers."
- The Final ARM TILA Rules apply only to closed-end loans secured by the consumer's principal dwelling where the annual percentage rate (APR) may increase after consummation
- The Final TILA Rules preserve Reg. Z's existing exemption of all loans with terms of one year or less

ARM Disclosure Requirements

- Because the disclosure requirements apply only to rate and payment changes occurring pursuant to the loan contract, there need be no disclosures for interest rate adjustments occurring in loan modifications, i.e., in cases where the original loan contract is modified
- The disclosure requirements do, however, apply to any later adjustments occurring pursuant to the new, modified loan contract

Periodic Billing Statements

- The Final TILA Rules implement the Dodd-Frank requirement that the Bureau "develop and prescribe a standard form for" periodic statements
- The Rules require that consumers receive a prescribed periodic statement for each billing cycle. For billing cycles shorter than 31 days (e.g., bi-weekly cycles), a periodic statement covering the entire month may be used
- The statement must be delivered or placed in the mail "within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle

Periodic Billing Statements

- This generally means that statements must be delivered or mailed within 4 days of the close of the courtesy period of the previous cycle
- The Final TILA Rule did not implement the Bureau's proposal that a first periodic statement be sent no later than 10 days before the first payment is due
- Statements may be provided electronically with a borrower's "affirmative consent"

Periodic Billing Statements

- The Final TILA Rules include four sample periodic statement forms (Forms H-30(A), (B), (C), and (D))
- The contents and format of the forms are prescribed in § 1026.41(c) and (d), and in the sample forms
- Note that borrowers more than 45 days delinquent receive additional information

Periodic Billing Statements

- There is an exemption for a “small servicer,” defined to mean a servicer that:
- (i) together with affiliates, services 5,000 or fewer loans in a calendar year; and
- (ii) only services mortgage loans that it (or its affiliate) either originated or now owns
- Note that in the case of a master-servicer/sub-servicer arrangement, the sub-servicer cannot claim the exemption for loans that are master serviced by an entity that does not qualify as a small servicer

Periodic Billing Statements

- This requirement applies to all closed-end loans secured by a dwelling, except:
- (i) reverse mortgages (as defined by § 1026.33(a)),
- (ii) timeshare plans (as defined in the bankruptcy code, 11 U.S.C. § 101(53(D))

Prompt Payment Crediting

- The Final TILA Rules also amend Reg Z to clarify how servicers should handle partial payments
- If the servicer retains the partial payment in a suspense or unapplied funds account (rather than credits or returns it), then the servicer must:
- (1) disclose on the periodic statement the total amount retained in such suspense or unapplied funds account and

Prompt Payment Crediting

- (2) when sufficient funds accumulate to cover a full payment, promptly credit the retained funds to the oldest outstanding payment
- Note that a payment is deemed "full" rather than "partial" — and therefore must be credited promptly in all cases — as long as it covers the outstanding principal, interest, and escrow amounts for a given billing cycle, i.e., even if it fails to include amounts required to cover late fees or other fees assessed by the servicer

Prompt Payoff Statements

- Even before the Final TILA Rules, Reg Z required pay-off statements to be provided "within a reasonable time after receiving" a request, including an oral request.
- The Final TILA Rules clarify the meaning of the phrase "reasonable time" by stating that it may never mean more than 7 business days
- The request also must be in writing

Prompt Payoff Statements

- The requirements regarding the prompt crediting of payments continue to apply only to servicers, but the requirements regarding prompt provision of payoff statements now apply to "creditors, assignees and servicers"
- All requirements apply to both open- and closed-end loans secured by a consumer's principal dwelling
- The requirements regarding prompt payoff statements also apply in instances where the dwelling securing the loan is not the consumer's principal dwelling

Servicing Rules & RESPA

- Unlike the Final TILA Rules, which generally would apply to any "creditor, assignee or servicer" on the pertinent loan, the Final RESPA Rules apply to the "servicer" only.
- Reg. X's definition of "servicer" remains unchanged, except in technical respects relating to the status of the National Credit Union Administration
- The Final RESPA Rules cover "mortgage loans," a new term defined to mean:
- a "federally related mortgage loan,"
- Subject to RESPA's standard exemptions in § 1024.5(b), such as the exemptions for loans on vacant land and for business-purpose loans, but
- Excluding open-end lines of credit (home equity plans)

Servicing Rules & RESPA

- The new term, “mortgage loan,” replaces the term “mortgage servicing loan” throughout RESPA’s servicing provisions, including provisions not otherwise proposed to be amended
- The principal effect of this change is that RESPA’s servicing provisions also will cover subordinate-lien closed-end mortgage loans, because the prior rules — using the “mortgage servicing loan” concept — covered only first-lien closed-end mortgage loans

Servicing Rules & RESPA

- While this provision clearly covers more loans, it also avoids most state law notice requirements
- A specific preemption provision added by the Final RESPA Rules, § 1024.33(d), will preempt state law requirements that require notices to borrowers on transfers of subordinate lien loans
- The Final RESPA Rules make clear, however, that state law provisions requiring notices to insurance companies or taxing authorities are not preempted, and that additional information may be added to a notice if permitted under state law

Forced Placed Insurance

- The Final RESPA Rules provide that where a borrower on a loan with an escrow account fails to pay an amount sufficient to fund hazard insurance premiums, the servicer of the loan will have to advance funds to that escrow account to keep the hazard insurance current, even on delinquent accounts
- (Currently, a servicer is required to advance funds to make hazard insurance and other escrow payments as necessary, but only if the borrower’s contribution to the escrow account is less than 30 days overdue)

Forced Placed Insurance

- Exceptions apply where the servicer has a reasonable basis to believe either:
- (i) that the borrower’s hazard insurance has been cancelled (or was not renewed) for reasons unrelated to nonpayment of premium charges or
- (ii) that the borrower’s property is vacant

Forced Placed Insurance

- The new rule on advancement of funds reduces the number of occasions where a servicer would need to force-place hazard insurance.
- On those occasions, however, the servicer would be required, prior to obtaining the hazard insurance, to have a "reasonable basis to believe" that the borrower has failed to comply with his or her contractual obligation to maintain hazard insurance
- In addition, before charging a borrower for force-placed insurance, the servicer would have to:

Forced Placed Insurance

- Deliver or place in the mail to the borrower a written notice at least 45 days before the premium or any fee is assessed
- Deliver or place in the mail, 30 or more days later, a reminder notice; and
- Not have received verification that the borrower has had hazard insurance in place continuously, taking account of any grace period

Forced Placed Insurance

- Similarly, before charging a borrower for renewing or replacing force-placed insurance, the servicer must:
- Mail or deliver to the borrower a written renewal notice at least 45 days before the premium or any fee is assessed; and
- Not have received verification that the borrower has obtained hazard insurance

Forced Placed Insurance

- Within 15 days of receiving verification that the borrower has hazard insurance in place, a servicer must:
- (1) cancel the force-placed insurance; and
- (2) for any period of overlapping coverage, refund to the borrower all premium charges and related fees paid by the borrower for such period and remove from the borrower's account any assessed charges and related fees for such period

Forced Placed Insurance

- Finally, all charges for forced-placed insurance must be "bona fide and reasonable," meaning "a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law."
- There are exceptions to this rule for charges subject to state regulation and charges authorized by the Flood Disaster Protection Act of 1973

Error Resolution & Information Requests

- Dodd-Frank Act amended RESPA to add new servicer prohibitions regarding borrowers' assertions of error and requests for information
- Specifically, a servicer shall not "fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties"

Error Resolution & Information Requests

- In addition, a servicer shall not fail to provide information regarding the owner or assignee of a borrower's loan within 10 business days of a borrower's request
- To define servicers' obligations to correct errors and respond to information requests, the Bureau adopted §§ 1024.35 and 1024.36 as part of its Final RESPA Rules

Error Resolution & Information Requests

- The Proposed RESPA Rule would have instituted error resolution and information request procedures to address oral communications from borrowers. However, the Final RESPA Rules do not contain these requirements.
- The Final RESPA Rules modify the time limits for responses to error notices and information requests by adding the following requirements:
- Servicers must respond to error notices regarding a failure to provide an accurate payoff balance within 7 days;

Error Resolution & Information Requests

- Error notices regarding alleged violation of the new loss mitigation requirements (regarding foreclosure referral, foreclosure sale, or small servicer requirements respectively) must be provided within 30 days or before the foreclosure sale, whichever is earlier
- Servicers must also provide information regarding the contact information for the owner or assignee of a mortgage within 10 days

Error Resolution & Information Requests

- However, for all other notices and requests, the Final Rules maintain the proposed response deadlines
- The time to respond to all other notices and requests is 30 days (with an extension to 45 days in most cases if, before the end of the 30 day period, the servicer notifies the borrower of the extension and the reasons for the extension)

Error Resolution & Information Requests

- Additionally, the Final RESPA Rules require that:
- Servicers acknowledge receipt of a borrower request or notice of error within 5 days; and
- Servicers provide, at no charge, copies of documents and information relied upon in responding to notices of errors within 15 days of receiving a borrower request for such documents

Error Resolution & Information Requests

- A servicer is not obligated to respond to a notice of error if it “reasonably determines” that the notice of error is:
- Duplicative of one previously made or asserted;
- “Overbroad,” meaning that the servicer cannot reasonably determine what the alleged error is, or the borrower requests an “unreasonable volume” of documents or information; or
- “Untimely,” meaning that the request or notice is delivered more than one year after (i) servicing for the loan was transferred; or (ii) the loan was paid in full.

Information Management Policies & Procedures

- The Final rules require servicers to have policies and procedures for maintaining and managing information and documents related to borrower accounts
- The Rules set forth the five "objectives" and two "standard requirements" for the policies and procedures. The five objectives are:
- Accessing and providing timely and accurate information to borrowers and investors;

Information Management Policies & Procedures

- Properly evaluating loss mitigation applications;
- Facilitating oversight of and compliance by service providers;
- Facilitating the transfer of information during servicing transfers; and
- Informing borrowers of written error resolution and information request procedures

Information Management Policies & Procedures

- The two standard requirements are:

1. Retaining servicing records for a year after the discharge or transfer of a loan; and
2. Meeting certain specified standards for the servicing file

- Even though the Final RESPA Rules require servicers' policies and procedures to be "reasonably designed" to achieve RESPA's "objectives" and to ensure compliance with the "standard requirements," it also provides a safe harbor.

Information Management Policies & Procedures

- Under the safe harbor, a servicer satisfies the requirements as long as it does not engage in a pattern or practice of (i) failing to achieve any of the "objectives" or (ii) failing to ensure compliance with any of the "standard requirements"
- In designing the required policies and procedures, servicers have "flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer's operations," including "the servicer's history of consumer complaints"

Delinquent Borrower Early Intervention

- No later than the 36th day of the borrower's delinquency, the servicer must make "good faith efforts" to establish live contact with the borrower in order to notify the borrower promptly about the availability of loss mitigation options, if appropriate
- The Bureau states that "good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the borrower"

Delinquent Borrower Early Intervention

- By the 45th day after the missed payment's due date, the servicer must provide the borrower with a prescribed written notice
- The servicer does not have to provide the written notice more than once in any 180-day period
- Among other things, the specified content of the notice must include a brief description of any loss mitigation options that may be available, and contact information for counseling organizations
- The Final RESPA Rules include model clauses for the notice (Clauses MS-4(A), (B), and (C)). The full contents of the written notice are prescribed in § 1024.39(b)(2), and in the model clauses.

Delinquent Borrower Early Intervention

- The Rule requires servicers to maintain policies and procedures reasonably designed to:
- Assign a delinquent borrower to specific loss mitigation personnel within 45 days of the borrower's delinquency;
- Make the assigned loss mitigation personnel available to the borrower by phone to assist with available loss mitigation options until the borrower has made, two consecutive mortgage payments in accordance with the terms of a loss mitigation agreement;
- Provide the borrower with accurate information about prescribed matters, including loss mitigation options; and
- Allow timely retrieval and access to borrower records, including all documents submitted by borrower

Foreclosure Restrictions

- The Bureau prohibits servicers from initiating the foreclosure process unless a borrower is more than 120 days delinquent
- Once a borrower is 120 days delinquent, a servicer may initiate foreclosure unless the borrower has submitted a complete loss mitigation application, in which case the servicer must complete the review and appeal procedures before starting the foreclosure process
- A servicer also cannot commence the foreclosure process if a borrower is performing under a loss mitigation agreement

Foreclosure Restrictions

- if a borrower submits a complete loss mitigation application by the applicable deadline, a servicer must complete the loss mitigation procedures before proceeding to a foreclosure judgment, obtaining an order of sale for the property, or conducting a foreclosure sale
- The Bureau also has clarified that proceeding to a foreclosure judgment includes filing a dispositive motion, such as a motion for a default judgment, judgment on the pleadings, or summary judgment, which may result in the issuance of a foreclosure judgment

Foreclosure Restrictions

- If such a motion is pending when a servicer receives a complete loss mitigation application, the servicer must take reasonable steps to avoid a ruling on such motion until completing the loss mitigation procedures
- The servicer cannot proceed with a foreclosure sale if a borrower is performing under a trial modification or other agreed upon loss mitigation option
- The Bureau is also implementing procedures applicable to the evaluation of complete loss mitigation applications submitted by borrowers less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale

Foreclosure Restrictions

- The Final RESPA Rules implement a series of timelines that provide different loss mitigation processes at certain stages of the foreclosure process. These requirements are:
- For any loss mitigation application received 45 days or more before a foreclosure sale, a servicer, within 5 days (excluding legal public holidays and weekends) of receipt and in writing, must acknowledge the application and provide notice of any additional information required to complete it;
- For any application received more than 37 days before a foreclosure sale, a servicer must evaluate any complete application with 30 days;

Foreclosure Restrictions

- For any complete loss mitigation application received 90 days or more before a foreclosure sale, the servicer must provide the borrower at least 14 days to accept or reject a loss mitigation offer;
- If a servicer receives a complete loss mitigation application less than 90 days before a foreclosure sale but more than 37 days before a foreclosure sale, the servicer must provide the borrower at least 7 days to accept or reject a loss mitigation offer; and
- A servicer must comply with the appeal process for any complete loss mitigation application received 90 days or more before a foreclosure sale

Foreclosure Restrictions

- Under the Final RESPA Rules, a servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer must state in its notice of denial:
- (i) the specific reasons for its determination for each such modification program; and
- (ii) that, if the application was received 90 days or more before foreclosure sale, the borrower may appeal

Foreclosure Restrictions

- Additionally, the denial letter also must describe the deadline set by the servicer for the appeal (which must be at least 14 days after providing the notice of denial) and any requirements for making the appeal
- Appeals must be reviewed by different personnel than those responsible for evaluating the application
- Within 30 days of a borrower making an appeal, the servicer must provide a notice to the borrower stating the servicer's determination. That determination would not be subject to any further appeal, and the servicer would not be obligated to consider any second loss mitigation application

Foreclosure Restrictions

- The Final RESPA Rules add § 1024.41(j), which states
- (i) that a small servicer may not initiate foreclosure proceedings unless a borrower is more than 120 days delinquent, and
- (ii) that a small servicer must not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing under the terms of a loss mitigation agreement

Mortgage Lending Compliance Issues:

Mortgage Servicing Rule Amendments

Servicing Amendments

- Servicing-related amendments to the January 2014 rules were issued by the CFPB on July 10th and September 13th
- These amendments primarily relate to clarifications regarding the Rule's requirements as well as the nature and timing of notices and disclosures

Servicing Amendments: July 2013

- ***Preemption of state law***
- The Amendments respond to questions about the extent to which the loss mitigation and other requirements adopted under the Real Estate Settlement Procedures Act preempt State mortgage servicing and foreclosure laws
- Specifically, the Bureau states that, although State laws that are inconsistent with the Bureau's requirements may be preempted, State laws that give greater protection to consumers are not

Servicing Amendments: July 2013

- ***New notice under 12 CFR § 1026.20(d).***
- The mortgage servicing rules require a new notice 210 to 240 days before the first payment is due after the first interest rate adjustment on an ARM
- The Bureau states in the Amendments that servicers will not be required to provide this notice when that payment is due 209 or fewer days after the effective date (i.e., on or before August 7, 2014)

Servicing Amendments: July 2013

- ***Revised notice under 12 CFR § 1026.20(c).***
- Under the current § 1026.20(c), a notice is required 25 to 120 days before the first payment is due after an interest rate adjustment causing a corresponding change in paymen.
- The mortgage servicing rules revise the content of the § 1026.20(c) notice and require that it be provided 60 to 120 days before the new payment is due

Servicing Amendments: July 2013

- *Exemptions for Small Servicers.*
- A servicer that services 5,000 or fewer mortgage loans that it or an affiliate originated or owns is a "small servicer" and therefore exempt from certain requirements in the mortgage servicing rules, including periodic statements and some of the requirements regarding loss mitigation and lender-placed insurance.
- The Amendments clarify which loans must be considered when making this determination. In particular, all dwelling-secured closed-end consumer credit transactions must be considered (not just federally related mortgage loans) as well as loans serviced by an affiliate of the servicer.

Servicing Amendments: September 2013

- *First Notice or Filing in Foreclosure Process.*
- the CFPB adopted an interpretation of "first notice or filing" that varies with the type of state foreclosure process:
- In judicial foreclosure states, the first notice or filing is the complaint or other document filed with the court to commence the foreclosure proceeding.
- In non-judicial foreclosure states, the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process.

Servicing Amendments: September 2013

- *First Notice or Filing in Foreclosure Process.*
- In all other states, the first notice or filing is the first document that establishes, sets, or schedules the foreclosure sale date
- The CFPB specifically stated that a breach letter, notice of right to cure, or other document is not the "first notice or filing" solely because it must be included as an attachment to a document that is subsequently filed, recorded, published, or otherwise used to start the foreclosure process

Servicing Amendments: September 2013

- *Incomplete Loss Mitigation Applications.*
- The rule adopted by the CFPB in January 2013 would have required servicers to review a borrower's loss mitigation application within five business days and provide a notice informing the borrower that either:
- (1) the application is complete; or
- (2) the application is incomplete and the borrower should submit specified information by the earliest of four specific dates. The rule issued in January also generally prohibited a servicer from offering the borrower any loss mitigation option until the application is complete and from requesting additional information after having informed the borrower that the application is complete.

Servicing Amendments: September 2013

- *Incomplete Loss Mitigation Applications.*
- The Amendments generally allow servicers to offer a borrower a short-term forbearance program even if the borrower has not yet submitted sufficient information to complete the application for all loss mitigation options.
- Furthermore, in response to concerns from industry and consumer advocates that the proposed exception was too narrow, the CFPB expanded it to cover forbearance programs of up to six months (as opposed to the proposed limit of two months).

Servicing Amendments: September 2013

- *Reasonable date to complete application.*
- When a servicer notifies a borrower that additional information is needed to complete an application, the notice must state what additional information is needed and provide a "reasonable date" by which the consumer should provide that information.
- In response to industry concerns about the ambiguity of both the current and proposed methods for determining the "reasonable date," the CFPB adopted an amendment providing that the servicer must disclose the date that "preserves the maximum borrower rights" under the rule based on the following "milestones":

Servicing Amendments: September 2013

- *Reasonable date to complete application.*
- 1. The date by which any document or information previously submitted by the borrower will be considered state or invalid
- 2. Day 120 of the delinquency
- 3. Day 90 before a foreclosure sale
- 4. Day 38 before a foreclosure sale
- However, if it would be "impracticable" for the borrower to obtain and submit the necessary information by the upcoming milestone (e.g., the milestone is less than 7 days from the request for the information), the servicer should generally disclose the date of the next milestone.

Mortgage Lending Compliance Issues:

ECOA Appraisal Rules

ECOA Appraisal Rule

- The CFPB issued a final rule that amends the Equal Credit Opportunity Act (ECOA) to require creditors to provide applicants with copies of appraisals and other written valuations conducted as part of the credit process
- Specifically, the Final Rule requires creditors to provide residential mortgage loan applicants with a copy of any and all appraisals and other written valuations developed in connection with an application for closed or open-end credit that is to be secured by a first lien on a dwelling

ECOA Appraisal Rule

- The practical import of this Final Rule is that creditors will need to ensure that their systems and procedures ensure that any time an appraisal or valuation is conducted or obtained for an application for credit, the borrower is provided both notice of the right to a copy, and the actual copy itself, of such appraisals or valuations
- The requirements of the Final Rule will become effective on January 18, 2014

ECOA Appraisal Rule

- Previously, creditors were required to provide applicants with copies of appraisal reports only upon written request from the borrower
- Under the Final Rule, creditors must:
- (i) provide a disclosure that notifies applicants, within three business days of receiving an application, of their right to receive a copy of any appraisals or other written valuations; and
- (ii) actually provide a copy of the appraisals and/or other written valuations to the applicant, regardless of whether the consumer requests them and regardless of whether the credit is extended or denied, or the application is incomplete or withdrawn

ECOA Appraisal Rule

- Regarding the disclosure requirement, creditors must mail or deliver a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application
- Sample language for this notice was developed by the CFPB as part of the rulemaking and is provided in the Appendix to Regulation B

ECOA Appraisal Rule

- With respect to providing the actual appraisals, creditors must provide copies not only of appraisals but also of other written valuations (defined as any estimate of the value of a dwelling developed in connection with an application for credit)
- As a result, this requirement covers broker price opinions and automated valuation models created in connection with a covered transaction

ECOA Appraisal Rule

- The requirements apply where credit will be secured by a first lien on a dwelling, which is defined as a residential structure that contains one-to-four units whether or not that structure is attached to real property, and apply regardless of whether the dwelling will be owner-occupied
- The requirements also apply to any application for renewal of an existing extension of credit to the extent that the creditor develops appraisals in connection with the renewal
- The rule further prescribes the timing of the provision of copies of appraisals

ECOA Appraisal Rule

- Copies must be provided promptly upon completion, or three business days prior to consummation, whichever is earlier
- Applicants may waive this timing requirement and agree to receive any copy at or before consummation
- In the event that an applicant waives the timing requirement and the transaction is not consummated, the creditor must provide the copies no later than 30 days after the creditor determines that the transaction will not be consummated

ECOA Appraisal Rule

- Any waiver generally must be obtained at least three business days prior to consummation (meaning a creditor cannot obtain a waiver after-the-fact in the instance of later discovering that the copy of the appraisal was not timely provided)
- The disclosures and copies required to be given under the rule may be provided in electronic form
- Finally, creditors may not charge applicants for providing the first copy of any appraisal report under the Final Rule, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the performance of the appraisal as well as subsequently requested copies of the appraisal report

Mortgage Lending Compliance Issues:

Mortgage Servicing & ECOA Appraisal Rules

Community Lending Solutions LLC
Consulting Services