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CFPB Advances on Merged Mortgage Disclosures

The Consumer Financial Protection Bureau (CFPB) has announced a new set of mortgage settlement forms to replace existing forms under the federal Truth in Lending (TILA) and the Real Estate Settlement Procedures Acts (RESPA). Through its website, the CFPB is seeking feedback on two new prototypes for the disclosure of mortgage-related fees, and terms and settlement costs. This latest effort is a continuation of the “Know Before You Owe” initiative, where the CFPB is creating disclosure prototypes designed to simplify mortgage-related disclosures.

As in previous rounds, the CFPB’s goal is to create “one combined form that is easier to understand and use for consumers and industry.” The merged disclosures are required under the Dodd-Frank Act. The public will be allowed to comment and provide feedback on these forms through the CFPB’s website.

On December 9, ABA submitted initial comments on the first iteration of the draft mortgage settlement forms released by the CFPB in November 2011. ABA provided detailed comments focused on the format and wording of the draft forms, and on their general clarity and intelligibility. ABA expressed the opinion that the new draft settlement forms were a “noticeable improvement over existing forms.” ABA offered various cautionary views to the Bureau, however, advising that numerous legal and other issues still require resolution. For instance, there is no clarity regarding the precise entity that will bear the duty of delivering the merged settlement form to the consumer (that duty currently resides with lenders in instances of TILA, and settlement agents, in instances of RESPA’s HUD-1 form). ABA critiqued the lack of consistency in the form’s verbiage, as well as the duplication of certain disclosure information. In addition, ABA observed that there are several new disclosure terms in the prototypes, such as the “Lender Cost of Funds,” that are of no consumer value, and that have the strong potential to confuse and mislead mortgage shoppers.

To see the current iteration of the “Know Before You Owe” forms, please go [here](#). To see the ABA’s initial comments on the prototype settlement disclosures, [go here](#).

For more information, contact ABA’s [Rod J. Alba](#).



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ABA Staff Meets With CFPB to Discuss Ability-to-Repay Proposal

ABA staffers last week met with Consumer Financial Protection Bureau officials to discuss the pending proposed rule -- mandated by the Dodd-Frank Act -- that would require creditors to determine a consumer's ability to repay a mortgage before making the loan. ABA had asked for the meeting as a follow-up to its comment letter in which the association offered an alternative solution to strengthen the "qualified mortgage" option's safe-harbor protections in the proposal.

The ABA staffers gave the CFPB officials an analysis paper that supplements the comment letter by detailing the need for a true "safe harbor" approach for meeting the ability-to-repay standard. They emphasized that adopting a "rebuttable presumption" for meeting the ability-to-repay test rather than a "safe harbor" would unnecessarily constrain borrowers' ability to obtain mortgage credit.

The ABA staffers added that they also oppose proposals the CFPB reportedly received that would base the qualified-mortgage safe harbor on rigid ratios such as those contained in the prudential regulators' proposed risk-retention rule. That would constrict credit availability, the ABA staff said, and defeat the purpose of the safe harbor the association proposed, which is to encourage lending to all borrowers who demonstrate an ability to repay.

[Read ABA's comment letter.](#) [Read the ABA paper.](#) [Read the proposal.](#)
For more information, contact ABA's [Joe Pigg](#).

ABA: FHFA Should Defer Changes in Mortgage-Servicing Compensation

ABA in a comment letter dated December 20, 2011 strongly encouraged the Federal Housing Finance Agency to defer any further action on altering mortgage-servicing compensation until the issue can be addressed as part of restructuring the mortgage finance system. ABA was responding to an FHFA discussion paper describing two alternative compensation structures.

"While ABA's members appreciate the undertaking by FHFA to explore ways in which servicing compensation can be improved, we are concerned that the timing is not right to proceed with significant changes to the servicing compensations methodology ... contemplated by either option ...in the discussion paper," the association said.

ABA noted that the Obama administration and Congress have started a multiyear process for restructuring the housing finance system. "It is our strong belief that changing the servicing compensation structure outside of that reform, particularly without demonstrating a compelling need for



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change, will only exacerbate instability in the market,” ABA said.

[Read the letter.](#) [Read the discussion paper.](#) For more information, contact ABA’s [Bob Davis](#).

CFPB Announces Ombudsman Office

The CFPB has announced the opening of the Ombudsman's Office, to be headed up by Acting Ombudsman Wendy Kamenshine. The CFPB Ombudsman's Office was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The Ombudsman has announced that it will assist in the resolution of issues that a depository or non-depository entity has with the CFPB “by advocating for a fair process.” The CFPB’s website states that the Ombudsman will analyze and learn about all perspectives on any issue brought to it by analyzing the applicable laws, regulations, policy, and data, talking with the individual and/or stakeholders involved, and meeting with CFPB officials. Upon completion of that review, the Ombudsman may make a recommendation on how the CFPB should address the issue.

To read more about the Ombudsman's Office, [go to this web site](#).

CFPB Initiates Transfer of Regulations

On December 16, the CFPB began a process of reissuing regulations that have been transferred to the CFPB pursuant to the Dodd-Frank Act. This process was anticipated by ABA, as the CFPB had previously announced intentions to translate all regulations transferred to CFPB jurisdiction into an enumerated code that will be subject to the CFPB’s control. These issuances do not change the underlying regulatory language; they only transfer the regulations to a new code section.

The current collection of code transfers consists of various sets of regulations. The various regulations are being republished as interim final rules effective December 30, 2011. CFPB states that although there is no requirement for an official comment period, as there is no substantive change to the rules, there are possible impacts and technical issues associated with this transfer, and it is therefore inviting public comments over a 60-day period.

This initial set of rule transfers includes: [Regulation X](#)--Real Estate Settlement Procedures Act; [Regulation C](#)--Home Mortgage Disclosure Act; [Regulation I](#)--Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance; [Regulation F](#)--Fair Debt Collection Practices Act; [Regulation N](#)--Mortgage Acts and Practices; [Regulations G/H](#)--S.A.F.E. Mortgage Licensing Act; and [Regulation O](#)--Mortgage Assistance Relief Services.

Since these issuances are not meant to affect the substance of existing regulations, ABA members are not immediately affected. It is important to note, however, that the CFPB will undertake similar republications for all federal banking regulations. Although these rule transfers are meant to duplicate existing regulations, making only “certain non-substantive, technical, formatting, and stylistic changes,” ABA will analyze all issuances to ensure that they remain within the parameters of existing law. ABA will raise any concerns that members may have regarding burdens or impacts resulting from the renumbering, altering of cross-references, and/or replacing of any existing nomenclature.

For more information, contact [Rod J. Alba](#) or [Ginny O'Neill](#).

CFPB Asks Public to Identify Outdated Regulations

The Consumer Financial Protection Bureau will soon publish a notice in the Federal Register that will ask which regulations it inherited from the other agencies should be streamlined, CFPB officials told ABA yesterday. Raj Date, the acting head of the CFPB, gave members of the ABA America's Community Bankers Council a heads-up on the notice November 9 during their meeting in Washington, D.C. “As an institution, we have no emotional attachment to the way things have been done in the past. If it doesn't make sense, we're going to stop doing it,” Date said.

The notice will ask the public to identify provisions in the inherited regulations that most need to be updated, modified or eliminated because they're outdated, unduly burdensome or unnecessary. It also will discuss several requirements that may warrant review, and seek suggestions to make complying with the regulations easier. There will be a 90-day comment period on the notice.

[Read the press release.](#) [Read the draft notice.](#) For more information, contact ABA's [Ginny O'Neill](#).

CFPB Initiates Information Gathering for Development of Mortgage Servicing Model Forms

The CFPB issued a request for comment on plans to collect information for the eventual implementation of certain mortgage servicing rules. According to the Bureau, the Dodd-Frank Act requires CFPB to publish, in final form, certain mortgage servicing rules by January 21, 2013. These rules would implement Sections 1418 (Reset of Hybrid Adjustable Rate Mortgages), 1420 (Periodic Mortgage Loan Statements) and 1463 (Force-Placed Insurance Disclosures) of the Act. The CFPB will engage in developing model forms and disclosures for these rules.

The notice, not yet published in the *Federal Register*, states that the CFPB will collect data, including through interviews, to guide the design,

development and implementation of the required forms. The CFPB will use an “iterative process to improve any drafts to make it easier for a consumer to use the documents and understand the information presented in the documents with respect to the consumer’s mortgage loan.” The CFPB invites comment on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents.

Comments are due by January 13, 2012. A copy of the CFPB notice is available [here](#).

OCC Issues Foreclosed Property Guidance

On December 14, 2011, the Office of the Comptroller of the Currency issued guidance on banks’ obligations and risks related to foreclosed property. “This guidance highlights legal, safety and soundness, and community impact considerations,” the OCC said. “It primarily focuses on residential foreclosed properties, but many of the same principles apply to commercial properties.”

The agency noted that a bank’s obligations related to foreclosed residential properties may differ depending on its role in the foreclosure-- as owner of the foreclosed property, as servicer/property manager, or as securitization trustee--and also on the contractual agreements under which it operates.

“Understanding the requirements imposed by Fannie Mae and Freddie Mac or the U.S. Department of Housing and Urban Development on servicers is particularly crucial, given the current role of these entities in the mortgage market,” the OCC said. [Read the guidance](#).

FHFA IG Criticizes the Agency on Oversight

The Federal Housing Finance Agency has deferred too much to Fannie Mae and Freddie Mac’s decisions without independently testing and validating them, FHFA Inspector General Steve Linick told the Senate Banking Committee on December 13..

He said the FHFA has displayed too much deference to the GSEs on, among other issues, their participation in the Making Home Affordable programs; decisions on executive compensation; and numerous transactions.

The agency also “was not proactive in oversight and enforcement, and ... resource allocations may have affected its ability to oversee the GSEs and

enforce its directives,” he said. “Both trends have emerged in a number of our reports.”

Linick noted that the FHFA plans to hire up to 44 additional examiners in its supervision divisions, but more may be needed to meet the agency’s oversight responsibilities. “Insufficient examination capacity contributed to FHFA’s lack of oversight by leaving key areas unchecked,” Linick said. [Read Linick’s testimony.](#)

Federal Task Force to Target HAMP Mortgage Relief Scams

The Treasury Department, Consumer Financial Protection Bureau and the Troubled Asset Relief Program’s special inspector general said on December 1st that they have created a task force to investigate and shut down schemes that prey on homeowners applying for the Home Affordable Modification Program (HAMP).

The newly formed task force also issued a consumer fraud alert containing tips on how to avoid HAMP-related scams. The tips, among other things, reminded consumers that they can apply for HAMP on their own, or obtain free help from housing counselors approved by the Department of Housing and Urban Development.

Read the [press release](#). [Read consumer Fraud Alert](#) with Tips for Avoiding Mortgage Modifications Scams.

Appraisal: Reasonable Rates Rule Faces State Opposition

The KL Gates law firm reports that the Dodd-Frank Act standards for pricing appraisals is receiving attention by various states and “lenders may need to contend with alternate state law requirements addressing the payment of fee appraisers, some of which may be inconsistent with federal law.” In their new [Consumer Financial Services Watch](#), KL Gates reports that in implementing state AMC laws, state appraisal boards, such as those in Kentucky, North Carolina and Texas, seek to set appraisal fees. “For example, Kentucky’s [proposed rule](#) regulating AMCs would require an AMC to compensate Kentucky appraisers a fee mutually agreed upon provided the fee is equal to the amount set in the VA fee schedule for comparable properties. Kentucky’s one-size-fits-all approach not only is contrary to the Federal Reserve Board’s conclusion that a single standard price for appraisers cannot exist, but also is an attempt to undo the federal requirements. Lenders and AMCs alike should closely watch these and other states’ attempts to implement AMC laws and the CFPB’s actions to review the interim final regulations.”

Under the Dodd-Frank Act, the federal banking agencies must jointly by rule establish minimum requirements to be applied by a state, including state registration and supervision of AMCs, and that appraisals be

conducted in compliance with Section 129E of TILA. While states have three years from the date the federal agencies finalize their rules establishing minimum requirements, AMC registration laws now exist in 28 states. Among the appraisal independence standards in Section 129E of TILA is a requirement that creditors and their agents (e.g., AMCs) compensate fee appraisers at a “customary and reasonable rate for appraisal services in the market area of the property being appraised.”

FHA To Require Appraisals by State Certified Appraisers

On November 3, HUD issued a [final rule](#), requiring that appraisers must be certified, rather than licensed, by a state appraisal licensing board in order to appear on the FHA Appraiser Roster. Thus, to be eligible for placement on the FHA Appraiser Roster, the appraiser must be state certified with credentials in compliance with the certification criteria established by the [Appraisal Qualification Board](#) (AQB) of the Appraisal Foundation.

This final rule follows the publication of the July 14, 2011, proposed rule. In this final rule, HUD is adopting the proposed rule without change. The rule’s effective date is December 23, 2011.

Spending Bill Includes Flood Insurance Extension, Durbin Report Language

The \$1 trillion appropriations bill (H.R 2055) President Obama signed into law Saturday to fund the government through September 2012 includes a provision that extends the National Flood Insurance Program through May 31, 2012. The extension gives the House and Senate time to work on legislation that would extend the NFIP for five years and make needed reforms.

The appropriations bill also contains report language inserted by Sen. Richard Durbin (D-Ill.) that directs the Federal Trade Commission to study the impact of the Durbin interchange amendment on community banks and the potential for banking-industry pricing collusion. [Read the Durbin report language](#).

For more information, contact ABA’s [Joe Pigg](#).
