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Compliance Insights

A value-added newsletter for clients and friends of OSC

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CFPB Issues Amendments to Final Mortgage Servicing Rule

On August 4, 2016, the Consumer Financial Protection Bureau (CFPB) released final rules, originally proposed in November 2014, amending nine major areas of the Mortgage Servicing Rules. This article summarizes the key amendments. Most of the rules are effective 12-months after publication in the Federal Register. The provisions relating to successors in interest and periodic statements for borrowers in bankruptcy will take effect 18-months after publication in the Federal Register.

I. SUCCESSORS IN INTEREST

The final rule defines "borrower" in RESPA and "consumer"[1] in TILA to expressly include confirmed successors in interest and extends the same rights under the servicing rules in Regulation X, subpart C and 12 CFR §1024.17 (Escrow Accounts), and Regulation Z, regardless of whether the successor in interest has assumed the mortgage loan obligation under state law. The rule also clarifies that confirmation of a successor in interest does not strip transferor borrowers or their estates of any rights or protections under the Mortgage Servicing Rules.

Definition

The amended rule broadens the categories of a successor in interest beyond those persons who acquire an ownership interest upon a borrower's death. Under the amended rule, successors in interest include persons to whom an ownership interest in a property is transferred 1) from a parent or spouse; 2) by devise, descent, or operation of law from a deceased relative; 3) by right of survivorship from a deceased joint tenant; 4) as a result of a divorce, legal separation, and/or property settlement agreement; and 5) into an *inter vivos* trust in which the borrower is and remains a beneficiary.

Confirming Successors in Interest

Under the amended final rules, servicers must promptly provide information in response to any written communication from a potential successor in interest by providing them with a written description of the documents or information the servicer requires in confirming the person's identity and ownership interest in the property. If the servicer has established an address for information requests, a servicer

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1. Note: For ease of reading , this summary uses the term "borrower" throughout.

Complying with Recent Changes to the Military Lending Act Regulation

Lenders that provide consumer credit to active duty Service members, their family members or dependents are gearing up to comply with a final rule that the Department of Defense (DOD) has issued establishing new requirements for most non-mortgage related consumer credit transactions. The Final Rule amends regulation DOD promulgated under the part of the John Warner National Defense Authorization Act for Fiscal Year 2007 called the "Military Lending Act" (MLA). The Final Rule expands coverage of current regulation to include many non-mortgage related credit transactions covered by the Truth in Lending Act (TILA), as implemented by Regulation Z. It provides safe harbor methods for identifying borrowers covered by the Final Rule, prohibits the use of certain practices, and amends the content of the required disclosures. The Final Rule also contains new provisions about administrative enforcement, penalties, and remedies.

COVERED BORROWERS

What Borrowers Does the Final Rule Cover?

Under the Final Rule, the term "covered borrower" includes full-time active duty Service members and those under a call or order of more than 30 days. It also includes National Guard members pursuant to an order to full-time National Guard duty for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, as well as members of a reserve

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INSIDE

Edited by Kirk Stephens, CRCM and Chief Compliance Officer of OSC/Breckenridge Insurance Group, as well as 20-year veteran of the FDIC. He can be reached at: kstephens@breckgrp.com | 678.322.3521

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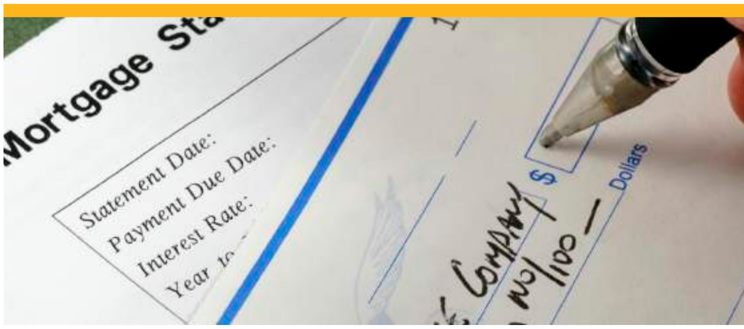

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need only comply with requests received at the established address. Upon receipt of required documents, servicers must promptly make a confirmation determination and provide notification of the determination, or that additional documentation or information is required in order to make a determination. Servicers are required to maintain policies and procedures designed to facilitate compliance with these requirements.

The CFPB declined to create a private right of action or a notice of error procedure for potential successors in interest relating to confirmation determinations, but also declined to provide a safe harbor from Unfair Deceptive Abusive Acts or Practices (UDAAP) claims relating to confirmation determinations.

Privacy Concerns

The rule permits servicers to omit location and contact information and personal financial information (other than information about the terms, status, and payment history of the mortgage loan) when responding to a Notice of Error or Information Requests from confirmed successors in interest. Concurrent with the final rules, the CFPB issued an interpretive rule that constitutes an advisory opinion under the Fair Debt Collections Practice Act (FDCPA). The interpretive rule provides a safe harbor from liability under FDCPA section 805(b) for servicers communicating with a confirmed successor in interest in compliance with Regulations X and Z. Additionally, the final rule permits modifications to the notices to avoid the implication that the successor is liable under the loan.

Disclosures

The final rule gives servicers the option to provide a written notice that explains the confirmed successor in interest's status together with a separate acknowledgment form for the successor in interest to return. A servicer providing such acknowledgment form need not send any further disclosures under the Mortgage Servicing Rules or comply with the live contact requirements until the confirmed successor in interest either assumes the loan obligation or executes and returns the acknowledgment form.

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OSC: REO & Investor Properties

OSC offers competitive property and liability protection for REO and investor-owned properties. With or between renters—or even while rehabbing—the comprehensive coverage available protects these investments for independent landlords, property managers, financial institutions, REITs and property investment groups.

We deliver quick quote to bind capabilities on residential homes (1 to 4 units), condos and small apartments from a top-rated carrier coupled with responsive claims handling when needed. We also cover land contract and seller-financed transactions.

Some of the general liability coverages, conditions and warranties include*:

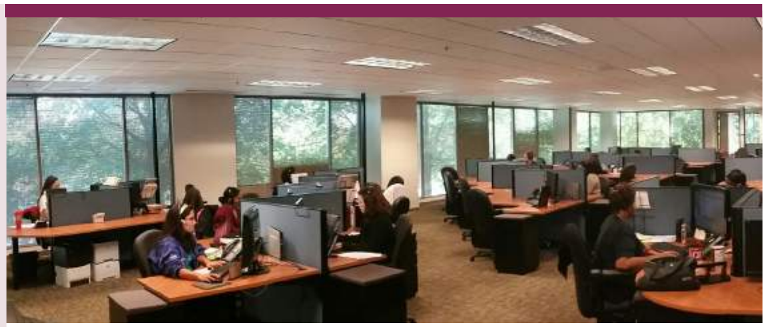
- $1MM each occurrence per property limit
- $2MM per property annual aggregate
- $50,000 in fire damage
- Personal advertising coverage

Property perils include* but are not limited to:

- Loss of rents for 12 months
- Fire, smoke, lightening, explosion
- Windstorm or hail (varied deductible options)
- Theft, vandalism and malicious mischief
- $100,000 building ordinance/law A,B & C
- $100,000 reverse flow of sewers/drains
- Direct loss or damage to apartments from mechanical breakdown or electrical related failure (exclusions apply)

For more information, please contact your OSC representative or: Don Curtis, SVP - dcurtis@oscis.com, Office: 760-342-3525 Cell: 619-994-6669 ■

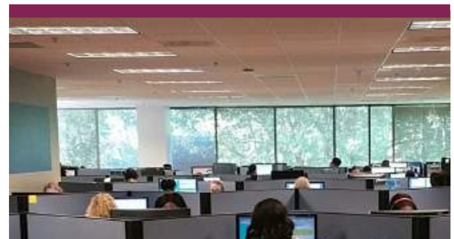
*Please review any policy information carefully for full coverage terms and conditions.



OSC Gets Call Center Makeover!

The Atlanta-area offices of OSC have been renovated to reflect the progressive and collaborative nature of our expert call center, operations, quality control and client services team utilizing cutting-edge technologies. A new open concept floor plan, relocation of our state-of-the-art document processing center, upgrade to our telcom infrastructure, and overall space improvements are being well received by team members and visitors alike.

"These latest office changes are part of the continued investment OSC has made in delivering unparalleled call center customer service and quality document solutions using advanced technology," stated Keith Gilroy, president of OSC. "We appreciate the details in how essential work gets done and the improvements to these spaces are both functional and look great," he added. ■



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The final rule clarifies that servicers generally do not have to send disclosures to a confirmed successor in interest if the servicer is providing the disclosures to another borrower on the account, nor is a servicer required to comply with the live contact requirements for a confirmed successor in interest if the servicer is complying with those requirements with respect to another borrower. If there are multiple confirmed successors in interest, servicers are only required to provide notices to one confirmed successor in interest.

Loss Mitigation

Confirmed successors in interest are entitled to the rights and protections under 12 CFR §1024.41. Servicers may not require loan assumption as a condition of reviewing an application, but may require an assumption as a condition of a loss mitigation offer. Servicers may, but are not required to, evaluate a loss mitigation application from a potential successor in interest. If a servicer complies with the requirements of §1024.41 with respect to a complete application before confirming the status of a successor in interest, the limitation on duplicative requests applies so long as the evaluation of loss mitigation options would not have resulted in a different determination due to the confirmed status. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review until confirmation of status, the servicer must preserve the application and all documents submitted in connection and must review and evaluate expeditiously upon confirming the successor's status.

II. DEFINITION OF DELINQUENCY

The new rule defines mortgage loan "delinquency" as the period of time beginning on the date a payment sufficient to cover principal, interest, and escrow (if applicable) becomes due and remains unpaid and continuing through the date the payment is made. This definition applies to all the servicing provisions that reference delinquency in Regulation X and the periodic statement provisions of Regulation Z. The CFPB added additional comments to clarify that:

- If a servicer applies payments to the oldest outstanding periodic payment, the date of the borrower's delinquency and the 120-day prohibition on foreclosure must advance accordingly.
- If a servicer applies a payment tolerance to a partial payment and treats the payment as current, the servicer may not treat the borrower as delinquent for the purposes of initiating foreclosure.

III. REQUESTS FOR INFORMATION

When a borrower requests information on the owner or assignee of the loan, servicers are permitted to disclose the contact information for Fannie Mae or Freddie Mac as the owner or trustee of the securitization trust without also having to provide the name of the trust, unless expressly requested by the borrower. If Fannie Mae or Freddie Mac is not the owner of the loan or the trustee, the servicer must provide information on the name of the trust and name and contact information of the trustee. If an express request for the specific name or number of the trust or pool is made, the servicer would be required to furnish the name of the trust and the contact information for the trustee.

IV. FORCE-PLACED INSURANCE

The final rule amends the force-placed insurance disclosure and model forms to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, servicers now will have the option to include a borrower's mortgage loan account number on the notices required under the force-placement rules.

V. EARLY INTERVENTION

The final rule adds clarity to the early intervention live contact and written early notice obligations by:

- Making clear that the requirement to make a good faith effort to establish live contact no later than 36 days is a recurring requirement that is triggered after each missed periodic payment or if a borrower remains delinquent after more than one billing cycle. Good faith efforts to establish live contact depend on the length of delinquency.
- Clarifying that the written notice must be sent no later than 45-days after each missed periodic payment but must only be provided once during any 180-day period. Transferee servicers are required to provide the written notice, regardless of whether the transferor servicer provided a written notice to the borrower in the preceding 180-day period unless the transferor servicer provided the written

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FEMA Issues New Version of Standard Flood Hazard Determination Form

FEMA issued a new version of the Standard Flood Hazard Determination Form (FEMA Form 086-0-32) during the summer. According to FEMA, the previous version can be used during a currently undefined transition period.

The new version provides the following changes:

- Section 1, Box 1: Lender name field references Servicer as well.
- Section 1, Box 2: Collateral description field does not include reference to parcel number.
- Section 1, Box 3: Instructions clarify that Lender ID Number is now considered optional.
- Section II.B, Box 3: Includes LOMC Case Number in addition to LOMC date and includes instructions clarifying that this field can remain blank if no LOMC applies to the property.
- Instructions clarify that flood insurance availability in Section II.C is based upon community participation in the NFIP and not on individual building eligibility.
- Instructions do not include a reference to a schedule of buildings or separate determinations for properties with multiple buildings.
- Instructions include a new section advising lenders to contact the applicable regulatory agency for guidance related to the use of the form.

The Standard Flood Hazard Determination Form (SFHDF) is required for all federally backed loans and is used by lenders to determine the flood risk for their building loans. The SFHDF is authorized by the National Flood Insurance Reform Act of 1994 and is imposed on lenders by their regulatory agencies, not by FEMA. FEMA oversees the National Flood Insurance Program which makes federally administered flood insurance available throughout the United State and is responsible for development, updates and making the form available for users. ■

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notice with 45-days of the transfer date. Confirmation of a successor in interest does not restart the 180-day period if the prior notice was provided to a transferor borrower.

Exemption from Live Contact Requirement

Unlike the proposed rule, the final rule provides a loan level exemption from the live contact early intervention requirements while any borrower on a mortgage loan is a debtor in bankruptcy or if any borrower has provided a cease communication notification.

Early Intervention Written Notice – Bankruptcy

While any borrower on a mortgage loan is a debtor in bankruptcy, a servicer is exempt from the written early intervention requirements if no loss mitigation option is available or if any borrower on the loan has provided a cease communication notification. If loss mitigation options are available, or if no cease communication notice has been given, servicers must provide the written notice no later than the 45th day after a delinquent borrower files a bankruptcy petition. The notice must be modified so that it does not include a request for payment.

Early Intervention Written Notice – FDCPA

If a borrower has invoked cease communication rights and the servicer is subject to the FDCPA, the servicer is not required to send the early intervention written notice if either no loss mitigation option is available or while any borrower on that loan is a debtor in bankruptcy. The Interpretive Rule provides a safe harbor from liability under FDCPA for servicers that are required to send the written notice. The notice may not contain a request for payment and servicers are prohibited from providing the written notice more than once during any 180-day period. The notice must also include a statement that the servicer may or intends to invoke its specified remedy of foreclosure.

VI. LOSS MITIGATION

The final rule includes general amendments to the Servicing Rule's loss mitigation requirements. Servicers must evaluate borrowers for loss mitigation more than once over the life of the loan as long as the borrower has brought their loan current since their last loss mitigation application.

Receipt and evaluation

With respect to the receipt and evaluation of loss mitigation applications, the final rule:

- Requires servicers to provide a written notice within five days of a borrower's completed application;
- Provides more specific guidance on selecting a reasonable date for a borrower to provide missing documents or information to complete an application (generally, 30-days from the date the servicer provides the notice is reasonable);
- Clarifies that a servicer cannot deny a complete application after 30-days solely because third party information is lacking, unless the servicer has exercised reasonable diligence for a significant period of time following the 30-day period (CFPB declined to provide more specific guidance on how long a servicer must exercise reasonable diligence);

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- Permits a servicer to stop collecting documents and information pertaining to a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option. Servicers must continue its efforts to obtain information that pertains to all other available options and may not stop collecting documents for a particular loss mitigation option based solely on the borrower's preference for a different option.; and
- Permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete application. Servicers must promptly provide the plan in writing, and inform the borrower that other loss mitigation options may be available and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available. Servicers are prohibited from making the first notice or filing or moving for foreclosure if a borrower is performing pursuant to the terms of a payment forbearance or repayment plan.

Dual Tracking

The final rule clarifies what steps servicers (and counsel) must take to protect borrowers from a wrongful foreclosure sale. The CFPB declined to adopt the proposed requirement that a servicer dismiss the action to avoid the sale if they have not taken all "reasonable affirmative steps" to delay it. The rule also expands the exception to the 120-day prohibition on foreclosure referral for servicers that are joining a foreclosure of a senior lien holder.

Servicing Transfers: THE FINAL RULE

- Requires transferee servicers to comply with the requirements of §1024.41 based on the date the application was received by the transferee servicer;
- Provides 10-days for a transferee servicer to provide the acknowledgement of receipt of a loss mitigation package if the acknowledgment period has not expired as of the transfer date or the transferor servicer has not provided it;
- Prohibits transferee servicers from making the first notice or filing for foreclosure until after the reasonable date disclosed to the borrower for submitting missing documents or information;
- For loans with complete applications pending as of the transfer, transferee servicers must evaluate the application within 30-days from the transfer date;
- For pending loss mitigation offers, a transferee servicer must honor the acceptance deadline provided to the borrower by the transferor servicer; and
- For loans pending an appeal, or if an appeal is made after the transfer date, the transferee servicer must make a determination within 30-days of the transfer date or within 30 days of the date the borrower made the appeal, whichever is later. If the transferee servicer is unable to make a determination, it must treat the appeal as a pending complete loss mitigation application.

VII. PROMPT PAYMENT CREDITING/PAYMENT PROCESSING

The final rule clarifies that periodic payments made under a temporary loss mitigation program could continue to be applied as specified in the loan contract, i.e., as partial

payments. Once the loan has been permanently modified, the terms of the permanent loan modification would control and these periodic payments could not be applied as partial payments.

VIII. PERIODIC STATEMENTS: THE FINAL RULE

- **For loans that have been accelerated,** if the servicer will accept a lesser amount to reinstate the loan, the "amount due" must reflect the lesser amount that will be accepted to reinstate the loan rather than the entire balance. If applicable, it should indicate that the amount due is accurate only for specified period of time. The explanation of amount due must list both the reinstatement amount and the accelerated amount, but not the monthly payment amount that would otherwise be required.
- **For loans in temporary loss mitigation,** the "amount due" can reflect either the amount due under the original loan contract or required to satisfy the temporary loss mitigation program (i.e., a temporary or trial program). Servicers should generally treat payment due under a temporary loss mitigation program as a partial payment. Servicers must credit payments in a way that reflects the continuing contractual obligations between the parties. Disclosures regarding how payments were and will be applied must identify how payments are applied according to loan contract. The explanation of amount due must include both the amount due according to loan contract and the payment due under the temporary loss mitigation program with a statement that the amount is different because of the temporary loss mitigation program.
- **For loans that are permanently modified,** the "amount due" must reflect the amount owed under the permanent modification to the loan contract.
- **For loans that have been charged off,** a servicer is no longer required to send a periodic statement if two conditions are met:
  - The servicer has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account.
  - The servicer provides, within 30-days of the charge off or the most recent periodic statement, a periodic statement, conspicuously labeled a "Suspension of Statements &

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Banks Earn $43 Billion in Second Quarter 2016

FDIC-insured banks and savings institutions earned $43.6 billion in the second quarter; up 1.4 percent from a year earlier. "Income and revenue both increased from a year ago, loan growth remained strong, the number of unprofitable banks was an 18-year low, and there were fewer banks on the problem list", said FDIC Chairman Martin Gruenberg.

"However, challenges continue to confront the banking industry. Revenue growth remains sluggish as a prolonged period of low interest rates has put downward pressure on net interest margins. This has led to some institutions to reach for yield, increasing their exposure to interest-rate risk and credit risk."

Chairman Gruenberg indicated, "More recently, persistent stress in the energy sector has resulted in a decline in asset quality at banks that lend to oil and gas producers, as well as banks that serve economies reliant on the energy sector. We likely have not yet seen the full impact of low energy prices on the banking industry, particularly for consumer and commercial and industrial loans in energy-producing regions of the country."

The number of FDIC-insured commercial banks and savings institutions reporting quarterly financial results declined to 6,058 from 6,122 in the second quarter. Mergers absorbed 57 institutions, two banks failed, and no new charters were added. The number of insured institutions on the FDIC's "Problem List" declined from 165 to 147 during the quarter, and total assets of problem institutions fell from $30.9 billion to $29 billion. This is the smallest number of problem banks in eight years.

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Notice of Charge Off – Retain This Copy for Your Records." This periodic statement must include an explanation to the borrower as to what it means for the loan to be charged off and must include certain disclosures.

Note: If a servicer fails at any time to treat the loan as charged off or charges any additional fees or interest, the obligation to provide a periodic statement resumes. A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption applied.

- For purposes of the first periodic statement provided following termination of an exemption under §1026.41(e), the disclosures may be limited to account activity since the last payment due date that occurred while the exemption was in effect.

Periodic Statements for borrowers in bankruptcy

Subject to certain exceptions, servicers must send a periodic statement to borrowers who are debtors in bankruptcy. The final rule includes sample forms to be used for this purpose.

The final rule departs from the proposal in three primary ways:

- It applies the exemption at the loan level – when the criteria for exemption applies to one borrower on the loan, servicer is exempt with respect to any borrower on the loan. The proposal would have exempted a servicer from the periodic statement requirements as to a specific borrower but not as to any co-obligors who were not in bankruptcy.
- The exemption can be triggered by a borrower's proposed bankruptcy plan instead of only by a confirmed plan.
- Servicer is only exempt from sending periodic statements to borrowers who have filed a statement of intention identifying intent to surrender the dwelling if the borrower has not made any partial or periodic payment on the loan after the commencement of bankruptcy.
- Allows a servicer to establish an exclusive address for borrowers in bankruptcy to use to submit a written request to opt into or out of receiving periodic statements.
- Sets forth transitional single billing cycle exemption under certain circumstances to enable a servicer to transition to a modified periodic statement for bankruptcy and to an unmodified periodic statement upon conclusion of the bankruptcy case or reaffirmation of the debt.

Under the final rule, servicers are exempt from sending periodic statements if the following two-prong test is met:

1) Any borrower on the loan must be a debtor in bankruptcy or must have discharged liability for the loan through bankruptcy; and

2) One of the following conditions must apply with regard to any borrower on the loan:

- A borrower requests in writing that servicer cease sending periodic statements;
- The bankruptcy plan provides that the borrower will surrender the dwelling, provides for the avoidance of the lien securing the loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the loan;
- A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the loan, lifting the automatic stay with regard to the dwelling, or requires the servicer to cease providing a periodic statement; or
- The borrower files with the bankruptcy court a statement of intention identifying intent to surrender the dwelling and a borrower has not made a partial or periodic payment on the loan after the commencement of the bankruptcy case.

Modifications for all borrowers in bankruptcy/discharged personal liability

- Periodic statements or coupon books may omit late fee information, delinquency-related disclosures, and the notice of whether the servicer has made the first notice of filing for foreclosure. The amount due does not need to be displayed more prominently that other disclosures.
- The periodic statement or coupon book must include a statement identifying the borrower's status as a debtor in bankruptcy or the discharged status of the loan and note that the statement is for informational purposes only.

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Additional Modifications for Chapter 12 or 13 Debtors

- The amount due may be limited to the monthly post-petition payments due under the loan and any post-petition fees or charges imposed since the last periodic statement. The statement is not required to include the amounts of any payments on account of a borrower's pre-petition arrearage or that are due under a court order.
- The explanation of amount due must include a breakdown of how much, if any, of the post-petition payment will be applied to principal, interest, and escrow, the post-petition charges since the last statement, and any post-petition past due amount.
- Transactional activity must show all payments received since the last statement, both pre- and post-petition. Servicers may, but are not required to, include more than one suspense account in the past payment breakdown in order to accurately disclose how they are applying payments. The description of activity need not disclose the source of any payment.
- The statement must include, if applicable, the total of all pre-petition payments received since the last statement, the total of all pre-petition payments received since the beginning of the bankruptcy case, and the current balance of the pre-petition arrearage. This information must be grouped in close proximity and located on the first page of the statement or, alternatively, on a separate page or separate letter. If the amount of the pre-petition arrearage is subject to dispute or has not yet been determined by the servicer, the servicer may include statement acknowledging the unresolved amount.
- Five additional statements must be included on the periodic statement, as applicable, when a borrower is in chapter 12 or 13:
  - The amount due includes only post-petition payments and does not include other payments that may be due under the terms of the bankruptcy plan;
  - If the bankruptcy plan requires the borrower to make payments directly to a trustee:
  - a statement that the borrower should send the payment to the trustee and not to the servicer;
  - that the information disclosed on the periodic statement may not include payments made to the trustee and may not be consistent with the trustee's records; and
  - a statement encouraging the borrower to contact their attorney or trustee with questions regarding the application of payments;

If a borrower is more than 45-days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the borrower filed for bankruptcy.

IX. SMALL SERVICER

The small servicer exemption currently applies to servicers who service 5,000 or fewer loans as the creditor or assignee. The final rule excludes both mortgage loans voluntarily serviced for a non-affiliate that is not a creditor or assignee and transactions serviced for a seller-financer from being counted as part of the 5,000 loan limit. ■

Interagency Flood Insurance Regulation Update Webinar: Questions and Answers

A little over a year ago, the Federal Reserve hosted an interagency Outlook Live webinar titled *"Interagency Flood Insurance Regulation Update."* Speakers from the Federal Reserve, Farm Credit Administration, the FDIC, the NCUA, and the OCC discussed the amendments to their flood insurance regulations, which were published in July 2015. The Agencies have addressed some of the most common questions received during that webinar, which are in addition to the Interagency Questions and Answers that were published in 2011. These questions and answers are categorized in three main topics: escrow, force-placed insurance and detached structures.

ESCROW

1. Does the requirement to escrow flood insurance premiums and fees apply when a loan does not experience a triggering event, such as when the loan is modified without being increased, extended, or renewed; the loan is assumed by another borrower; or the building securing the loan is remapped into a Special Flood Hazard Area (SFHA)?

No, the requirement is subject to certain exceptions. The agencies' regulations provide that a lender or its servicer is required to escrow flood insurance premiums and fees when a designated loan is made, increased, extended, or renewed (a triggering event), unless either the lender or the loan is excepted from the escrow requirement. Until the loan experiences a triggering event the lender is not required to escrow flood insurance premiums and fees unless (i) a borrower requests the escrow in connection with the agencies' regulatory requirement that the lender provide an option to escrow for outstanding loans or (ii) the lender determines that a loan exception to the escrow requirement no longer applies. A designated loan is a loan secured by a building or mobile home that is located or is to be located in an SFHA, in which flood insurance is available under the National Flood Insurance Act (the act).

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[INTERAGENCY FLOOD CONTINUED FROM PAGE 7]

2. If the borrower has already been granted an exception from the lender to escrow for taxes, homeowner's insurance, and flood insurance, does the lender or its servicer still need to send a notice to offer the ability to escrow for the flood insurance?

Yes. The Agencies' regulations do not exclude loans for which borrowers have previously waived escrow from the requirement to offer and make the option available to escrow flood insurance premiums and fees. Consequently, lenders or their servicers still must send a notice of the option to escrow flood insurance premiums and fees to borrower's who have previously waived escrow or for whom lenders previously offered an option to escrow. Although a borrower may have previously decided to waive escrow or had already been offered an option to escrow, it is possible that the borrower's circumstances have changed, and it offered another chance to escrow, the borrower may desire to do so.

3. Is the option to escrow notice required for all outstanding loans that are not exempt and secured by residential real estate or just those that are in a flood zone?

Under the Agencies' regulations, lenders or their servicers are required to offer and make the option available to escrow flood insurance premiums and fees for all outstanding designated loans secured by residential improved real estate or mobile homes as of January 2, 2016, or July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception to the escrow requirement. The requirement to provide the option to escrow notice does not apply to loans or lenders that are excepted by the agencies' regulations from the general escrow requirement. The option to escrow notice requirement also does not apply to loans that are not subject to the mandatory purchase requirement.

4. If a lender does not qualify for the small lender exception and purchases a portfolio of loans secured by residential improved real estate or mobile homes from a small lender eligible for the exception, must the purchasing lender require an escrow account on the designated loans in the portfolio or provide notice of the option to escrow to the borrowers?

It depends. Under the Agencies' regulations, the requirement to notify borrowers of the option to escrow applies to a lender's loans outstanding as of January 1, 2016. Therefore, if a lender purchased a portfolio of loans secured by residential improved real property or mobile homes prior to January 1, 2016, and the loans remained outstanding in the lender's portfolio as of that date, the lender would be required to provide the notice of the option to escrow to borrowers on designated loans. On the other hand, if the portfolio purchased occurred after January 1, 2016, a lender that does not qualify for the small lender exception would not be required by the agencies' regulations to send the notice of the option to escrow. Nor would an escrow have to be established on the designated loans in the portfolio because the purchase of a portfolio of loans is not a triggering event. However, if a triggering event occurs in connection with any designated loan in the portfolio after the purchase, the lender or its servicer would need to require an escrow for flood insurance premiums and fees.

5. Is it true that lenders qualifying for the small lender exception are not required to provide borrowers the escrow notice or the option to escrow notice?

Yes. Lenders that qualify for the small lender exception are not required to provide borrowers either the escrow notice or the option to escrow notice unless the lender ceases to qualify for the small lender exception.

6. If a lender does not escrow for taxes or homeowner's insurance, is it still required to escrow for flood insurance under the new rule? If yes, is the lender obligated to escrow for taxes and other insurance because it escrows for flood insurance pursuant to the rule?

If a lender or its servicer is required to escrow for flood insurance under the new rule, it must do so even if it does not escrow for taxes or other insurance. A lender or servicer is not, however, obligated to escrow for taxes and other insurance because it escrows for flood insurance pursuant to the agencies' flood rule, although other regulations may apply that require the escrow. Furthermore, a lender may always choose to require an escrow even when it is not mandated.

7. For which types of loans must a lender or its servicer provide the option to escrow notice? If a loan is subject to an exception (e.g., a business purpose loan), does a lender that does not qualify for the small lender exception still have to provide an option to escrow notice in connection with that loan?

Lenders or their servicers that do not qualify for the small lender exception must provide the option to escrow notice to borrowers for designated loans secured by residential improved real estate or mobile homes outstanding as of January 1, 2016. However, if a loan is subject to another exception (e.g., business, commercial, or agricultural purpose), the lender or its servicer is not required to provide an option to escrow in connection with that loan.

8. If a creditor originates a second mortgage loan for a property located in an SFHA and it is determined that the first lienholder does not have sufficient flood insurance coverage for both liens and is not currently escrowing for flood insurance, does the second lienholder have to escrow for the additional amount of flood insurance coverage?

Under the Agencies' regulations, junior lienholders are not required to escrow for flood insurance if the borrower has obtained flood insurance for a closed-end second mortgage loan that meets the mandatory purchase requirement. Thus, the lender or its servicer must ensure that adequate flood insurance is in place. Question No. 36 of the July 2009 Interagency Questions and Answers Regarding Flood Insurance explains the requirements for junior lienholders. If adequate flood insurance is not obtained, the lender or servicer would need to escrow. However, the escrow requirements do not apply to a junior lien that is a home equity line of credit (HELOC).

{Continued on Page 9}

[INTERAGENCY FLOOD CONTINUED FROM PAGE 8]

9. Does a lender or its servicer have to escrow for loan when the property is not located in a SFHA but the borrower chooses to buy flood insurance?

Under the Agencies' regulations, a lender and its servicers are only required to escrow for loans that are secured by residential improved real estate or mobile homes located or to be located in SFHAs where flood insurance is available under the National Flood Insurance Program and that experience a triggering event (i.e., made, increased, extended, or renewed) on or after January 1, 2016, unless either the lender or the loan qualifies for an exception. If the property securing the loan is not located in an SFHA, the lender or its servicer may choose to do so.

10. Is there an exception to the escrow requirement for loans secured by multifamily buildings? Is there an exception for commercial loans?

The Agencies' regulations specify that the escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes, even if secured by residential real estate. In addition, the escrow requirements would not apply to a loan secured by a particular unit in a multifamily residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense. Otherwise, the escrow requirements would generally apply to loans for units in multifamily residential buildings.

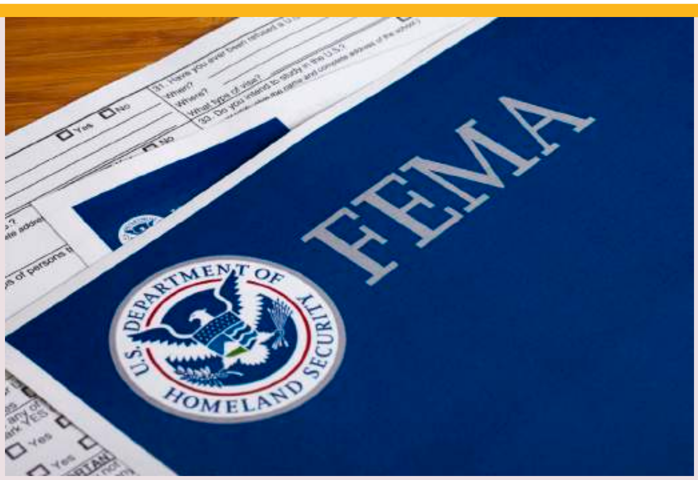
FORCE-PLACED INSURANCE

11. Following a flood map change, is a regulated lending institution required to force place flood insurance during the 45 days following the notice to the borrower, or can the institution wait 45 days after notifying the borrower?

The Agencies' regulations permit a lender or its servicer to force place flood insurance beginning on the date the borrower's policy lapsed or did not provide sufficient coverage to ensure continuous flood insurance for both the institution and the borrower, and any time after that date. However, if a borrower fails to obtain flood insurance within 45 days of the lender's notification to the borrower of the need to obtain flood insurance, the lender must force place flood insurance at that time.

12. If the need for flood insurance on a property was mistakenly not required because of a vendor error and is later discovered, is the process to cure the same as if the property newly became covered under the act? If not, what procedural steps must be taken?

The same procedures must be followed when a lender or its servicer discovers that improved collateral real property is not covered by flood insurance because of vendor error that is used when flood insurance coverage for such property becomes necessary as the result of a mapping change. Under the agencies' regulations, if a lender, or a servicer acting on its behalf, determines at any time during the



term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or that the coverage is inadequate, the lender or its servicer must notify the borrower of the need to obtain adequate flood insurance at the borrower's expense. If the borrower fails to obtain adequate flood insurance within 45 days after notification, the lender must purchase flood insurance on behalf of the borrower.

13. If a lender cannot get a full refund from the insurance company because the borrower did not provide proof of coverage in a timely manner, is the lender required to refund the full premium to the customer?

The Agencies' regulations specifically require the refund of force-placed insurance premiums for any overlap period and do not provide any exceptions to that requirement. Moreover, the agencies clarified in the supplementary information accompanying the July 2015 Final Rule that a lender's refund obligation is not subject to the insurer's refund of the premium.

14. If a lender or its servicer is required to force place flood insurance because the property was remapped into an SFHA, may the lender or is servicer charge the borrower as of the date the lender receives notice of the remapping?

The Agencies' regulations provide that a lender or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage. When a lender or its servicer receives notice of a property being remapped into an SFHA, the effective date of the remapping change is the date the property has insufficient coverage. Therefore, along with sending the appropriate notice to the borrower to purchase adequate flood insurance, the lender or its servicer can force place flood insurance beginning on the effective date provided in the date of notice of remapping and, also as of that date, charge the borrower for the force-placed insurance provided force-placed insurance is in place. However, if the borrower purchases an adequate flood insurance policy, the lender or its servicer would need to reimburse the borrower for premiums and fees charged for force-placed coverage during any period of overlapping coverage.

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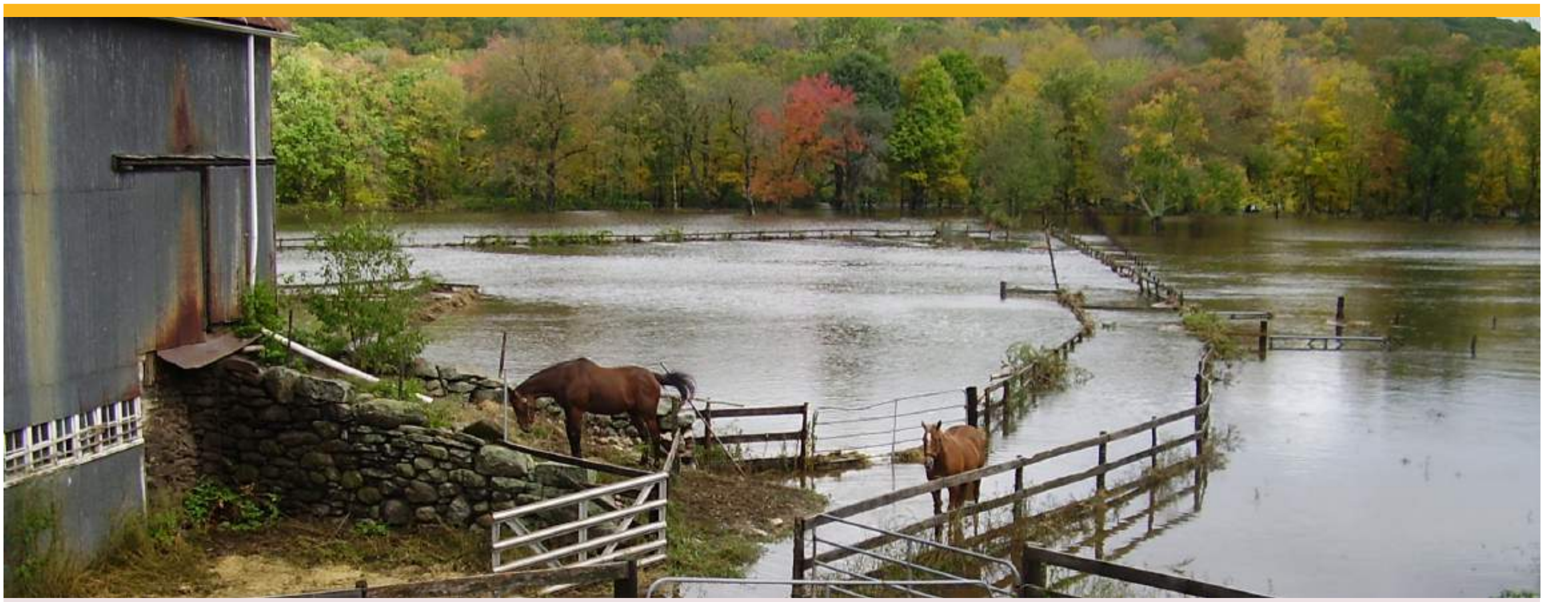

[INTERAGENCY FLOOD CONTINUED FROM PAGE 9]

DETACHED STRUCTURES

15. Has the Consumer Financial Protection Bureau (CFPB) revised the Special Information Booklet required by Section 13 of the Homeowner Flood Insurance Affordability Act (HFIAA) to require that language related to detached structures be included in the required Special Information Booklet?

Yes. The CFPB has revised the Special Information Booklet as required by Section 13 of the HFIAA, which also amends Section 5(b) of RESPA (12 U.S.C. 2604(b)), to require language related to detached structures. The booklet, titles "Your Home Loan Toolkit: A Step-by-Step Guide," states: "Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure."

16. If a borrower currently has a flood insurance policy on a detached structure that does not serve as a residence, can the lender or its servicer cancel its requirements to carry that flood insurance?

If a borrower has a flood insurance policy on a detached structure, which is part of the residential property that does not serve as a residence, the borrower is no longer required by statute to have flood insurance on that building. The lender may allow the borrower to cancel the policy. As the agencies noted in the supplementary information accompanying the July 2015 Final Rule, for detached structures that are of relatively high value, if warranted as a matter of safety and soundness, the lender may continue to require flood insurance coverage on the detached structure in that such coverage may be in the borrower's best interest.

17. If a property is remapped into a flood zone, does that trigger a review of the intended use of each detached structure?

A lender must examine the status of a detached structure upon a qualifying triggering event (i.e., making, increasing, extending, or renewing a loan). However, consistent with existing obligations under the agencies' regulations, if a lender determines at any time that a property has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is uninsured or underinsured, the lender has a duty to inform the borrower of the obligation to obtain or increase insurance coverage. The agencies agree that lenders do not have a duty to monitor the status of a detached structure following the lender's initial determination because of the minimal post-closing communications with borrowers or lack systematic inspections of the property. However, as discussed in Question No. 7 of the agencies' July 2009 Interagency Questions and Answers Regarding Flood Insurance, regardless of the lack of such requirement in the agencies' regulations, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

18. Can a lender review current loans in its portfolio as flood insurance policies renew and determine that is would no longer require flood insurance on a detached structure in a flood zone if the structure does not provide contributory value?

A lender or its servicer could initiate such a review; however, the agencies' regulations do not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on their contributory value. Flood insurance is not required, in the case of any residential property, on any structure that is a part of such property but is detached from the primary residential structure and does not serve as a residence. In addition, other exemptions could apply, such as the exemption for state-owned property covered under a policy of self-insurance satisfactory to the administrator of the Federal Emergency Management Agency, the exemption for property securing any loan with an original principal balance of $5,000 or less, or the exemption for a loan with a repayment term of one year or less. ■

[MILITARY LENDING ACT CHANGES CONTINUED FROM PAGE 1]

component of the Army, Navy, Air Force, or Marine Corps. The Final Rule also protects a covered Service Member's dependents.

Who are a Service member's dependents? Under the Final Rule, dependents are:

- A Service member's spouse;
- A Service member's child who is under the age of 21 or meets certain other conditions;
- A Service member's parent or parent-in-law residing in the Service member's household who is (or was, at the time of the Servicer member's death, if applicable) dependent on the Service member for more than one-half his or her support; and
- An unmarried person who is not a dependent of a member under any other subparagraph over whom the Service member has custody by court order and who meets certain other conditions.

When is a Service member's child who is 21 or older a dependent? A Service member's child who is 21 or older can be a dependent if the child is (or was, at the time of the Service member's death, if applicable) dependent on the Service member for more than one-half of his or her support and:

- Under the age of 23 and enrolled full time at an institution of higher learning approved by the Secretary of Defense; or
- Incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a Service member.

When is someone over whom a Service member has custody by court order a dependent? An unmarried person who is not covered by another category of dependents can be a Service member's dependent if the Service member has custody over the person by court order and the person:

- Is under 21 years of age or under 23 years of age and full time student;
- Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a Service member and is (or was at the time of the Service member's death, if applicable) dependent on the Service member for over one-half of the child's support; or
- Resides with the Service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the relevant "administering Secretary" prescribes by regulation.

COVERED TRANSACTIONS

What transactions does the Final Rule cover? The pre-amendment version of the MLA regulation applied only to payday loans, vehicle loans and refund anticipation loans. The Final Rule encompasses far more categories of consumer credit extended by a creditor.

The Final Rule covers "consumer credit." Unless an exception applies, consumer credit means: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is: (i) Subject to a finance charge; or (ii) Payable by a written agreement in more than four installments.

Categories of credit that may meet the definition of "consumer credit" includes (but are not limited to):

- Credit card accounts;
- Installment loans and small dollar loans; and
- Overdraft lines of credit with finance charges, per Regulation Z.

What consumer credit is NOT covered? The Final Rule does not apply to five categories of transactions:

- A residential mortgage transaction, which is any credit transaction secured by an interest in a dwelling;
- A transaction expressly for financing the **purchase** of a motor vehicle secured by the purchased vehicle;
- A transaction expressly for financing the **purchase** of personal property secured by the purchased property;
- Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29, which addresses State-specific exemptions) or otherwise is not subject to disclosure requirements under Regulation Z; and
- Any transaction in which the borrower is not a covered borrower.

Which entities does the Final Rule consider to be creditors? The Final Rule defines "creditor" as an entity or person engaged in the business of extending consumer credit. It includes their assignees. A creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a creditor under Regulation Z.

GENERAL REQUIREMENTS

Military Annual Percentage Rate (MAPR) Limits

What limits apply to the MAPR? The Final Rule limits the MAPR you may charge a covered borrower. You may not impose an MAPR greater than 36 percent on closed-end credit or any billing cycle for open-end credit. Also, you may not impose any MAPR unless it is agreed to under the terms of the credit agreement or promissory note; it is authorized by state or federal law, and is not otherwise prohibited by the Final Rule.

Is the MAPR the same as the Annual Percentage Rate? No. MAPR differs from the Annual Percentage Rate (APR) found in TILA and Regulation Z. MAPR includes the following items when applicable to an extension of credit:

- Any premium or fee for credit insurance, including any charge for single premium credit insurance;
- Any fee for debt cancellation contract or debt suspension agreement;
- Any fee for credit-related ancillary product sold in connection with credit transaction for closed-end credit or an account for open-end credit; and

{Continued on Page 12}

[MILITARY LENDING ACT CHANGES CONTINUED FROM PAGE 11]

- Except for "bona fide fee" (other than a periodic rate) excluded under special rules for credit card accounts:
  - Finance charges, as defined by Regulation Z, associated with the consumer credit;
  - Any application fee charged to the covered borrower (except in connection with a short-term, small amount loan as discussed later); and
  - Any participation fee, except as provided in special rules for certain open-end credit (discussed later).

Subject to the bona fide fee exception, applicable only to credit card accounts, MAPR includes all the above even if Regulation Z excludes the item from the finance charge.

Bona Fide and Reasonable Fees

What is a "bona fide fee?" To determine whether a charge is a bona fide fee, compare it to similar fees typically imposed by other creditors for the same or a substantially similar product or service. (You can only exclude bona fide fees from the MAPR for a credit card account).

Is there a safe harbor for determining whether a fee is bona fide? Yes. A fee is considered reasonable if it is less than or equal to the average amount of a fee charged for the same, or a substantially similar, product or service charged during the preceding three years by five or more creditors having U.S. cards in force or more creditors having U.S. cards in force of at least $3 billion. The $3 billion threshold can be met considering either outstanding balances or loans on U.S. credit card accounts initially extended by the creditor.

Can you charge fees during a no-balance billing cycle? It depends. You cannot charge fees when there is no balance in a billing cycle, except for a participation fee that does not exceed $100 per year. The $100 per annum fee limitation does not apply to a bona fide and reasonable participation fee.

What is a reasonable participation fee? A participation fee may be reasonable if the amount corresponds to:

- The credit limit in effect or credit made available when the fee is imposed;
- The services offered under the account; or
- Other factors relating to the account.

Is a bona fide fee for a credit card account always excluded from the MAPR? No. In most cases it is excluded, but if you impose a fee that is not a bona fide fee, and you impose a finance charge to a covered borrower, you must include the total amount of fees – including any bona fide fees and any fee for credit insurance products or credit-related ancillary products – in the MAPR.

Required Disclosures

What disclosures does the Final Rule require you to make to covered borrowers?

You must provide to each covered borrower the following:

- A statement of the MAPR applicable to the extension of credit;
- Any disclosure Regulation Z requires made in accordance with the applicable Regulation Z provisions; and
- A clear description of the payment obligation, which can be either a payment schedule for close-end credit, or account opening disclosures consistent with Regulation Z for open-end credit, as applicable.

What information must the statement of the MAPR contain? The statement of the MAPR need not contain the MAPR for the transaction as a numerical value or dollar amount of charges in the MAPR. Instead, it must describe the charges you may impose, consistent with the Final Rule and terms of the agreement, to calculate the MAPR. The Final Rule provides a model statement. You may use the model statement or a substantially similar statement. You may include the statement of the MAPR in the transaction agreement. You need not include it in advertisements.

What form must the disclosures take and how must you deliver them? The disclosures must be written and provided in a form the covered borrower can keep. In addition to the written disclosures, you must orally provide the information in the statement of MAPR and in the description of the payment obligation. You may do so in person or via a toll-free telephone number. If applicable, the toll-free telephone number must be on the application or on the written disclosure.

{Continued on Page 13}

[MILITARY LENDING ACT CHANGES CONTINUED FROM PAGE 12]

Where there is more than one creditor, who must provide the disclosures? Where there are multiple creditors, only one must deliver the disclosures. The creditors may agree which one will provide them.

IDENTIFYING COVERED BORROWERS

How can a lender identify covered borrowers? This Final Rule permits a lender to use its own method of determining whether a borrower is a covered borrower. It also provides a safe harbor allowing a lender to conclusively determine whether a borrower is a covered borrower by using information obtained either from the DMDC's MLA website, currently available here, or a nationwide consumer reporting agency.

What rules apply to using the DMDC database? You may obtain the safe harbor protection if you verify the status of a member by using information relating to that consumer, if any, obtained directly or indirectly from the DMDC database. A database search requires the borrower's last name, date of birth, and Social Security Number.

When must a lender make a database search? A search is conducted before the transaction occurs or an account is opened.

Can a lender use information from a nationwide consumer reporting agency? Yes. To determine whether a borrower is a covered borrower, a lender may verify the status of the borrower by using code or other indicator describing that status on a consumer report it obtains from a nationwide consumer reporting agency or a reseller of such reports.

What records must a lender keep to use the safe harbor provision? To be protected by the safe harbor provision, you must create a record in a timely manner and maintain it. The Final Rule does not specify how long you must retain the records.

LIMITATIONS AND RESTRICTIONS

Does the Final Rule restrict terms and condition other than the MAPR? Yes. In extending covered credit to a covered borrower, you cannot:

- Require the covered borrower to waive right to legal recourse under any other state or federal law, including the Servicemembers Civil Relief Act;
- Require the covered borrower to submit to arbitration or other burdensome legal notice provisions, in the case of a dispute;
- Demand unreasonable notice from the borrower as a condition for legal action;
- Require the covered borrower to establish an allotment to repay the obligation;
- Prohibit the covered borrower from repaying the consumer credit, or charge a prepayment penalty; or
- Use a check or other method to access an account, except if the MAPR is 36 percent or lower.

PENALTIES, REMEDIES, CIVIL ENFORCEMENT AND PREEMPTION

What are the consequences of violating the Final Rule? Knowingly violating the MLA or its implementing regulation is a misdemeanor under the criminal code of the United States. Penalties include a fine and imprisonment of not more than one year.

Also, a person who violates the MLA and its implementing regulation is civilly liable to a covered borrower for:

- Any actual damages resulting from the violation, but not less than $500, for each violation;
- Appropriate punitive damages;
- Appropriate equitable or declaratory relief;
- Costs of the action and reasonable attorney fees as determined by the court, where the covered borrower succeeds in the action; and
- Any other relief provided by law.

What effect does violating the Final Rule have on the contract with the covered borrower? Any credit agreement, promissory note, or other contract with a covered borrower is **void from its inception** if it fails to comply with any provision of the Final Rule, or contains a prohibited provision.

What is the applicable statute of limitations? A covered borrower must bring an action within two years of discovering a violation, but not later than five years after it occurs.

Does the MLA preempt other state or federal laws, rules, and regulations? Yes, the MLA preempts other state or federal laws, rules and regulations; including state usury laws to the extent they are inconsistent with the MLA or its implementing regulation. However, this preemption does not apply if the law, rule, or regulation provides protection to a covered borrower that is greater than the protection given under the MLA and its implementing regulation.

EFFECTIVE DATES

When does the Final Rule become effective? The effective date of the Final Rule was October 1, 2015.

With respect to "consumer credit" as defined under the original regulation, the rules for payday loans, vehicle title loans, and tax refund anticipation loans become effective October 3, 2016. Credit card provisions do not become effective until October 3, 2017.

The Final Rule's safe harbor provision for identifying covered borrowers goes into effect October 3, 2016. Until that date, lenders can use the safe harbor provisions in effect since October 1, 2007. That is, you can use the covered borrower identification statement. On October 3, 2016, the safe harbor when using a covered borrower identification statement expires.

Civil liability provisions are effective as of October 1, 2015, and apply to consumer credit extended on or after January 2, 2013. ■

Final Rule
Implementing Regulations

Brief Recap of the CFPB's Supervisory Highlights

In the Supervisory Highlights for summer 2016, the Consumer Financial Protection Bureau (CFPB) recaps its observations in auto loan origination, mortgage origination, debt collection, fair lending, and small-dollar lending. Below are some of the observations from the report covering January – April of 2016.

1. Automobile Loan Origination

A. *Deceptive practice in advertising add-on gap coverage products:* CFPB Examiners found that lenders had deceptively advertised the benefits of gap coverage products by creating the false impression that such products would fully cover the remaining loan balance in the event of a vehicle loss.

B. *Deceptive telephone scripts for loan deferrals:* Examiners found that one or more lenders had engaged in a deceptive practice by using a telephone script that created the "false overall net impression" that the only effect of taking advantage of a loan deferral would be to extend the maturity date and accrue interest during the deferral. Instead, the deferral could result in a consumer paying more in finance charges than the lender originally disclosed because subsequent payments would be applied to cover the interest earned on the unpaid amount from the date of the consumer's last payment.

C. *Compliance management system deficiencies:* CFPB examiners found various weaknesses in compliance management systems, such as the failure to raise compliance-related issues to the institution's board of directors; failure to follow the institution's policies and procedures in daily practices; failure to properly monitor and correct business line practices to align with Federal consumer financial laws; failure to adequately tracking training completed by employees and the Board; and failure to adequately follow up on consumer complaints.

2. Mortgage Origination

A. *Incorrect calculation of amount financed on loans with discount credits:* CFPB examiners found that lenders had violated Regulation Z by (1) miscalculating the amount financed and finance charge on loans with discount credits, or (2) failing to accurately disclose the interest payment on interest-only bridge loans.

B. *Failure to comply with RESPA Section 8 and FCRA:* CFPB found that lenders had made improper referrals under RESPA Section 8 by requiring customers to use an affiliated provider

of tax services and flood determination or had violated the FCRA by taking adverse based on information in a consumer report without providing adverse action notices containing the required disclosures.

C. *Compliance management system deficiencies:* CFPB examiners found weak compliance management systems that allowed violation of Regulations V, X, and Z to occur, such as weak oversight of automated systems, including inadequate testing of codes that calculate the finance charge and amount financed when originating mortgage loans.

3. Debt Collection

A. *Miscoding of accounts unsuitable for sale by debt sellers:* Examiners found that debt sellers, as a result of "widespread coding errors", sold thousands of debts that did not properly reflect that the amounts (1) were in bankruptcy, (2) had been determined by the debt sellers to be products of fraud, or (3) had been settled in full.

B. *Use of misleading statements regarding repayment options:* CFPB determined that the debt sellers had engaged in in unfair practices by falsely representing to consumers that a down payment was necessary to establish a repayment arrangement or a checking account had to be used for repayment.

4. Fair Lending

A. *Reporting actions for conditionally-approved applications with unmet underwriting conditions:* During Home Mortgage Disclosure Act (HMDA) data integrity reviews, CFPB examiners found that after issuing a conditional approval subject to underwriting conditions, lenders did not accurately report the action taken on the loans or applications.

B. *Equal Credit Opportunity Act special purpose credit program:* The Report also describes various ECOA/Regulation B special purpose credit programs reviewed by CFPB examiners. CFPB states that it "generally takes a favorable view of conscientious efforts that institutions may undertake to develop special purpose credit programs to promote extensions of credit to any class of persons who would otherwise be denied credit or would receive it on less favorable terms."

5. Small-dollar Lending

A. *CFPB examiners found that some payday lenders had not complied with Regulation E advance notice requirement for preauthorized electronic fund transfers (EFT) where the amount of a preauthorized EFT differs from the preceding EFT.* In lieu of providing advance notice, Regulation E allows the lender to give consumer the option of receiving notice only when the preauthorized EFT amount falls outside a specified range or varies from the most recent EFT by more than a specified amount. Examiners found that installment loan agreements failed to state an acceptable range of preauthorized EFTs in lieu of providing individual notice of EFTs of varying amounts. ■

NEWS BRIEFS

Fed and CSBS Survey Examines Community Banking Activities

The Federal Reserve and the Conference of State Bank Supervisors released an annual survey of the nation's community banks, which provides a comprehensive overview of the key issues and challenged facing banking with less than $10 billion in assets. The survey examines lending and non-lending activities, regulatory compliance and market conditions.

READ SURVEY

2015 HMDA Data Show Mortgage Originations Up 22 Percent

The Federal Financial Institutions Examination Council released the 2015 Home Mortgage Disclosure Act data on mortgage lending transactions at 6,913 financial institutions. The data encompasses 12.1 million mortgage applications, 7.4 million of which resulted in loan originations – a 22 percent increase from 2014; refinance originations rose by 36 percent.

VIEW DATA

CFPB Publishes Resource on HMDA Final Rule

The CFPB has published a webinar and other resources on its website to help bankers comply with the HMDA final rule. The resources address institutional and transactional coverage, the data disclosure and submission process and key dates. Bankers can view the webinar on the CFPB's website or on YouTube.

ACCESS THE RESOURCES

Trades Offer Recommendations for Improving Flood Insurance

ABA and other financial and insurance associations wrote to lawmakers outlining recommendations for improving the National Flood Insurance Program. The groups based their recommendations on a set of principles geared toward enhancing the NFIP, expanding the private flood insurance market's ability to absorb more flood risk and providing consumers more options for purchasing insurance. Congress is currently considering long-term reauthorization of the NFIP, which expires next September. Recommendations included in part for Congress to pass legislation to clarify the requirements for purchasing private flood insurance that satisfied federal standard, and to consider exempting large commercial loan transactions from the mandatory purchase requirement.

READ LETTER

CFPB Issues Notice on New URLA Compliance with Reg B

The Consumer Financial Protection Bureau issued a notice to creditors that the recently redesigned Uniform Residential Loan Application (URLA) form – while not required under the Equal Credit Opportunity Act and Regulation B – is compliant with Reg B. The new URLA may be used starting Jan 1, 2018. While its use is not required, it has been redesigned in part to reflect expanded Home Mortgage Disclosure Act data collections that take effect the same time. Creditors who use the previous URLA will be required to use a supplemental form to comply with Regulation C.

READ MORE

CFPB Report Highlights ABA Offers Resource for Cybersecurity Awareness Month

To mark the National Cybersecurity Awareness Month in October, ABA has developed a series of consumer tips to help bankers promoted consumer awareness about cybercrime. Throughout October, ABA will release these resources to help consumers protect themselves, their small businesses, their identities and their mobile devices online.

READ MORE

CFPB Responds to Senate Letter on Tailored Regulation

Consumer Financial Protection Bureau Director Richard Cordray replied to a letter spearheaded by Senate Banking Committee members that urged the CFPB to exempt community banks and credit union from certain regulations. The letter, cosigned by a bipartisan group of 70 senators had cited a provision of the Dodd-Frank Act allowing the CFPB to exempt "any class" of entity from its rulemakings. Cordray response stressed that Dodd-Frank also charges the CFPB with enforcing consumer financial protection laws "consistently" in order to promote fair competition.

READ CORDRAY'S LETTER

FDIC Updates Video Resource on ATR, QM Rules

The FDIC released updated videos on the Ability to Repay and the Qualified Mortgage rules. The updated videos provide bank management and compliance staff with resources to better help them understand the rule, and reflect changes in federal laws and regulations since their original release in 2014.

ACCESS THE VIDEOS

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a Breckenridge Company
245 TownPark Drive, Suite 200
Kennesaw, GA 30144
800.432.1258 | oscis.com
Breckenridge INSURANCE GROUP