



# COMPLIANCE UPDATE

## **BUREAU POSTS PROTOTYPE MORTGAGE CLOSING DISCLOSURE FORM**

The Consumer Financial Protection Bureau (CFPB) has blogged regarding its testing in Des Moines, Iowa, of two draft designs for a new real estate mortgage closing disclosure form that would combine the Truth-in-Lending and RESPA disclosures for borrowers. The CFPB earlier this year tested revised disclosures given at application, combining the Good Faith Estimate of settlement costs and the Truth-in-Lending disclosures. We can expect further developments before final changes are announced next year. Revision of these documents has been mandated by the Dodd-Frank Act. The most recent information can be found at: <http://www.consumerfinance.gov>.

## **CORRECTION OR AMENDMENT OF BANK SECRECY ACT (BSA) FILING FORMS**

FinCEN issued a Notice regarding changes effective December 1, 2011, in the instructions for correcting or amending previously filed paper BSA forms. To view specific correction or amendment instructions, visit the FinCEN Forms web page [www.fincen.gov](http://www.fincen.gov) and select a specific form type.

## **CHEX SYSTEMS AND CREDIT SCORE DISCLOSURES**

There has been a recent clarification regarding the Chex System's score (QualiFile), and whether or not it is considered to be a credit score under the new Fair Credit

Reporting Act (FCRA) adverse action notice requirements. Yes, for purposes of the new notice requirements, the score is considered a credit score. If a consumer is denied a deposit account based on the score provided by Chex Systems, the FCRA adverse action notice must include credit score disclosures.

## **AGENCIES RELEASE GUIDANCE AND PROPOSED REVISIONS TO INTERAGENCY QUESTIONS AND ANSWERS REGARDING FLOOD INSURANCE**

On October 14, 2011, the federal agencies published guidance that updates the Interagency Questions and Answers Regarding Flood Insurance. The guidance finalizes two questions and answers that had been previously proposed. The first relates to insurable value. The second relates to force-placement of flood insurance. The agencies withdrew another question regarding insurable value.

The agencies requested comment on three additional proposed updates to questions and answers relating to force-placement of flood insurance. Two answers have been significantly and substantively changed. The third change regarding force-placement of flood insurance revises a previously finalized question and answer for consistency with the proposed changes.

It is the intention of the agencies that, after public comment has been received and considered and the guidance has been adopted in final form, the agencies will issue a final update to the 2009 Interagency

Questions and Answers Regarding Flood Insurance. The final update will continue to supplement other guidance or interpretations issued by the agencies and the Federal Emergency Management Agency.

## **ANNUAL MORTGAGE LOAN ORIGINATOR (MLO) REGISTRATION RENEWAL PERIOD BEGINS**

The annual S.A.F.E. Act federal MLO renewal period for 2012 began November 1 and ends December 31, 2011. All institutions with federally registered MLOs must renew their institution records; MLOs placed in an active status before July 1, 2011, must renew their registrations. MLO registrations that were made active on or after July 1, 2011, will not require renewal until the end of 2012.

## **REGULATION Z EXEMPTION LEVEL FOR 2012**

The Board of Governors of the Federal Reserve System published adjusted exemption levels for Regulation Z and Regulation M on June 20, 2011. These adjustments reflect the annual percentage increase in the consumer price index that was in effect as of June 1, 2011. They will be effective January 1, 2012.

Based on these adjustments, the protections of the Truth-in-Lending Act (TILA) and the Consumer Leasing Act generally will apply to consumer credit transactions and consumer leases of \$51,800 or less in 2012. Private education loans and loans secured by real property (such as mortgages), however, continue to be subject to the TILA, regardless of the amount of the loan.

## **COMMUNITY REINVESTMENT ACT (CRA), FAIR HOUSING ACT (FHA), AND EQUAL CREDIT OPPORTUNITY ACT (ECOA) POSTERS FOR FORMER OTS INSTITUTIONS**

Title 3 of the Dodd-Frank Act effectively abolishes the Office of Thrift Supervision (OTS). Federal regulatory

supervisory responsibilities for federal thrifts with assets of \$10 billion and under transferred to the OCC. State thrifts with assets of \$10 billion and under are now supervised by the FDIC. This transfer was effective July 21, 2011.

In light of the shifts in supervision, the CRA posters at bank branches will need to be changed to reference either the OCC or FDIC, as applicable. If affected, you should also ensure you have the correct Fair Housing Act and ECOA notices reflecting the change.

## **FINCEN UPDATES CTR AND SAR E-FILE**

On September 8, 2011, FinCEN announced its release of Electronic Filing Requirements for its Currency Transaction Report (CTR) and Suspicious Activity Report (SAR). These technical specifications are to be used to develop batch files of FinCEN's new CTR (FinCEN Report 112) and SAR (FinCEN Report 111) for upload or transmission to the BSA E-Filing System. Use of new CTR and SAR formats for e-filing will be permitted in December 2011, and mandatory July 1, 2012. FinCEN will conduct a webinar on the new batch filing specifications on September 29, 2011.

## **45-DAY ADVANCE NOTICE REQUIREMENTS FOR OPEN-END VARIABLE RATE LOANS WITH A RATE FLOOR**

Previously, open-end (not home-secured) variable rate consumer loans were not subject to the 45-day advance notice requirements for increases in rate changes if they were tied to a publicly available index plus a margin, because the rate varied "according to the operation of an index that is not under the control of the creditor and is available to the general public." However, due to some Regulation Z clarifications that were issued by the Federal Reserve Board in the Federal Register on April 25, 2011, these loan types will be subject to the 45-day advance notice requirements for increases in rate changes if they are subject to a floor rate. A common example is prime plus 7%, with a minimum rate of 12%.

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When the prime rate increases and you increase the interest rate on the loan, you will need to notify affected borrowers 45 days prior to the change becoming effective. The reason for this is that the floor rate is now considered to be an index under the creditor's control under the Credit CARD Act.

The Board noted that for open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan, the regulation does not prohibit variable rates that are subject to a minimum or floor, but for such rates the creditor must comply with the advance notice requirements of § 226.9(c). These clarifications have a mandatory compliance date of **October 1, 2011**.

### **IMPORTANT REMINDER ON INSIDER ASSET TRANSACTIONS**

Subsection (z) was added on July 21, 2011, to § 18 of the Federal Deposit Insurance Act (12 USC 1828) by § 615 of the Dodd-Frank Act. It places restrictions on an insured depository institution's purchases of assets from, or sales of assets to, executive officers, directors, principal shareholders, and their related interests. Any such transaction must be on market terms, and, if it represents more than 10 percent of the institution's capital stock and surplus, it must be approved in advance by a majority of the members of the institution's board of directors who don't have an interest in the transaction. Although the Federal Reserve Board may issue rules to explain and carry out the new subsection, **implementing regulations are not mandated**. Compliance has been required since **July 21, 2011**.

### **Questions?**

If you wish to discuss these matters in detail, please contact Bob Kline, Debbie Masters, Tim Schofer, or Matt Presto at (724) 934-0344 or (800) 580-7738, or email [bkline@srsnodgrass.com](mailto:bkline@srsnodgrass.com), [dmasters@srsnodgrass.com](mailto:dmasters@srsnodgrass.com), [tschofer@srsnodgrass.com](mailto:tschofer@srsnodgrass.com), or [mpresto@srsnodgrass.com](mailto:mpresto@srsnodgrass.com).