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CFPB ADOPTS FINAL CHANGES TO TILA-RESPA INTEGRATED DISCLOSURE RULE

Last October, the CFPB proposed changes to the TILA-RESPA Integrated Disclosure Final Rule first issued in November of 2013 and effective August 15, 2015. The proposed changes would have adjusted the timing requirement for giving revised disclosures when the consumer locks in the interest rate after the initial Loan Estimate disclosure has been given, corrected an omission in the original rule to allow certain language relating to new construction loans to be included on the Loan Estimate form, and required NMLSR ID numbers to be shown on the integrated disclosures, along with several technical corrections and wording changes.

Under the integrated disclosure rule as originally issued, a creditor must provide a revised Loan Estimate disclosure re-disclosing interest rate dependent charges and loan terms on the date that the interest rate is locked. The Bureau proposed to allow creditors until the next business day after the rate lock occurs to provide the re-disclosure. Fortunately, the final rule relaxes the timing requirement even further and requires that the revised disclosure be provided no later than three business days after the rate is locked, similar to the existing requirement for a revised GFE under RESPA.

A creditor is permitted to give a revised disclosure on new construction loans when settlement is expected to occur more than 60 days after the initial Loan Estimate is given, if the original disclosure states the creditor may issue revised disclosures at any time prior to 60 days before consummation. However, the rule as originally issued did not permit that statement to be included on the Loan Estimate form. The revised final rule corrects that omission. Creditors may include the statement on page 3 of the Loan Estimate under the heading "Other Considerations."

The final rule also requires that the name and NMSLR ID of both the organization and individual originator be shown on both the initial Loan Estimate and Closing Disclosure. Technical corrections include various non-substantive changes to sections of the commentary to clarify the intent of those sections.

(Cliff Harrison)

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"KNOW BEFORE YOU OWE" DEADLINE APPROACHES

In November of 2013, the CFPB issued its final rule to combine consumer TILA and RESPA disclosures for mortgage loans as required by the Dodd Frank Act. Early on in its existence, the Bureau made the combined "know before you owe" disclosures a focal point of its mortgage rulemakings, publishing a series of prototype disclosures for public comment beginning in 2011 and conducting multiple rounds of consumer testing. Rightly or wrongly, the CFPB believes that the new forms will provide better information in a clear format that will help consumers understand the terms and costs of the loan product being offered and allow for easier comparison shopping.

The new disclosure documents replace the initial and loan closing disclosures under TILA and the GFE and HUD-1 under RESPA and consist of two forms: (1) the Loan Estimate and (2) the Closing Disclosure. The Loan Estimate is designed to help consumers understand the key features, risks and costs of the mortgage loan for which they are applying. The Closing Disclosure aims to provide details about the actual, final costs and terms of the loan. Use of the CFPB forms is mandatory and almost all changes are prohibited.

The final rules are lengthy, detailed and technical as to format, content and delivery of the disclosures. In this article, we will give an overview of the new requirements and highlight some of the things we have gleaned from the rule, commentary and compliance guides published by the CFPB.

Scope and Effective Date. Use of the combined disclosures will be required for most closed-end consumer mortgage loans where the application was received on or after August 1, 2015. Exempt are home equity lines of credit, reverse mortgages, mobile home only loans (no real property), lenders who make 5 or fewer mortgage loans a year, and certain no-interest second mortgage loans for things like down payment assistance, property rehab, energy efficiency improvements and foreclosure avoidance.

The Loan Estimate. The Loan Estimate combines the information previously disclosed in the early TILA disclosure and the GFE and includes additional information such as the ECOA appraisal notice and the RESPA servicing notice. It can be provided by either a broker or by the creditor, but if provided by a broker, the creditor remains liable for the disclosure and compliance with the rule. Lenders that work through brokers will need to be able to manage that risk.

Timing. The Loan Estimate must be provided no later than 3 business days after an application is received and not less than 7 business days prior to consummation of the loan. The final rule clarifies that a completed application consists of the consumer's name, income information, social security number (for credit report purposes), property address, estimated value of the property, and the loan amount being applied for. The existing TILA and RESPA rules allow for a seventh element of any other information required by the creditor in order to complete the application. The new rule eliminates that extra "catch-all" item.

The definition of "business day" is similar to the existing rules; so, for purposes of the initial three day period, business day will continue to mean a day on which the creditor is open to the public for substantially all business functions. However, for purposes of the seven day waiting period, business day will include all calendar days except Sundays and legal public holidays. A waiver of the seven business day waiting period is permitted for bona fide personal financial emergencies with a proper waiver form that is not pre-printed, describes the emergency, waives the waiting period, and is

dated and signed by all consumers who are primarily liable for the loan.

Content. There are some significant differences in the new disclosures over the current forms. For example, while the GFE lumps all origination charges into a single figure, the Loan Estimate requires an itemization of the individual components of the origination charges. So, charges such as an underwriting fee, application fee or processing fee will be itemized, with a subtotal of all such amounts. Points paid to lower the rate must be itemized and shown as a percentage of the loan amount and a dollar amount. If points are not paid, the disclosure space must stay blank (and not shown as a "0"). Loan level pricing adjustments that are passed on to the consumer as a charge at closing rather than an adjustment in the interest rate must also be itemized. Subtotals and itemizations of individual charges are also required for third party charges under the headings "Services You Can Shop For" and "Services You Cannot Shop For." The individual charges must be labeled in a way that describes each item and listed alphabetically.

Broker compensation will be disclosed differently than on the current GFE. While the GFE requires broker compensation to be shown as both a charge to the consumer and a credit from the lender, creditor-paid broker compensation paid indirectly by the borrower through the interest rate will not be disclosed on the Loan Estimate. Broker compensation paid directly by the consumer to the broker will be disclosed as an itemized component of the origination charges and will also be disclosed on the Closing Disclosure as a Borrower-Paid charge. On the Closing Disclosure, broker compensation paid by the creditor will be shown in the "Paid by Others" column.

The old standard "Fed box" disclosures of APR, Finance Charge, Amount Financed, and Total of Payments are, apparently, not all that important any longer and will be moved to the last page of the Loan Estimate. Fortunately for lenders, the CFPB did not adopt requirements to disclose the lender's average cost of funds used in making the loan or the "all-inclusive" APR that would have included closing costs and fees for things like credit insurance premiums in the calculation. The latter could have significantly increased the number of loans that would be considered to be higher priced or HOEPA high cost loans and decreased the number of loans that would be considered to be qualified mortgages, unless the CFPB also changed those thresholds. However, the CFPB warned that it may reconsider this item later in its normal regulation review process.

The final rule allows a creditor to provide written estimates and information using its own forms prior to providing the Loan Estimate (for example, in connection with a pre-qualification or for general information purposes to prospective applicants). However, the lender's estimate must contain a conspicuous disclosure using model disclosure language at the top of the first page to distinguish the lender's information from the official Loan Estimate and must avoid using headings, format or content similar to the official form.

Limit on Fees. A creditor may not charge a fee to a consumer, other than for a credit report, until the Loan Estimate has been provided and the consumer has indicated a desire to proceed. The consumer can give this indication in any fashion (in-person, by phone or email, or by signing a pre-printed form) after receiving the Loan Estimate. Silence is not an indication, and the creditor must document this communication in some fashion in order to satisfy record retention requirements.

Accuracy and Tolerances. The Loan Estimate must provide a good faith estimate of the closing costs. An estimate is considered to be in good faith if the charges actually paid by or imposed on the consumer do not exceed the amounts disclosed in the Loan Estimate by

more than any applicable tolerance. If the charges exceed the amounts originally disclosed by more than any applicable tolerance, the estimate is not in good faith regardless of the reason, whether due to technical error, miscalculation or underestimation of the charge. A Loan Estimate is also considered to be in good faith if the creditor charges less than the amount disclosed on the Loan Estimate without regard to any tolerance limitations.

The CFPB largely retained the tolerance regime under the existing rule with some changes. Charges may exceed the amounts disclosed in the Loan Estimate in the following situations:

- Charges that may change without a tolerance limitation. Creditors may charge more than the amounts originally disclosed for the following items, provided that the original estimate was based on the best information reasonably available to the creditor at the time the Loan Estimate was prepared:
  - Prepaid interest, property insurance premiums, and amounts placed in escrow;
  - Charges for services required by the creditor that the consumer is permitted to shop for, provided, that the consumer picks a third-party provider that is not on the creditor's written list of providers; and
  - Charges for third-party services not required by the creditor (even if the service is provided by an affiliate of the creditor).
- Charges that are subject to a 10% cumulative tolerance. These charges are grouped together and may not increase cumulatively by more than 10% over the sum of the amounts disclosed on the Loan Estimate:
  - Recording fees;
  - Charges for third-party services the consumer is allowed to shop for where the charge is not paid to the creditor or the creditor's affiliate and the consumer picks the provider from the creditor's written list of providers.
- Changed circumstances. In certain specific circumstances, a revised Loan Estimate or Closing Disclosure may be provided that permits the charges to be increased (see below).

For all other charges, creditors are not permitted to charge more than the amounts shown on the Loan Estimate, unless a changed circumstance permits a revised Loan Estimate or Closing Disclosure to be given. These zero tolerance charges are: 1) all fees paid to the creditor, mortgage broker or any affiliate of either, 2) fees paid to third parties for required services that the consumer is not permitted to shop for, and 3) transfer taxes.

Changed Circumstances and Revisions. A creditor is bound by the Loan Estimate and may issue a revised Loan Estimate only in certain situations, including:

- a changed circumstance that causes charges to exceed the applicable tolerance (note that for third party charges subject to the cumulative 10% tolerance, a creditor may only provide a revised Loan Estimate when the changed circumstance results in an increase to the sum of all charges in this category by more than 10%),
- a changed circumstance that affects the consumer's eligibility for the loan product applied for or the value of the collateral,
- changes to the loan terms are requested by the consumer,
- a rate lock is entered into (but changes are limited to rate dependent terms)
- the consumer fails to indicate an intent to proceed within 10 business days, or
- the loan is a new construction loan and settlement is delayed more than 60 days (provided, the Loan Estimate discloses that the creditor may issue a revised Loan Estimate any time prior to 60 days before consummation).

A “changed circumstance” is defined as: 1) an extraordinary event beyond the control of any interested party, 2) information specific to the consumer or the transaction that was relied on in preparing the Loan Estimate changes or is found to be inaccurate, or 3) new information is provided that the creditor did not rely upon when preparing the Loan Estimate.

The revised Loan Estimate must be provided (delivered or placed in the mail) within 3 business days after learning of the change and at least 7 business days prior to consummation. The seven day waiting period begins once the revised Loan Estimate is delivered or placed in the mail, not when it is received by the consumer. If closing was originally scheduled to occur during the 7 day waiting period, the lender will not be able to rely on the revised Loan Estimate unless closing is delayed. As noted below, the Closing Disclosure is required to be received by the consumer at least 3 business days prior to consummation. A revised Loan Estimate may not be provided once the Closing Disclosure has been given, and, as a result, a consumer must actually receive a revised Loan Estimate no later than 4 business days prior to closing.

The Closing Disclosure. This new form takes the place of the old HUD-1 and TILA closing disclosure forms and includes additional disclosures mandated by the Dodd-Frank Act. The purpose is to provide a detailed accounting of the actual settlement costs and terms of the transaction. The Closing Disclosure may be provided by the creditor or by the settlement agent, but the creditor remains responsible and liable for the content and compliance with the rule.

Timing. The Closing Disclosure must be received by the consumer no later than three (3) business days before closing. If mailed, the disclosure is considered to be received 3 business days after mailing.

Content. The Closing Disclosure must contain the actual terms and costs in connection with the transaction. Since the disclosure must be given at least 3 business days before closing, the rule allows a creditor to estimate disclosures using the best information available at the time the disclosure is prepared if the actual term or cost is not known. However, the creditor must act in good faith and use due diligence in obtaining the information. That will require close coordination between the lender and the closing attorney well in advance of closing in order to be able to provide a completed disclosure form 3 business days prior to closing. If an estimated disclosure changes, corrected final disclosures must be provided at or before consummation.

Revisions. Since the Closing Disclosure must be received by the consumer 3 business days before consummation, it is always possible that something about the loan or closing costs may change after the disclosure is given. The rule describes three categories of changes that require redisclosure:

- changes that occur before consummation that require a new 3 day waiting period to close after a corrected Closing Disclosure has been given,
- minor changes that occur before consummation that do not require a new 3 day waiting period and require only that a revised Closing Disclosure be given at or before consummation, and
- changes that occur after consummation.

If any one or more of the following three types of significant changes occur before consummation, a corrected Closing Disclosure and a new 3 business day waiting period is required before closing: the disclosed APR changes (by more than ⅛ of 1%, or ¼ of 1% in an irregular transaction), the loan product changes (for example, fixed to adjustable rate), or a prepayment penalty is added. Other less significant changes can be made by simply

providing a revised Closing Disclosure at or before consummation of the loan. In that case, however, the consumer has the right to request inspection of the corrected Closing Disclosure during the business day before consummation. Remember, too, that changes may not result in an increase in settlement charges by more than any applicable tolerance, except where a changed circumstance occurs that permits re-disclosure and the increase.

Changes after consummation also require re-disclosure. If during 30 calendar days after closing, an event in connection with the settlement occurs that causes the Closing Disclosure to be inaccurate and changes the amount actually paid by the consumer (for example, actual recording fees differ from the amount disclosed and paid at closing), the creditor must provide a corrected Closing Disclosure within 30 calendar days of receiving information sufficient to establish that the event occurred. In a purchase transaction, re-disclosure would similarly be required if the event caused a change in the amount actually paid by the seller. For non-numeric clerical errors that do not affect the timing, delivery or other requirements of the rule, the creditor must provide a corrected Closing Disclosure within 60 days after consummation. An example would be where the Closing Disclosure incorrectly identifies the name of a settlement service provider.

<u>Tolerance Refunds</u>. Charges paid by the consumer at closing that exceed the amounts disclosed on the Loan Estimate beyond any applicable tolerance must be refunded and a corrected Closing Disclosure reflecting the refund must be delivered or placed in the mail within 60 calendar days after closing. For charges subject to a zero tolerance, the excess of any individual charge over the amount disclosed must be refunded. For charges subject to the cumulative 10% tolerance, the amount by which the total sum of those charges exceeds the sum of those charges shown on the Loan Estimate by more than 10% must be refunded.

<u>Record Retention</u>. Copies of the Closing Disclosure and all documents related to it must be retained for at least 5 years after consummation. All other records relating to compliance with the Integrated Disclosure rule must be kept for at least 3 years after consummation. If a creditor sells or transfers the loan and does not continue to service it (for example, a sale of a mortgage in the secondary market with servicing released), the creditor must provide a copy of the Closing Disclosure to the new owner or servicer as part of the transfer of the loan file and both the creditor and new owner or servicer must retain a copy for the full 5 year period. Fortunately for lenders, the Bureau did not adopt its proposal to require creditors to maintain records of compliance in electronic, machine readable format. Records may be kept by any method that reproduces disclosures and other records accurately, including computer programs and electronic storage.

<u>Implementation</u>. How you comply with the new rule will depend a great deal on how you operate. To start with, though, it may be helpful to identify all affected products, departments and staff. Changes to loan documentation systems will certainly be necessary and discussions with your vendors about the status of upgrades and when the forms and system changes will be available for installation and testing should already be taking place. Identifying and planning for training needs for loan originators, processors, compliance and quality control staff should be considered as well as consultation with and training of closing attorneys who frequently close loans your bank originates will be most important. Quality control during preparation of documents, closing and post-closing will be important. As with all changes, there will be a period of learning and adjustment for all concerned. We

will devote a major segment of the February Quarterly Meeting to the new rule.

(Cliff Harrison)

TILA-RESPA DISCLOSURE COMPLIANCE GUIDES AVAILABLE

Just a reminder that the CFPB has made available a number of tools to aid lenders in coping and complying with the TILA-RESPA Integrated Disclosure Rule. These include:

- A Small Entity Compliance Guide in a plain English Q & A format. The guide covers the basics of the rule and requirements for use of the new disclosure forms.
- A Guide to Completing TILA-RESPA Integrated Disclosure Forms which is a companion to the Compliance Guide. It summarizes the instructions for the Loan Estimate and Closing Disclosures on a section-by-section basis.
- A Disclosure Timeline Example which illustrates the process and timing of disclosures for a sample loan.
- Blank disclosure forms including versions with annotations to the specific rule provisions, sample completed disclosures for five different loan types, and model forms for a written list of settlement service providers.
- A series of four recorded 60 to 90 minute webinars available for downloading and covering an overview of the rule, frequently asked questions and the loan estimate and loan closing forms.

These materials can be found on the CFPB website at: www.consumerfinance.gov/regulatory-implementation/tila-respa/

Personally, I think the CFPB should also offer free aspirin and psychological counseling for compliance officers.

(Cliff Harrison)

WHAT CONSTITUTES ADEQUATE TRAINING?

By now everyone is familiar with the approach used with the various federal prudential regulators to assess the risk that a bank incurs in connection with its compliance with the various applicable laws and regulations.

The regulators refer to this as a bank's Compliance Management System or CMS. According to the regulators, your bank's CMS is how your bank:

- Learns about its compliance responsibilities;
- Ensures that employees understand these responsibilities;
- Ensures that requirements are incorporated into business processes;
- Reviews operations to ensure responsibilities were carried out and requirements are met; and
- Takes corrective action and updates materials as necessary.

An effective CMS is comprised of three interdependent elements:

- Board and management oversight;
- The bank's Compliance Program; and
- Compliance audit.

All of these elements need to be strong and working together to successfully manage compliance.

The second of these elements is the bank's Compliance Program which regulators assess separately. Your Compliance Program includes the following components:

- Policies and procedures
- Training
- Monitoring
- Consumer complaint response.

Training, obviously, is an integral part of your Compliance Program Guidelines from the regulatory agencies stress that the education of a financial institution's Board of Directors, management, and staff is essential to maintaining an effective Compliance Program. Management and staff should receive specific, comprehensive training in laws and regulations, and internal policies and procedures that directly affect their jobs.

The compliance officer should be responsible for compliance training and establish a regular training schedule for Directors, Management, and staff. Appropriate training can be conducted in-house or through external training programs or seminars. Once personnel have been trained on a particular subject, a compliance officer should periodically assess employees on their knowledge and comprehension of the subject matter.

An effective compliance training program should be updated frequently with current, complete, and accurate information on products and services and business operations of the institution, consumer protection laws and regulations, internal policies and procedures, and emerging issues in the public domain.

You should ask yourself how well your current training program measures up to each of these standards.

At the February Quarterly Meeting Patsy Parkin will conduct a study of just what constitutes an effective training program. It seemed appropriate, however, to consider some common short comings that some banks encounter in their training efforts. In other words what is NOT an effective training program?

The regulators stress the frequency, completeness, accuracy, and timeliness of your training. It follows that training should be systematic and well planned. It should not be haphazard or reactionary. For instance, training that takes place just before a compliance examination, or just after a compliance review that reveals problems, is probably not what the regulators have in mind. Although this type of training is sometimes necessary, a more planned and proactive approach can often eliminate the need for a lot of "crash" training.

A second form of training that is sometimes required, but should be avoided whenever possible, is training that takes place in response to a requirement in an enforcement action brought by one of your regulators. Almost every Board Resolution, MOU, Consent Order or Cease and Desist Order carries with it a requirement that the bank conduct comprehensive training on the subject area(s) covered by the enforcement action. In most instances the regulators require that this training be conducted by a third party consultant. Obviously this approach is more expensive and less preferable to a well-planned and more continuous training program that just might avoid the imposition of an enforcement action in the first place.

The regulators view comprehensive training for Management, the Board of Directors and the bank's staff as the responsibility of the

Compliance Officer. Materials provided and the program content of the regularly scheduled Quarterly Meetings of the MRCG and the MSRCG should help in developing an on-going training program that will pass regulatory muster.

(Ed Wilmesherr)

LIGHTS! CAMERA! IT'S TIME FOR ACTION!

OK, maybe not the camera, but it's definitely time for action – training action!! Does your bank have an effective compliance training program for your employees AND for your directors? If not, it's time to get started and we are going to help!

Many banks use online or web-based basic compliance training for employees, choosing an assortment of topics, based on an employee's job description. So how do you teach them about your bank's policies and procedures? No, there is nothing wrong with using online or web-based training, BUT it should be paired with some good, old-fashioned classroom training. At our February meeting we will be walking through an effective compliance training program that you can implement at your bank.

Now we have talked about employee training, but what about director training? We know that sometimes directors don't want to take time to watch a video or even read about regulations, but directors have a responsibility to provide oversight of a bank's compliance program, and they cannot do this effectively without at least a basic knowledge of the regulatory requirements. So we will be providing you with some easy, painless guidance on how to do this.

And of course all of this needs to be well-documented! Practical guidance and tools for success. Get ready to learn!

(Patsy Parkin)

LOANS TO MILITARY SERVICEMEMBERS: A REFRESHER AND AN UPDATE

Regulators have raised some questions in recent exams about the Servicemembers' Civil Relief Act and the Military Lending Act. This article summarizes some of the things your bank should already be doing along with some recent developments.

Existing Law. Beginning as a federal effort to protect soldiers from deteriorating financial circumstances while at war, the SCRA has evolved to include caps on some interest rates and protections from things like foreclosures, repossessions, evictions, and default judgments while a servicemember is on active duty. Enacted in 2007, the Military Lending Act sought to protect servicemembers from certain high interest rate loans. Some of the particular provisions of these laws that may apply to your bank follow:

- *6% Interest Rate Cap*. For debt incurred prior to active duty, interest rates on all debt are capped at 6% during the period of active duty. Interest above the cap is not deferred, it is forgiven. The interest rate reduction applies equally to debts of the servicemember and joint debts with the servicemember's spouse. The cap applies to all debt including mortgages, installment loans, credit cards, HELOCs and even student loans. For a mortgage or deed of trust, the rate cap extends for one year following the end of active duty.
- *Repossession, Foreclosure, and Collection*. Without a court order, repossessions and foreclosures are almost always prohibited when a borrower is on active duty. An attempted repossession or foreclosure in violation of the SCRA is void and can result in criminal penalties. The protection against foreclosure of a mortgage or deed of trust extends for 12

months after a servicemember returns from active duty (reverts to 9 months on 1/1/16). Protection also extends to termination of installment contracts for the purchase or lease of personal property entered into prior to active duty. As a result, some examiners have questioned whether banks incorporate SCRA compliance into their safe deposit box policies and procedures.

- *Litigation*. A court may stay any action in which a servicemember is a plaintiff or defendant, and such a stay may also apply to things like executions of judgments and garnishments. Default judgments are generally unavailable against a servicemember in military service. Also, time in military service is usually excluded from the calculation of statutes of limitations.
- "*Consumer Credit.*" The Military Lending Act protects "covered borrowers" in "consumer credit" transactions. A "covered borrower" is a person who is on active duty at the time of becoming obligated to repay consumer credit, as well as that person's spouse and dependents. In general, "consumer credit" includes most payday loans (closed-end credit of $2000 or less with a term of 91 days or less), vehicle title loans (vehicle secured, non-purchase money, closed-end credit with a term of 181 days or less), and tax refund anticipation loans (closed-end credit where the borrower agrees to pay an income tax refund to the lender). The following applies when consumer credit is extended to a covered borrower.
    - *MAPR*. The Military Annual Percentage Rate, or MAPR, is capped at 36% for consumer credit to "covered borrowers. MAPR is a broader calculation than finance charges or APR under Regulation Z and includes credit insurance premiums, fees for credit-related ancillary products, and some other fees.
    - *Particular Disclosures*. The MAPR must be disclosed together with the total of all charges included in the MAPR. A specific disclosure regarding rights under the SCRA must be provided verbally and in writing in addition to Regulation Z disclosures.
    - *Prohibited Terms*. Several terms are prohibited, including mandatory arbitration, prepayment penalties, and waivers of rights under the SCRA. Rollovers, renewals, refinancings, or consolidations by the same covered borrower and creditor are prohibited unless they result in more favorable terms to the borrower.

Practical Challenges. A central challenge for many banks is how to know which customers are protected. Some suggestions include:

- *Lender Training*. Make sure your lenders are trained. For example, your lenders should know what to do if a customer mentions that their spouse has been called to active duty.
- *Create a Regular Process Before Collection*. When a loan is in default, ask your customer if they or their spouse has been called to active duty. Consider including a statement on your collection correspondence directing your customer to contact you if they believe they are eligible for benefits under the SCRA.
- *DOD Database*. Use the Department of Defense's database to determine whether your customers have been called to active duty. Some banks periodically check their entire customer list in this database while other banks check particular customers on a case by case basis.
- *Written Borrower Statement*. When extending any type of loan that would be

considered to be "consumer credit" as it is defined in the Military Lending Act, make sure the borrower certifies in writing whether the borrower is a "covered borrower."

Recent Developments. In January, HUD revised the SCRA notice required to be delivered to past due borrowers. The new form has an expiration date of 12/31/2017.

Also, in September 2014, the Department of Defense proposed regulations to expand the definition of "consumer credit" and to create a new safe harbor for determining whether a borrower is a "covered borrower."

- *Consumer Credit*. The definition of "consumer credit" and the overall application of the Military Lending Act is proposed to mirror more closely the types of loans subject to Regulation Z. For example, the proposed definition would include all forms of payday loans, vehicle loans, and tax refund anticipation loans (instead of only those on the particular terms in the current regulation), as well as loans such as installment loans, unsecured open-end lines of credit such as overdraft lines of credit, and credit cards (with some particular exceptions for credit cards). Residential mortgages and purchase money loans (such as loans for the purchase of an automobile) would remain outside the scope of "consumer credit."
- *Safe Harbor*. Under existing law, lenders can rely on a written statement from a borrower confirming whether the borrower is a "covered borrower." The proposals would require lenders to confirm a borrower's status on the Department of Defense database to benefit from the safe harbor.

Most banks have been careful to avoid making covered "consumer credit" loans under the existing rules because of the difficulty in calculating the MAPR and complying with the additional requirements. The proposed expansion of coverage could make that approach next to impossible. We will continue to monitor developments in this area.

(Jeff Stancill)

SUPREME COURT CLARIFIES RIGHT OF RESCISSION

On January 13, 2015, the U.S. Supreme Court decided the case of *Jesinoski v. Countrywide Home Loans, Inc.* which settled once and for all a set of split decisions between the various U.S. District Courts of Appeal regarding the exercise of the right of rescission when that right has been extended due to a creditor's failure to give notice of the right of rescission or to make the necessary material disclosures required by the Truth In Lending Act and Regulation Z. Before getting into the details of that case, a brief refresher on rights of rescission is in order.

Everyone is familiar with the basic right to rescind. That provision of the Truth In Lending Act and Regulation Z requires delivery of a notice and certain required disclosures to all persons entitled to rescind when a security interest is taken in a consumer's principal dwelling. The consumer then has until midnight of the third business day following the closing of the loan, the delivery of the notice or delivery of the required disclosures, whichever occurs last. If the required notice and/or material disclosures are not delivered in correct form and content, then the right of rescission is extended until three years after closing.

The "notice", of course, is the actual notice of the right to rescind. The "material disclosures" that must accompany the notice are the TILA-required disclosures of the annual percentage

rate, the finance charge, the amount financed, the total of payments, the payment schedule, as well as the disclosures required for High-Cost mortgages (HOEPA loans) by Section 1026.32(c) and the limitations imposed on those loans by Section 1026.32(d) (balloon payments, negative amortization, prepayment penalties, etc.) and, finally, the prepayment penalty limitations on those loans subject to the ability to repay requirements of Section 1026.43(g).

Now to the Jesinoski case. In this case, Mr. and Mrs. Jesinoski took out a loan that was subject to the right of rescission. The case does not discuss either the failure to provide the necessary rescission notice or the necessary material disclosures. Instead, it focuses on the act of rescission itself and what rescission requires.

The Jesinoskis mailed a letter rescinding their loan exactly 3 years after loan closing. Shortly thereafter, their lender, Bank of America Home Loans, replied, refusing to acknowledge their rescission. One year later the Jesinoskis filed suit seeking a declaration of rescission and damages. The lower court agreed with the lender that TILA requires a borrower seeking rescission to file suit within 3 years of loan closing.

The U.S. Supreme Court had no trouble overturning that ruling. In a unanimous decision, the Supreme Court found that the clear language of TILA leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. The statute does not require him to file suit within 3 years.

This decision resolved what had previously been an unsettled question. Some circuits had ruled that the borrower needed to file suit within the 3 year period in order to exercise the right to rescind.

Practice Pointer: As a result of the Supreme Court's decision, a lender that receives a notice of rescission in the extended 3 year rescission period should promptly file suit against the borrower to review the validity of the rescission itself and, if the rescission is valid, to seek a return of loan principal as a condition of the loan's rescission.

When rescission occurs, the loan transaction unwinds. The lender must reimburse the borrower for all interest paid, and ultimately the borrower must repay the outstanding balance. However, the *Jesinoski* decision makes it clear that borrowers are entitled to litigate their case for rescission prior to reaching a determination that the borrower has the ability to pay off the principal balance. That fact may lead to more frivolous claims of rescission, especially in foreclosure situations.

(Ed Wilmesherr)

EXEMPTION THRESHOLDS FOR CERTAIN REGULATIONS INCREASED

A number of compliance-related regulations have threshold amounts below which institutions are exempt from compliance requirements. The applicable regulatory agency is often required to adjust the threshold levels annually by the percentage increase in the Consumer Price Index.

Below are a number of adjustments made by the CFPB, the FDIC, the OCC and/or the Federal Reserve:

- Effective January 1, 2015, the **Consumer Financial Protection Bureau adjusted the asset-size exemption threshold for banks, savings associations, and credit unions under Regulation C, which implements the Home Mortgage Disclosure Act.** The asset-size exemption will increase to $44

million. Therefore, institutions with assets of $44 million or less as of December 31, 2014 are exempt from collecting HMDA data in 2015.

- Effective January 1, 2015, the **Consumer Financial Protection Bureau adjusted the asset-size exemption threshold under Regulation Z, which implements the Truth in Lending Act.** The asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan is adjusted to increase to $2.060 billion. Therefore, creditors with assets of $2.060 billion or less as of December 31, 2014 are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2015. The adjustment to the escrow exemption asset-size threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that do not exceed the asset-size threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

- On December 23, the **Federal Reserve Board announced the annual adjustment to the dollar amount used to determine whether a small loan is exempt from the special appraisal requirements that apply to higher-priced mortgage loans.** The exemption was adjusted to $25,500, effective January 1, 2015. The Dodd-Frank Act amended the Truth in Lending Act to require creditors to obtain a written appraisal based on a physical visit of the home's interior before making a higher-priced mortgage loan.

- On December 19, the **Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency announced the annual adjustment to the asset-size thresholds used to define small bank, small savings association, intermediate small bank, and intermediate small savings association under the Community Reinvestment Act regulations.** Financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification. Those meeting the small and intermediate small asset-size threshold are not subject to the reporting requirements applicable to large banks and savings associations. The asset-size threshold adjustments were effective January 1, 2015.

(Ed Wilmesherr)

“ICE” IN FEBRUARY

Yes, we could have the “frozen ice” at our February meeting, but I hope not because we have the Immigration and Customs Enforcement (“ICE”) coming to our meetings! Steven Cole with the Department of Homeland Security has been approved to speak. There have been many questions lately about acceptable ID documents for non-resident aliens and we have asked Mr. Cole to discuss passport information, VISAs, work authorized social security cards, permanent resident cards, employment authorized documents, ITINs, and BENs. We also gave him several scenarios relating to non-resident aliens and have asked him to give examples of potential suspicious or unusual activity.

I know my “track record” for outside speakers has not been too good, but I am willing to try again, especially with this “hot topic.” Bring

your BSA Officer and let's get ready for an informative session.

(Patsy Parkin)

MRCG MEETING
TO BE HELD ON FEBRUARY 19, 2015

The MRCG will hold its February Meeting on February 19, 2015, at the Mississippi Sports Hall of Fame & Museum Conference Center, 1152 Lakeland Drive, Jackson, Mississippi. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m..

During the February Quarterly Meeting we will go over the anticipated change in TILA/RESPA Disclosure forms and "Know Before You Owe" regulations; the requirements for an effective training program; a SCRA update; a recent U.S. Supreme Court decision; and a number of miscellaneous other compliance topics.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration to Liz Crabtree no later than Friday, February 13, 2015, so that arrangements for lunch can be finalized. We look forward to seeing you there.

(Ed Wilmesherr)

MSRCG MEETING
TO BE HELD ON FEBRUARY 24, 2015

The MSRCG will hold its February Meeting on February 24, 2015, at The Racquet Club of Memphis in the Large Ballroom located at 5111 Sanderlin Avenue, Memphis, Tennessee. Registration will begin at 9:00 a.m. with the meeting to begin at 9:30 a.m.

During the February Quarterly Meeting we will go over the anticipated change in TILA/RESPA Disclosure forms and "Know Before You Owe" regulations; the requirements for an effective training program; a SCRA update; a recent U.S. Supreme Court decision; and a number of miscellaneous other compliance topics.

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(Ed Wilmesherr)

MRCG-MSRCG COMPLIANCE CALENDAR

10/28/14 - Reg. P amendment allowing website posting of annual privacy notice effective	04/16/15 – MRCG/MSRCG Joint Steering Committee Meeting
10/29/14 – Comment period for proposed HMDA rule ends	05/19/15 – MSRCG Quarterly Meeting
11/03/14 - Amendment to 2014 mortgage rules providing for ATR/QM points and fees cure effective	05/21/15 – MRCG Quarterly Meeting
12/29/14 - Comment period for proposed flood insurance escrow rule ends	07/16/15 – MRCG/MSRCG Joint Steering Committee Meeting
01/15/15 – MRCG/MSRCG Joint Steering Committee Meeting	08/01/15 – Mandatory use of revised TILA/RESPA disclosure takes effect
02/19/15 – MRCG Quarterly Meeting	08/20/15 – MRCG Quarterly Meeting
02/24/15 – MSRCG Quarterly Meeting	08/25/15 – MSRCG Quarterly Meeting
03/09/15 – Comment period for CFPB proposal on “safe” deposit products for college students ends	09/17/15 – MRCG/MSRCG Joint Steering Committee Meeting
03/16/15 – Comment period for CFPB proposed changes to mortgage servicing rules end	11/17/15 – MSRCG Annual Meeting
03/23/15 – Comment period for CFPB proposed rules on pre-paid card disclosures ends	11/19/15 – MRCG Annual Meeting