

# Lenders Compliance Group

Wednesday, July 10, 2013

## CFPB's Mortgage Rules for Readiness

The just released [2013 CFPB Dodd-Frank Mortgage Rules Readiness Guide](#) (Guide) from the Consumer Financial Protection Bureau (CFPB) provides, finally, a set of criteria and preparation procedures for residential mortgage lenders and originators. It is Version 1.0 and, like previously issued guides and manuals, the CFPB will update the Guide periodically, using the results from its field examinations to further enhance the audit methodologies.

Note that it is called a "Readiness Guide." Such documents are not meant to be, and are not, conclusive. Such guides are expected to be sign posts leading the way, a means by which a company may learn of the priorities and exigencies of a regulator's oversight functions. In other words, as the Guide itself declaims: "The Guide summarizes the mortgage rules finalized by the CFPB in January 2013, but it is not a substitute for the rules."

To put a finer point on the use of the Guide, please always remember that only the rules and their official interpretations can provide complete and definitive information regarding their requirements.\*

These rules can be found at <http://www.consumerfinance.gov/regulatory-implementation/>.

Each rule in the Guide also includes a hyperlink with additional information, which includes Small Entity Compliance Guides that may make the rule easier to digest. There are links to videos outlining the main elements of the rule. Furthermore, a convenient hyperlink compendium structure is embedded in the Guide, so that the rule headings are themselves hyperlinks directing the reader to the rule-specific CFPB website page.

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### SECTIONS OF THE GUIDE

#### The Guide consists of the following sections:

- Part I: Summary of the Rules
- Part II: Readiness Questionnaire
- Part III: Frequently Asked Questions
- Part IV: Tools

**Part I (Summary of the Rules)** contains an outline of the eight final rules issued in January 2013 concerning mortgage markets in the United States pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Public Law 111-203, 124 Stat. 1376 (2010) (2013 Title XIV Final Rules).

The rules amend several existing regulations, including Regulation Z, X, and B. Throughout the year, CFPB expects to provide updates to the rules where necessary. Updates will be posted, along with summaries of the changes, on the regulatory implementation CFPB webpage.

The questionnaire in **Part II (Readiness Questionnaire)** is "not intended" to encompass all details of a comprehensive compliance program. This should not be interpreted to mean that the questionnaire is a replacement for the examination procedures or regulations. It is intended to serve as a guide in preparing for implementation of the mortgage rules and in performing a self-assessment. Thus, the questionnaire should be used as a self-assessment in determining a company's progress towards compliance with the new mortgage rules. The questionnaire contains twenty-nine self-assessment questions and numerous subsections. Do not confuse the questionnaire with a proxy examination tool: it will not be added to the Examination Manual. The CFPB views the questionnaire as a "voluntary guide" for preparation. I have no doubt that it will be used by management in their discussions with examiners. The extent of those discussions may be determined by the institution's size, products offered, risk mitigation, risk profile, and other factors, such as the overall strength

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products offered, risk profiles, and other factors, such as the overall strength of the compliance management system.

**Part III (Frequently Asked Questions)** consist of only a two-page set of questions and answers, most of them quite obvious, both in the asking and the answering. Perhaps the most interesting 'question and answer' set is this one:

Question: Will the CFPB coordinate and communicate supervisory activities with other regulatory agencies?

Answer: In accordance with the Dodd-Frank Act and its routine practice, the CFPB will coordinate with other regulators. Regulators will communicate examination plans and findings with each other. When appropriate, the regulators will coordinate examination efforts in order to reduce regulatory burden.

Although the CFPB gave a vaguely worded answer, let's put it this way: the integration of information between the state banking departments and the CFPB and, where applicable, other state and federal agencies, has become (or is becoming) seamless.

Finally, **Part IV (Tools)** is a resource directly, commonly used on many websites to direct the reader to other website locations of interest. This section hosts many hyperlinks, seventeen in total, that cover most of the rules and regulations that the CFPB has promulgated relating to mortgage compliance.

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## SUMMARY OF THE RULES

### Ability-to-Repay and Qualified Mortgage Standards (Regulation Z)

Regulation Z currently prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The final rule implements Sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), which generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan) and establish certain protections from liability under this requirement for "Qualified Mortgages." The final rule also implements Section 1414 of the Dodd-Frank Act, which limits prepayment penalties. Finally, the final rule requires creditors to retain evidence of compliance with the rule for three years after a covered loan is consummated.

[This rule is effective January 10, 2014.](#)

### Escrow Requirements under the Truth in Lending Act (Regulation Z)

Regulation Z currently requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a principal dwelling. The rule implements statutory changes made by the DFA that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. The rule also exempts certain transactions from the statute's escrow requirement. The primary exemption applies to mortgage transactions extended by creditors that operate predominantly in rural or underserved areas, together with their affiliates originate a limited number of first-lien covered transactions, have assets below a certain threshold, and together with their affiliates do not maintain escrow accounts on extensions of consumer credit secured by real property or a dwelling that are currently serviced by the creditors or their affiliates (subject to certain exceptions).

[This rule is effective June 1, 2013.](#)

### High-Cost Mortgage and Homeownership Counseling (Regulation Z) (Regulation X)

The final rule amends Regulation Z (Truth in Lending Act) by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act of 1994 (HOEPA), revising and expanding the tests for coverage under HOEPA, and imposing additional restrictions on mortgages that are covered by HOEPA, including a pre-loan counseling requirement.

The final rule also amends Regulation Z and Regulation X (Real Estate Settlement Procedures Act) by imposing certain other requirements related to homeownership counseling, including a requirement that consumers receive information about homeownership counseling providers.

[This rule is effective January 10, 2014.](#)

### Mortgage Servicing Rules (RESPA) (Regulation X) (TILA) (Regulation Z)

The CFPB amended Regulation X (RESPA) and implemented a commentary that sets forth an official interpretation to the regulation. The CFPB also amended Regulation Z (TILA) and the official interpretation to the regulation, which interprets the requirements of Regulation Z. These final rules implement provisions of the DFA regarding mortgage loan servicing.

Under Regulation X, the final rule implements DFA sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers' obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers' applications for available loss mitigation options. Further, this final rule modifies and streamlines certain existing servicing-related provisions of Regulation X.

Under Regulation Z, the final rule implements DFA sections addressing initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This



final rule also amends current rules governing the scope, timing, content, and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions.

[These rules are effective January 10, 2014.](#)

#### ECOA Appraisals for Higher-Priced Mortgage Loans (Regulation B)

The final rule revises Regulation B to implement an ECOA amendment concerning appraisals and other valuations that were enacted as part of the DFA. In general, the revisions to Regulation B require creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly.

[This rule is effective January 18, 2014.](#)

#### TILA Appraisals for Higher-Priced Mortgage Loans (Regulation Z)

The revisions to Regulation Z implement a new provision requiring appraisals for "higher-risk mortgages" that was added to TILA by the DFA. For mortgages with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) by a specified percentage, the final rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.

[This rule is effective January 18, 2014.](#)

#### Loan Originator Compensation Requirements (Regulation Z)

The final rule implements requirements and restrictions imposed by the DFA concerning loan originator compensation; qualifications of, and registration or licensing of, loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance.

The final rule also revises or provides additional commentary on Regulation Z's restrictions on loan originator compensation, including application of these restrictions to prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements.

At this time, the CFPB is not prohibiting payments to and receipt of payments by loan originators when a consumer pays upfront points or fees in the mortgage transaction. Instead the CFPB is now studying "how points and fees function in the market and the impact of this and other mortgage-related rulemakings on consumers' understanding of and choices with respect to points and fees."

The amendments to § 1026.36(h) were effective on June 1, 2013. This is the provision that prohibits mandatory arbitration clauses and waivers of certain consumer rights.

[All other provisions of the rule will be effective on January 10, 2014](#), unless the CFPB changes the effective date.

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### QUESTIONNAIRE

The questionnaire consists of six sections, as follows:

**Developing an Implementation Plan:** Three self-assessment questions and subsection criteria.

**Policies and Procedures:** Nine self-assessment questions and subsection criteria.

**Training:** Six self-assessment questions and subsection criteria.

**Audit, Compliance Review, Internal Control:** Two self-assessment questions and subsection criteria.

**Complaints:** Four self-assessment questions and subsection criteria.

**Third Party and Vendor Management:** Five self-assessment questions and subsection criteria.

**Some suggestions that I suggest as a method to implement a viable self-assessment.**

1. Management should use a "all hands on deck" approach, a 'tone at the top' attitude of cooperation and commitment to compliance. This must be consider a required project.
2. Be sure to weigh each section equally in any evaluation. The number of self-assessment questions and subsection criteria are not an indication of importance or priority.
3. A team of department managers should be established and given the priority to obtain and detail all aspects of the questionnaire.
4. Follow the "4 P's" review strategy of areas critical to examination preparation – these are the areas to review which we ourselves advocate for risk such engagements: Policy, Processes, Procedures, and Personnel.
5. Produce a self-assessment report to management, at twice each calendar year, that contains the following information:

- CFPB Questionnaire (latest version)

- Ability to process and managing risk, including the adequacy of policies and procedures.
- Appropriateness of strategic and business plans in light of their impact on CFPB exam preparation.
- Responsiveness of strategic and business plans to test results that identify risks that materially affect risk exposure.
- Accuracy and timeliness of management information systems and the entirety of data captured.
- Quality of staffing, and management's capability to manage internal control functions.
- Recommendation of corrective actions for deficient policies, procedures, practices, or other concerns, which include, but are not limited to:
- Adequacy of adherence to policy, processes, procedures, personnel, and credit parameters (i.e., fair lending).
- The Who, What, When, Where, Why – and How! – approach to identifying and mitigating deficiencies.
- Adequacy of audit and examination functions.
- Other matters of significance arising from this review.
- Impact on identified concerns, along with causes and remedies.
- Corrective actions set forth clearly and concisely, with timeframe implementation and back-testing.
- Executive Summary of the actions that management and all relevant staff have taken in the past or will take in the future in order to monitor for CFPB readiness and be prepared for compliance with the CFPB's stated guidelines.

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### LIBRARY



### 2013 CFPB Dodd-Frank Mortgage Rules Readiness Guide

Version 1.0  
July 1, 2013

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\* Jonathan Fox is the President & Managing Director of Lenders Compliance Group



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