



If you would like assistance preparing for a CFPB examination or determining whether your existing documents, policies, and procedures are compliant with federal consumer protection laws, please contact Suzanne Garwood at 202.344.8046.

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## CFPB: AUGUST ROUNDUP

While Congress took its annual August recess, the CFPB continued to work, burying the mortgage industry under additional proposed mortgage regulations covering a wide range of topics from appraisals to mortgage servicing activities.

### MORTGAGE LOANS

#### Appraisals

The CFPB, on its own and with a number of other federal banking regulatory agencies, issued two proposed regulations relating to appraisals. The first, issued by the CFPB, amended Regulation B to provide for a new appraisal disclosure and impose a duty to provide applicants with a copy of the appraisal (the "ECOA Appraisal Rule"). The second addressed appraisal requirements for "higher risk" mortgages (the "High Risk Appraisal Rule"). Comments for both proposals are due by October 15, 2012.

#### ECOA Appraisal Rule

This proposal covers appraisals as well as valuations (AVMs) for first-lien loans and applies to all lending institutions – including credit unions and independent mortgage lenders.

As proposed, lenders must notify consumers of the right to a copy of the appraisal within three business days of receiving an application. This is true even if the application is incomplete, withdrawn, or denied.

In addition to the new notice requirement, the lender must provide a copy of all written appraisals and valuations promptly (30 days) after receiving an appraisal or valuation, but in no case later than three business days prior to consummation of the mortgage. Consumers are permitted to waive the three-day requirement; however, if the consumer waives he must still be given a copy of all written appraisals and valuations at or prior to closing.

As proposed, lenders are prohibited from charging additional fees for providing a copy of written appraisals and valuations; however, the creditor may impose a reasonable fee to reimburse the creditor for the cost of the appraisal or valuation unless otherwise required by law.

#### Higher Risk Appraisal Rule

The agencies issued this proposal to implement new Section 129H(d) of the Truth in Lending Act as required by Section 1471 of the Dodd-Frank Act. Similar to the ECOA Appraisal Rule, lenders will need to provide new disclosures and copies of the appraisal relating to "higher risk" mortgage loans.

A "higher risk" mortgage loan is a residential mortgage loan secured by a principal dwelling with an APR that exceeds the APOR for a comparable transaction as of the date the interest rate is set by: (i) 1.5 or more percentage points, for a first-lien residential mortgage loan with an original principal obligation amount that **does not exceed**; or (ii) 2.5 or more percentage points that **does exceed**, the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size (jumbo loans), as of the date of such interest rate set; and (iii) by 3.5 or more percentage points for a subordinate lien residential mortgage loan. For purposes of the above definition, a "residential mortgage loan" is any consumer credit transaction that is secured by a mortgage, deed of trust, or



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other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan. Qualified mortgages and reverse mortgage loans that are qualified mortgages are expressly exempt.

As an alternative to the above definition, the Bureau is contemplating substituting a “transaction coverage rate” that mirrors the definition as set forth under HOEPA.

Creditors must provide consumers, at least three days prior to closing, with a copy of any appraisal prepared in connection with a higher risk mortgage along with a statement that any appraisal prepared for the mortgage is for the creditor’s sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense:

“We may order an appraisal to determine the property’s value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.”

Appraisals for higher rate mortgage loans must be performed by a certified or licensed appraiser who conducts an interior physical property visit. The proposal provides a safe harbor for compliance if the creditor: (i) orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal; (ii) certifies through the National Registry that the appraiser who signed the appraiser’s certification was a certified or licensed appraiser in the State; (iii) confirms that certain elements are addressed in the written appraisal; and (iv) has no actual knowledge to the contrary of facts or certifications contained in the written appraisal.

If the seller obtained the property within 180 days at a lower price, the creditor must obtain an additional appraisal from a different certified or licensed appraiser that includes an analysis of the difference in sale prices, changes in market conditions, and any improvements made.

The ECOA Appraisal rule is available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_ECOA\\_proposed\\_rule.pdf](http://files.consumerfinance.gov/f/201208_cfpb_ECOA_proposed_rule.pdf)

A summary of the CFPB’s proposed rule is available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_ECOA\\_plain\\_language\\_summary.pdf](http://files.consumerfinance.gov/f/201208_cfpb_ECOA_plain_language_summary.pdf)

The Higher Risk Appraisal proposed rule can be found here:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_HRM\\_proposed\\_rule.pdf](http://files.consumerfinance.gov/f/201208_cfpb_HRM_proposed_rule.pdf)

A summary of the interagency proposed rule is available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_HRM\\_plain\\_language\\_summary.pdf](http://files.consumerfinance.gov/f/201208_cfpb_HRM_plain_language_summary.pdf)

### Loan Originator Compensation

Just last year the mortgage lending industry settled into a new loan originator compensation regime, which prohibited loan originators from receiving compensation from both a lender and a consumer and from receiving compensation that varies with the terms of the loan. Even though this rule went into effect just over a year ago, Dodd-Frank adopted provisions to revise the landscape and impose new requirements. As such, the CFPB is issuing new proposed regulations on this topic. Highlights from the proposal include:



- **“Loan originator”** is, with respect to a particular transaction, a person who takes an application, then arranges, offers, negotiates, or otherwise obtains an extension of consumer credit for another person in expectation of compensation or other monetary gain or for compensation or other monetary gain. The term generally includes a creditor only if the creditor does not finance the transaction out of its own resources. Additionally, the term includes all creditors for the qualification and NMLS requirements in the proposal.
- **Restrictions on Compensation.** The proposal continues the ban on loan originator compensation based on terms of the loan except that the proposal narrowly allows certain reductions in loan originator compensation to cover unanticipated increases in closing costs from non-affiliated parties.
- **What is a “proxy?”** A factor is a proxy for a transaction term if the factor substantially correlates with a term or terms of the transaction and the loan originator can, directly or indirectly, add, drop, or change the factor when originating the transaction. *Examples:* Loan officer (“LO”) seniority is NOT a proxy; Sale into the secondary market MAY be a proxy.
- **Qualified and Non-Qualified Plans.** As proposed, it would be permissible to pay compensation in the form of a contribution to a qualified plan provided the compensation is not directly or indirectly based on the terms of that LO’s transactions. Bonus and profit-sharing plans, however, will be subject to an alternative proposal, provided the compensation is directly or indirectly based on the terms of that LO’s transactions and: (i) Alternative “A” – not more than 50 percent of the total revenues of the person are derived from the person’s mortgage business; (ii) Alternative “B” - not more than 25 percent of the total revenues of the person are derived from the person’s mortgage business; or (iii) the LO was the originator of five or fewer transactions during a 12-month period.
- **Maximum and Minimum Compensation.** Creditors may set a minimum or maximum amount of compensation. *Example.* A creditor **may** offer a loan originator one percent of the amount of credit extended for all loans the originator arranges for the creditor, but not less than \$1,000 or greater than \$5,000 for each loan. A creditor **may not** compensate a loan originator one percent of the amount of credit extended for loans of \$300,000 or more, two percent of the amount of credit extended for loans between \$200,000 and \$300,000, and three percent of the amount of credit extended for loans of \$200,000 or less.
- **Variations Based on Loan Terms.** Even if the only compensation that a loan originator receives comes directly from the consumer, that compensation may not vary based on the loan terms.
- **Pooling.** The Bureau proposes to make clear that, where loan originators are compensated differently and they each originate loans with different terms, it is not permissible to pool compensation so that the loan originators share in that pooled compensation because each loan originator is being paid based on loan terms, with each loan originator receiving compensation based on the terms of the loans made by the loan originators collectively. This type of pooling arrangement could provide an incentive for the loan originators participating in the pooling arrangement to steer some consumers to loan originators that originate loans with less favorable terms (for example, that have a higher interest rate), to maximize their compensation.
- **Point Banks and Pricing Concessions.** There are no circumstances under which point banks are permissible, and they are prohibited. Additionally, creditors may change loan terms or pricing to match a competitor, avoid triggering high-cost loan provisions, or for other reasons but may **not** affect the loan originator’s compensation.



Notwithstanding the above, the proposal does **not** prohibit loan originators from decreasing their compensation to cover unanticipated increases in non-affiliated third-party closing costs that result in the actual amounts of such closing costs exceeding limits imposed by applicable law (e.g., tolerance violations under Regulation X). This exception does not apply if the creditor or the loan originator knows or should reasonably be expected to know the amount of any third-party closing costs in advance.

- **Loan Originator Qualification Requirements.** The proposal requires employers to: (i) ensure LO meets character, fitness, and criminal background check standards and receives training consistent with duties; (ii) ensure loan originator employees are SAFE Act licensed or registered where applicable; and (iii) required to list license or registration numbers on “key documents.”

An overview of the proposal is available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_detailed\\_summary\\_of\\_proposed\\_loan\\_originator\\_rules.pdf](http://files.consumerfinance.gov/f/201208_cfpb_detailed_summary_of_proposed_loan_originator_rules.pdf)

The proposed rules are available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_tila\\_mlo\\_compensation\\_proposed\\_rule.pdf](http://files.consumerfinance.gov/f/201208_cfpb_tila_mlo_compensation_proposed_rule.pdf)

The SBREFA Panel report on the outreach with small servicers is available at:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_LO\\_comp\\_SBREFA.pdf](http://files.consumerfinance.gov/f/201208_cfpb_LO_comp_SBREFA.pdf)

### Mortgage Servicing

In an effort to fulfill requirements imposed by the Dodd-Frank Act, the Bureau also unveiled new mortgage servicing rules that focused primarily on ensuring that consumers are better informed with respect to the status of their loan and their options regarding loss mitigation and foreclosure avoidance. These regulations are a mix of amendments to Regulations Z and X:

- **Monthly mortgage statements.** Servicers would be required to provide clear billing statements including information on the loan, amount due, and application of past payments.
- **Warnings before interest rate adjustments.** Servicers would be required to provide consumers with a new notice six to seven months before the first rate adjustment, as well as earlier and improved notices before rate adjustments causing an increase in a consumer’s mortgage payments.
- **Force-placed insurance.** Servicers can only charge borrowers for buying insurance on the property when they have a reasonable basis to believe that the borrowers have let their own insurance lapse and have given borrowers two notices estimating the cost of the “force-placed insurance.”
- **Early outreach for delinquent borrowers.** Servicers are expected to intervene early on to get a delinquent borrower back on track.
- **Prompt crediting of payments.** Servicers must apply payments as of the day they are received, and clarify the handling of partial payments.
- **Accurate information management.** Servicers must have reasonable policies to ensure that when borrowers provide documents and information the servicers can find and use them.
- **Error resolution and information requests.** Servicers must address borrower concerns about possible errors within specified timeframes and provide the information



they request.

- **Direct and ongoing access to servicer personnel.** Delinquent borrowers must be able to contact the right people at their servicer to get information and take steps to avoid foreclosure.
- **Evaluation for alternatives to foreclosure.** Servicers would be required to appropriately review borrower applications for loan modifications or other options to avoid foreclosure.

Comments are due on these servicing proposals by October 9.

The proposed mortgage servicing rules for TILA and RESPA are available here:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_tila\\_proposed\\_rules.pdf](http://files.consumerfinance.gov/f/201208_cfpb_tila_proposed_rules.pdf) and  
[http://files.consumerfinance.gov/f/201208\\_cfpb\\_respa\\_proposed\\_rules.pdf](http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf)

A summary of the proposals is available here:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_detailed\\_summary\\_proposed\\_mortgage\\_servicing\\_rules.pdf](http://files.consumerfinance.gov/f/201208_cfpb_detailed_summary_proposed_mortgage_servicing_rules.pdf)

The factsheet about these proposals can be found here:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_mortgage\\_servicing\\_fact\\_sheet.pdf](http://files.consumerfinance.gov/f/201208_cfpb_mortgage_servicing_fact_sheet.pdf)

The SBREFA Panel report on the outreach with small servicers is available here:

[http://files.consumerfinance.gov/f/201208\\_cfpb\\_SBREFA\\_Report.pdf](http://files.consumerfinance.gov/f/201208_cfpb_SBREFA_Report.pdf)

A report about how the Bureau developed the new disclosures and how consumers understood the forms can be found here:

[http://files.consumerfinance.gov/f/201208\\_cfbp\\_ICF\\_Macro\\_Forms\\_Testing\\_Report.pdf](http://files.consumerfinance.gov/f/201208_cfbp_ICF_Macro_Forms_Testing_Report.pdf)

### Cornell Viewing Room

The CFPB announced its Cornell University e-Rulemaking Initiative (CeRI). This partnership is intended to make it easier for the public to comment on proposed rules through a pilot project called Regulation Room (<http://regulationroom.org/>). Regulation Room provides an online environment for people and groups to learn about, discuss, and react to selected proposed rules. The CFPB will not treat individual contributions to the Regulation Room as formal public comments on the CFPB's docket, but expects to incorporate contributions into a public report prepared by CeRI researchers.

### Foreclosure Scams

Although you will not see a reference by name to the Gordon Law Firm on the CFPB's website, arguably it is more than mere coincidence that the Bureau's announcement regarding foreclosure scams appeared at approximately the same time that the Bureau filed its first civil action against the law firm.

According to the complaint, the Gordon Law Firm promised distressed homeowners that the firm would secure loan modifications for them. Allegedly, the law firm then took payment from customers, and did "little or nothing" to help them. This suit is ongoing, and updates are regularly posted by the firm's receiver: <http://www.robbevans.com/html/cegordon.html>

To ensure that consumers are able to properly analyze their foreclosure alternatives, the Bureau offers the following tips on identifying foreclosure scams. Scammers may:





- Ask you to pay high fees upfront to receive services;
- Promise to get you a loan modification;
- Ask you to sign over title to your property;
- Ask you to sign papers that you do not understand;
- Say you should start making payments to someone other than your servicer or lender;
- Claim to be conducting a "forensic audit;" or
- Tell you to stop making mortgage loan payments altogether.

## STUDENT LOANS

### Report Update

The CFPB released an update to the student loan report it issued last month. This update reflects new methodologies that their research team used to calculate the statistics in the report relating to: (i) the proportion of private student loan borrowers who exhausted their Federal Stafford Loan options; and (ii) the extent to which schools certified a borrower's need for a private student loan. Compared to the original estimates, the update shows that the number of borrowers who exhausted their federal options is lower than the original estimate, and the level of school certification is higher.

A copy of the updated report is available here:

<http://www.consumerfinance.gov/reports/private-student-loans-report/>

### Loan Advisory

The CFPB issued a consumer advisory to students expecting to receive scholarship and student loan proceeds onto what appears to be a school-endorsed debit card.

The advisory came on the heels of an announcement by the Federal Deposit Insurance Corporation of its settlements for alleged unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act. Under the settlements, the parties agreed to consent orders and to provide restitution of approximately \$11 million to approximately 60,000 students. In addition, the FDIC has imposed civil money penalties totaling of \$282,000.

The activities at issue were: (i) charging student account holders multiple nonsufficient fund fees from a single merchant transaction; (ii) allowing accounts to remain in overdrawn status over long periods of time, thus allowing NSF fees to continue accruing; and (iii) collecting the fees from subsequent deposits to the students' accounts, typically funds for tuition and other college expenses.

Details regarding the settlement are available here:

<http://www.fdic.gov/news/news/press/2012/pr12092.html>

## MISCELLANEOUS BUREAU ACTIVITIES

### Senior Personnel Changes

**Kelly Thompson Cochran** is serving as the Acting Assistant Director for Regulations at the CFPB. Ms. Cochran previously served as the Deputy Assistant Director for Regulations. As Deputy Assistant Director, she oversaw preparation of the Bureau's proposed and final rules implementing Dodd-Frank Wall Street Reform and Consumer Protection Act provisions



regarding remittances, mortgage servicing, mortgage disclosures, mortgage loan originator compensation, high-cost mortgages, and appraisals.

**Chris Lipsett** joins the Bureau as Senior Counsel in the Office of the Director. Most recently, Mr. Lipsett was a partner in the law firm of Wilmer Cutler Pickering Hale and Dorr. Mr. Lipsett's practice focused on regulatory, compliance, counseling, litigation, and transactional matters in the financial services industry, with an emphasis on credit cards and other consumer products.

**Stephen Van Meter** is Deputy General Counsel. Mr. Van Meter joined the CFPB's Legal Division in June 2011 as Assistant General Counsel for Policy. In that role, he helped to lead the Legal Division's Law and Policy Group, which is responsible for providing legal advice to the Bureau's leadership and mission units on matters relating to consumer protection laws and regulations, administrative law, and the Bureau's authorities and jurisdiction.

**Delicia Reynolds Hand** joins the CFPB as the new Staff Director for the Consumer Advisory Board and Councils. In this capacity she will plan, direct, coordinate, and evaluate the CFPB's advisory boards and councils, including the Consumer Advisory Board, Community Bank Advisory Council, and Credit Union Advisory Council.

## REGULATIONS

### Money Transfer

The CFPB updated its international money transfer rule to make the transfer process easier for institutions that handle 100 or fewer remittances a year. The Bureau concluded that those institutions that consistently conduct 100 or fewer remittance transfers per year do not provide transfers in the "normal course of business" and therefore are not subject to the new requirements. However, if a company that provided 100 or fewer remittance transfers in the previous year provides more than 100 remittance transfers in the current year, the rule provides a reasonable transition period to come into compliance.

This final rule will take effect February 7, 2013 and is available here:  
[http://files.consumerfinance.gov/f/201208\\_CFPB\\_remittance\\_rule.pdf](http://files.consumerfinance.gov/f/201208_CFPB_remittance_rule.pdf)

### Gift Cards

The CFPB is seeking comment on whether certain provisions of unclaimed property laws in Maine and Tennessee relating to gift cards are inconsistent with federal law on gift card expiration dates. Federal law, as set forth in the Electronic Fund Transfer Act (EFTA) and the CFPB's Regulation E, generally prohibits the sale of a gift card that expires sooner than five years after the card is issued, or five years after the date when funds were last loaded onto the card. Nevertheless, unclaimed property laws in Maine and Tennessee provide that certain types of gift cards are abandoned property if they remain unused for a period of two years.

The Notice of Intent to Make Preemption Determination, as submitted to the Federal Register for publication, is available at:  
[http://files.consumerfinance.gov/f/201208\\_CFPB\\_Intent\\_to\\_make\\_preemption\\_determination.pdf](http://files.consumerfinance.gov/f/201208_CFPB_Intent_to_make_preemption_determination.pdf)



## OUTSTANDING FEDERAL REGISTER PUBLICATIONS

<u>Topic</u>	<u>Comment Deadline</u>	<u>Status</u>	<u>Effective Date</u>
Remittances	N/A	Final Rule	February 7, 2013
Mortgage Servicing amending Regulation Z: (i) initial interest rate adjustment notices for ARMs; (ii) periodic statements for residential mortgage loans; and (iii) prompt crediting of payments and response for payoff amounts.	October 9, 2012 (comments on Paperwork Reduction Act due 10/15/12)	Proposed Rule	N/A
Mortgage Servicing amending Regulation X: Requests comment regarding proposed amends to Regulation X to address seven servicer obligations: (i) correct errors asserted by mortgage loan borrowers; (ii) provide information requested by mortgage loan borrowers; (iii) ensure reasonable basis exists to obtain force-place insurance; (iv) establish reasonable information management policies and procedures; (v) provide information about mortgage loss mitigation options to delinquent borrowers; (vi) provide delinquent borrower access to servicer personnel with continuity of contact about the account; and (vii) evaluation of borrowers' application for available loss mitigation options.	October 9, 2012 (comments on Paperwork Reduction Act due 10/15/12)	Proposed Rule	N/A
Appraisals (amendments to Regulation B and higher risk appraisals)	October 15, 2012	Proposed Rule	N/A
Loan originator compensation and steering	October 16, 2012	Proposed Rule	N/A
Preemption of state laws for gift cards	October 22, 2012	Request for Comment	N/A
Integrated Mortgage Disclosures	November 6, 2012 (certain portions close 09/07/2012) (finance charge comments extended to November 6, 2012)	Proposed Rule	N/A
High Cost Mortgage and Homeownership Counseling	November 6, 2012 (certain portions close 09/07/2012)	Proposed Rule	N/A
Seeking public comment on effective financial education approaches	October 31, 2012	Request for Comment	N/A





## UPCOMING REGULATIONS

<u>Topic</u>	<u>Next Regulatory Release</u>	<u>Anticipated Date of Next Activity</u>
Requirements for Escrow Accounts (Regulation Z)	Final Rule	September 2012
Supervision of Larger Depository Institutions and Affiliates	Pre-Rule Stage	September 2012
Restatement of Regulations	Further Action	September 2012
Amendments to TILA and FIRREA Concerning Appraisals	Further Action	October 2012
Business Lending Data (Regulation B)	Pre-Rule Stage	October 2012
TILA Ability to Repay (Regulation Z)	Final Rule	December 2012
Disclosure of Records	Final Rule	December 2012
Registration of Certain Nondepository Covered Persons	NPRM	January 2013
Home Mortgage Disclosure Act (Regulation C)	Pre-Rule Stage	April 2013
Alternative Mortgage Transaction Parity (Regulation D)	NPRM	June 2013
TILA Amendments (i.e., rescission)	TBD	TBD

**Please do not hesitate to contact the attorneys in our CFPB Task Force if you have any questions or concern regarding this update and the potential impacts of CFPB activities on your business.**

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