

Consumer Regulatory Changes

**Federal Reserve Board
Division of Consumer and Community Affairs
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Overview

HMDA – Hearings

Mortgage Rulemakings – Regulation Z (Truth in Lending)

1. Phase 1 Proposed Rule to Improve Disclosures for Mortgages and HELOCs (August 2009)
2. Final Rule on Originator Compensation
3. Phase 2 Proposed Rule -- Reverse Mortgages and Rescission
4. Final Rule on Notice of Loan Transfer
5. Interim Rule for MDIA-required disclosures of highest rate and payment
6. Proposed Rule Implementing Higher Threshold for Escrows on Jumbo Loans

Dodd-Frank Wall Street Reform & Consumer Protection Act – Mortgage Provisions (Title XIV)

EFTA – Legislation and Rulemakings

Home Mortgage Disclosure Act (HMDA) Regulation C

Public Hearings

- Federal Register notice of hearings and request for public comment published on June 21, 2010
- Hearing Dates /Locations
 - July 15 — Atlanta
 - August 5 — San Francisco
 - September 16 — Chicago
 - September 24 — Washington, D.C.

HMDA

Outreach Calls and Meetings with Stakeholders

- Data users/researchers
- Consumer advocates
- HMDA reporters (lenders)
- Other agencies

HMDA – Major Issues

Data Elements

- Add information to current HMDA data
 - Reform legislation added over a dozen new fields
 - Includes credit score, property parcel number, applicant age, “universal loan identifier,” property value, others
 - Privacy concerns to be balanced against additional data

HMDA – Major Issues (continued)

- Modify or delete information?
- Coverage
 - Add other reporters (such as mortgage brokers and non-lender purchasers)
 - Streamline coverage test for existing reporters
- Scope
 - Add other loan types (HELOCs, reverse mortgages, equity loans)

HMDA – Major Issues (continued)

- Preapproval Programs
 - Continue reporting?
 - Used by lenders?
- Other technical/compliance issues and emerging issues in the market

Board's web page for information about HMDA hearings:

http://www.federalreserve.gov/communitydev/hmda_hearings.htm

Regulation Z (Truth In Lending Act) Mortgage Transactions

5 Federal Register Notices Issued on Monday August 16, 2010

- 2 Final Rules
- 1 Interim Final Rule
- 2 Proposals

View Press Release and Notices at:

<http://www.federalreserve.gov/newsevents/press/all/2010all.htm>

Regulation Z Mortgage Transactions (continued)

- Loan Originator Compensation (Final Rules)
- Phase 2 of the Federal Reserve's Comprehensive Review of TILA's Mortgage Rules (Proposed Rules)
- Mortgage Transfer Notices (Final Rules)
- MIDIA: Interim Rules for Loans with Variable Rates or Payments (Interim Final Rules)
- Jumbo Loans: Revised Rate Trigger for Escrow Account Requirement (Proposed Rules)

Brief Review of 2009 Mortgage Proposal (Regulation Z)

Phase One

- In August 2009, the Board proposed changes to Regulation Z provisions covering mortgages, including HELOCs
- Received 6,000 comment letters on the closed-end proposal
 - Including several thousand form letters from brokers opposing the proposed rules on originator compensation
- Proposal covers closed-end and home-equity lines of credit
- Timing, format and content of disclosures would be changed. Many changes are based on extensive consumer testing.

Summary of 2009 Proposal for Closed-End Mortgage Loans

- The APR would be revised to include most fees and settlement costs (“all-in” APR)
- A graph would show consumers how their APR compares to the average rate offered to borrowers with excellent credit
- Final TILA disclosures would be required at least 3 days before consummation in all cases (not just when APR changes from the early disclosure)

Summary of 2009 Proposal for Home Equity Lines of Credit (HELOCs)

Provided with the application:

- The lengthy, generic “program disclosure” currently provided with the application would be replaced with a new, one-page disclosure summarizing key information and risks concerning HELOCs
- Consumer testing: consumers could not use the generic program disclosures; too detailed
- New disclosure proved substantially more meaningful and easier for consumers to use

New Early Disclosure for HELOCs

Provided within 3 Days after receiving the consumer's application:

- Creditors would be required to give the consumer disclosures tailored to the actual credit terms for which the consumer qualifies
 - Currently, transaction-specific disclosures not required until account opening
- These would provide information about costs and risks in a tabular format that consumers found easier to use
- Table: modeled after credit card disclosures

HELOCs (continued)

- At account opening, creditors would provide final disclosures in the same tabular format, to facilitate comparison with the earlier disclosures
- During the HELOC plan, creditors would provide enhanced periodic statements--showing the total amount of interest and fees charged for the statement period and the year to date
- Although changes to HELOCs are limited by law—if there are changes in terms, creditors would have to notify consumers at least 45 days in advance

HELOCs (continued)

- The new HELOC rules would also clarify that creditors are prohibited from terminating an account for delinquency until the payment is more than 30 days late

Proposed Rules on Loan Originator Compensation

August 2009

- Payments received by brokers or loan officers (yield spread premiums) may not be based on the rate, or other terms or conditions
- Solicited comment on compensation that is based on the loan amount
- Originators that receive compensation directly from a consumer would be prohibited from receiving compensation from any other source

Proposal on Loan Originator Compensation (continued)

- Prohibition on Steering
 - Would prohibit originators from “steering” consumers to lenders offering less favorable terms to increase the originator’s compensation
- Proposed safe harbors--offering the loan options:
 - with the lowest rate and second lowest rate for which the consumer qualifies
 - with the lowest origination points/fees and discount points

Final Rules on Loan Originator Compensation and Steering—August 16, 2010

- Final Rules protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices
- Effective date is April 1, 2011
 - Delayed to provide time for lenders and originators to develop new business models, implement systems changes, and train personnel

Final Rule on Originator Compensation (continued)

The Dodd-Frank Wall Street Reform and Consumer Protection Act:

- Also restricts practices concerning loan originator compensation
- Includes provisions similar to the Board's final rules
- But also addresses other practices not covered by the Board's rules
- The Board plans to implement the legislative provisions in a future rulemaking, with opportunity for public comment

Final Rule on Originator Compensation (continued)

- Final rules apply to all persons who originate loans, including
 - Mortgage brokers and the companies that employ them
 - Loan officers employed by depository institutions and other lenders
- Apply to closed-end loans secured by a consumer's dwelling

Final Rule on Originator Compensation (continued)

- Prohibits payments to the loan originator that are based on the loan's interest rate or other terms. Compensation that is based on a fixed percentage of the loan amount is permitted.
- Prohibits mortgage broker or loan officer from receiving payments directly from a consumer while also receiving compensation from the creditor or another person.
- Prohibits originator from “steering” a consumer to a lender offering less favorable terms in order to increase the broker's or loan officer's compensation.

Final Rule on Originator Compensation (continued)

Provides a safe harbor to facilitate compliance with the anti-steering rule.

A transaction is covered by the safe harbor if:

- The consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest (that is, a fixed rate loan, adjustable rate loan, or a reverse mortgage); and

Final Rule on Originator Compensation (continued)

- The loan options presented to the consumer include the following:
 - (1) The lowest interest rate for which the consumer qualifies;
 - (2) The lowest amount for points and origination fees; and
 - (3) The lowest rate for which the consumer qualifies for a loan with no risky features (e.g., prepayment penalty, negative amortization, or a balloon payment in the first 7 years).

Comprehensive Review of Regulation Z Mortgage Rules

Phase 2 Proposed Rules

August 2010

Proposed Rules for Reverse Mortgages

- Complex products available to older consumers, some of whom may be more vulnerable to abusive practices
- To help consumers understand these complex products, creditors would be required to provide improved disclosures that explain particular features unique to reverse mortgages

Enhanced Reverse Mortgage Disclosures

- At application, creditors would provide a new, two-page disclosure which highlights in simple language the basic features and risks of reverse mortgages
- Within 3 days after receiving an application, creditors would provide transaction-specific disclosures reflecting the actual terms of the reverse mortgage being offered
 - Must be presented in a tabular format that consumers have found easier to use
- At least 3 days before closing, must provide final disclosures in the same format, to facilitate comparison with the earlier disclosures

Reverse Mortgage Advertising

- Creditors also must ensure that their advertisements for reverse mortgages are accurate and balanced
- For example, an advertisement that states that a reverse mortgage “requires no payments” must also clearly disclose the fact that borrowers must pay taxes and required insurance

Prohibited Practices for Reverse Mortgages

- **Anti-Tying:** Creditors would be prohibited from conditioning a reverse mortgage on the consumer's purchase of another financial or insurance product, such as annuities or long-term care insurance.
- **Counseling:** To help ensure consumers understand these complex products before they become obligated, consumers would be required to receive counseling about reverse mortgages:
 - Before any nonrefundable fee can be imposed (except a fee for the counseling itself)
 - Before the loan can be closed

Reverse Mortgages (continued)

- To ensure that the reverse mortgage counseling is unbiased, creditors would be prohibited from:
 - Steering consumers to specific reverse mortgage counselors, or
 - Compensating counselors or counseling agencies

Other Provisions of the Proposal

The consumer's right to rescind:

- A consumer generally has three business days after closing to rescind certain home-secured loans
- This right may be extended for up to three years if the creditor fails to provide the consumer with certain disclosures or the notice of the right to rescind

Rescission (continued)

The proposed revisions would:

- Simplify and improve the notice of the right to rescind provided to consumers at closing;
- Revise the list of disclosures that, if not properly made, can trigger an extended right to rescind, to focus on disclosures that testing shows are most important to consumers; and
- Clarify creditors' obligations when the extended right to rescind is asserted, to reduce uncertainty and litigation costs.

Other Provisions Related to Home-Secured Credit

The proposal also would:

- Ensure that consumers receive new disclosures when the parties agree to modify the key terms of an existing mortgage loan
- Ensure that for closed-end mortgage loans, consumers have time to review their loan cost disclosures before they become obligated for any fees (other than a credit report fee), by requiring lenders to refund the fees if the consumer decides to withdraw the application within three days after they receive the disclosure

Other Provisions

Other provisions have been proposed to:

- Clarify that when a consumer requests information from the consumer's loan servicer about the owner of the loan, the servicer must provide the information within a reasonable time after the request, which generally would be 10 business days
- Revise the definition of "higher-priced mortgage loans," which are subject to special protections for subprime loans, to ensure that prime loans are not improperly classified as such loans

Other Provisions (continued)

The proposed rules would also:

- Conform advertising rules for HELOCs to rules adopted in 2008 for closed-end mortgage loans; and
- Revise the disclosure rules related to credit insurance and debt cancellation and suspension products to ensure that consumers are fully informed of the costs and risks of these products.

Mortgage Transfer Notices (Final Rules)

- Implement statutory amendment to TILA requiring that consumers receive notice when their mortgage loan has been sold or transferred
- New disclosure requirement became effective in May 2009, upon enactment of the Helping Families Save Their Homes Act
- Under that Act, a purchaser or assignee that acquires a mortgage loan must provide the required disclosures in writing within 30 days

Mortgage Transfer Notices (continued)

- To provide compliance guidance and greater certainty on the new requirements, the Board published interim rules in November 2009, which were effective immediately
- Final rules are substantially similar to the interim rules
- Covered parties may continue to follow the November 2009 interim rules until the mandatory compliance date for the final rules, which is January 1, 2011

MIDIA: Interim Rules for Variable Rate and Payment Loans (Interim Final Rules)

- Interim final rule implements provisions of the Mortgage Disclosure Improvement Act (MDIA) that require lenders to disclose how borrowers' regular mortgage payments can change over time
- Seeks to ensure that mortgage borrowers are alerted to the risks of payment increases before they take out mortgage loans with variable rates or payments

MDIA (continued)

- Lenders' cost disclosures must include a payment summary in the form of a table, stating:
 - The initial interest rate together with the corresponding monthly payment;
 - For adjustable-rate or step-rate loans, the maximum interest rate and payment that can occur during the first five years and a "worst case" example showing the maximum rate and payment possible over the life of the loan; and
 - The fact that consumers might not be able to avoid increased payments by refinancing their loans.

MDIA (continued)

- Lenders also must disclose certain features, such as balloon payments, or options to make only minimum payments that will cause loan amounts to increase
- Lenders must comply with the interim rule for applications they receive for closed-end mortgage loans on or after January 30, 2011 (the statute's effective date)
- May provide disclosures that comply with the interim rule before that date
- Board is soliciting comment on the interim rules for 60 days

Jumbo Loans: Revised Rate Trigger for Escrow Account Requirement (Proposed Rules)

- Proposed rule would revise the escrow account requirements for higher-priced loans
- Implements a provision of the Dodd-Frank Act
- Would increase the annual percentage rate (APR) threshold used to determine whether an escrow account is required for property taxes and insurance for first-lien, jumbo loans (loans exceeding the conforming loan-size limit for purchase by Freddie Mac)

Jumbo Loans (continued)

- Currently, creditors must establish escrow accounts for first-lien loans if a loan's APR is 1.5 percentage points or more above the applicable prime offer rate
- Under the Dodd-Frank Act, for jumbo loans the escrow requirement would apply only if the loan's APR is 2.5 percentage points or more above the applicable prime offer rate
- The APR threshold for non-jumbo loans remains unchanged

Jumbo Loans (continued)

- The Dodd-Frank Act includes other provisions concerning escrow accounts, including new disclosure requirements, which will be implemented in a separate rulemaking
- The proposed change would not affect the APR threshold used to determine whether a jumbo loan is subject to the other protections that the Board adopted for higher-priced loans in 2008 (including requirements for determining consumers' repayment abilities and restrictions on prepayment penalties)
- 30-day comment period

Dodd-Frank Act: Mortgage Originator Compensation -- Section 129B

- Prohibits compensation to mortgage originators
 - That is based on loan terms, except the loan amount
 - From any person, if the consumer has made any upfront payment in connection with the loan, including discount points
- Requires the Board to issue rules prohibiting steering consumers to unaffordable loans, predatory loans, and “non-qualified” loans

Dodd-Frank Act Sections 1401-1405

Mortgage Origination Compensation (continued)

- Requires the Board to issue rules that prohibit steering consumers to unaffordable loans, predatory loans, and “non-qualified” loans
- Subjects mortgage originators to civil liability for violations of Section 129B
- “Mortgage Originator” includes mortgage brokers and retail loan officers

Dodd-Frank Act Sections 1401-1405

Dodd-Frank Act: Requirement to Establish Escrows – Section 129D

- Creditors must establish escrow accounts for taxes and insurance, for the first five years of certain first-lien higher-priced loans
 - Higher threshold for jumbo loans
 - Board may exempt certain creditors in rural or underserved areas
- Creditors must provide disclosures, including the estimated monthly amounts to be escrowed, at least 3 business days before consummation

Dodd-Frank Act Sections 1461-1462

Dodd-Frank Act: Appraiser Independence

Section 129E

- Prohibits anyone with an interest in the transaction from influencing the appraiser
- Prohibits creditor who knows of a violation from extending credit, unless the creditor uses reasonable diligence to ensure that the property value is not materially misstated
- Requires lenders and their agents to pay a “reasonable and customary” fee to appraisers

Dodd-Frank Act: Appraiser Independence (continued)

- Directs the Board to issue interim final rules within 90 days of enactment
- Provides that the Home Valuation Code of Conduct shall have no force or effect on the date that the Board promulgates the interim final regulations

Dodd-Frank Act Section 1472

Dodd-Frank Act: Ability to Repay – Section 129C

- A creditor may not make a mortgage loan unless it makes a reasonable and good faith determination that the borrower has a reasonable ability to repay the loan
- The creditor must verify and document income and assets relied on to make the loan
- Applies to closed-end loans secured by a dwelling (but not time-share loans)

Dodd-Frank Act: Ability to Repay (continued)

Presumption of ability to repay is available if the loan is a “qualified mortgage.” Criteria in the statute include:

- Fully amortizing payments; loan term not exceeding 30 years
- The borrower’s debt-to-income ratio or residual income meets standards to be set by the Board
- The total points and fees (except third party closing costs) do not exceed 3 percent of the loan amount

Dodd-Frank Act Sections 1411-1412

Dodd-Frank Act: High-Cost Mortgages

Section 129

- “High-Cost HOEPA Loans” – Loans covered by Section 32 of Regulation Z
- Amends HOEPA’s coverage tests to extend its protections to more loans, including HELOCs
- The APR threshold for first-lien loans is lowered to 6.5 percentage points over the Board’s “average prime offer rate”
 - The current trigger is 8 percentage points over the comparable Treasury security.

Dodd-Frank Act: High-Cost Mortgages (continued)

- The points and fees trigger is lowered to 5 percent of the loan amount for loans of \$20,000 or more (8 percent or \$1,000, for loans under \$20,000)
 - The current points and fees trigger is the greater of 8 percent of the loan amount or \$ 579 (adjusted annually by the Board).
- Adds certain prepayment penalties to the triggers for HOEPA's coverage
- Provides additional protections, such as prohibiting balloon payments and requiring homeownership counseling before a high-cost mortgage is extended

Dodd-Frank Act Sections 1431-1433

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Current Regulatory Activities under the Electronic Fund Transfer Act (EFTA)

- Dodd-Frank Wall Street Reform and Consumer Protection Act
 - Interchange fees
 - Remittance transfers
- Prepaid cards
- Gift cards
- Overdraft services

EFTA: Interchange Fees

- Dodd-Frank Act requires the Board to—
 - Establish standards for assessing whether the amount of any interchange fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction
 - Prescribe regulations prohibiting network and transaction routing exclusivity
- Final rules must be issued by April 2011
- Rulemaking does not transfer to the CFPB

EFTA: Remittance Transfers

- Dodd-Frank Act requires the Board to issue regulations addressing:
 - Disclosures about exchange rates and the amount to be received by the recipient; and
 - Error resolution procedures for remittance transfers.
- Key components of the rules must be issued in final form no later than 18 months after the date of enactment (January 2012)
- Authority transfers to the CFPB

EFTA: Prepaid Cards

- Board staff is considering whether to extend Regulation E protections to general use prepaid cards that serve as account substitutes
 - Payroll cards and government electronic benefit transfer cards already have Regulation E protections, with some modifications
- No mandate in the Dodd-Frank Act
- No deadline for action

EFTA: Gift Cards

- Board issued final rules April 2010, effective in August
- July 21, 2010: Legislation delayed effective date for certain card disclosures from August 22 to January 31, 2011
- On August 11, 2010, Interim Final Rules were issued to implement legislation and delay the effective date
- 30-day comment period; Final rules expected in Fall 2010

EFTA: Overdraft Services

- Board staff is monitoring the marketing of overdraft services as a result of the new opt-in rule that took effect in the Summer of 2010
- Staff is considering whether any additional rules are necessary
- No mandate in Dodd-Frank Act
- No deadline for action