



January 12, 2011 -- Volume 3, No. 1

REGULATORY NEWS

ABA Urges FED To Calibrate Reg. Z Changes With Dodd-Frank Rules

On December 22, ABA commented on the Federal Reserve Board's proposed rule to review and reform the Truth in Lending Act (TILA) rules pertaining to mortgage loans under Regulation Z. ABA's [comments](#) request that the Board postpone finalizing the proposal until they can be incorporated into broader mortgage-reform requirements under the Dodd-Frank Act.

"The mortgage sector has experienced unprecedented regulatory scrutiny in the past 24 months, resulting in expensive, disparate and piecemeal regulatory changes that yield complex and even conflicting requirements," the letter says. "Going forward, ABA believes that the Board must work with the new Bureau of Consumer Financial Protection to develop a comprehensive plan for disclosure reform that includes an agenda and timetable to propose, finalize and implement all mortgage disclosure revisions by all agencies with a stake in mortgage lending."

ABA's comments explain that the proposal would require "colossal" changes requiring significant resources to implement, changes that would then have to be replaced only 18 to 24 months later as banks implement Dodd-Frank Act requirements. "ABA asks that the Board appreciate the counterproductive effects of the current piecemeal approach to regulation, and that it better calibrate these continual regulatory hits to the banking industry."

Through a separate letter, ABA also joined an industry trade letter signed by the National Reverse Mortgage Lenders Association ("NRMLA") and the Mortgage Bankers Association ("MBA"). The [joint letter](#) provided detailed comments on how the Proposed Rule would affect the origination of FHA-insured and regulated HECM (home equity conversion mortgage) loans, as well as proprietary reverse mortgage products.

An ABA analysis of the proposal is available to ABA members [here](#).

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

ABA RESOURCES

[ABA Works on RESPA](#) -- Frequently updated as new guidelines become available!

[ABA Works on Regulation Z](#) -- designed to help you better understand and make decisions about whether and how to offer "higher-priced mortgage loans."

Free mortgage webinars for ABA members. [Register](#).



ABA Files Comments with HUD on Warehouse Lending

Warehouse lending activities should not be subject to the disclosure and anti-kickback provisions of the Real Estate Settlement Procedures Act (RESPA), ABA and two other trade groups said in a December 22 [comment letter](#). The American Bankers Association (ABA), Mortgage Bankers Association (MBA), and the Housing Policy Council (HPC) of the Financial Services Roundtable (collectively, the “Associations”) responded to the Department of Housing and Urban Development’s (HUD) Solicitation of Information on Changes in Warehouse Lending and Other Loan Funding Mechanisms.

The purpose behind HUD’s solicitation for comments was to help them decide whether to issue guidance under RESPA to address the changes that have occurred since it last issued regulations specifically related to warehouse lending and other loan funding mechanisms in 1992 and 1994. HUD’s solicitation raises important structural question of whether warehouse lenders are engaged in table funding when they extend credit to mortgage lenders, and therefore, whether they are subject to the provisions of RESPA. The Associations expressed that it is important for HUD to recognize that warehouse lenders make commercial loans to mortgage lenders to facilitate secondary market transactions and that they are not engaged in table funding when they do so. The comment letter explained that the relationship of a warehouse lender to a mortgage lender is in no way the same as the relationship of a wholesale lender to a mortgage broker.

The Associations warn that if HUD concludes that warehouse lending structures constitute “table funding,” the results would lead to extremely negative effects on the mortgage industry—particularly for smaller mortgage lenders who rely on warehouse lenders and consumers who benefit from a competitive market. Many participants in the warehouse lending market are likely to choose to exit the industry if the protections afforded to repurchase agreements and purchase and sale agreements are not available because of HUD regulations.

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

ABA Requests Minor Modifications to TILA Interim Final Rule on Appraisal Independence

ABA filed a [comment letter](#) on December 27 with the Federal Reserve on the Interim Final Rule implementing changes to Regulation Z regarding recent Truth in Lending Act (TILA) amendments. The Board’s interim final rule implements the appraisal independence provisions that were added to the Truth In Lending Act through Section 1472 of the Dodd-Frank Wall Street



The Mortgage Lending Bulletin is a service of the American Bankers Association. ABA Members: To unsubscribe and to manage your subscriptions, please visit [ABA E-mail Bulletins](#) and check or uncheck the appropriate boxes. For other inquiries, please contact: [Rod J. Alba](#), Vice President, Mortgage Finance & Senior Regulatory Counsel, at 1-800-BANKERS. American Bankers Association, 1120 Conn. Ave NW, Wash. DC 20036

Reform and Consumer Protection Act.

ABA agreed with the direction of the regulations overall, but asked that the Board review certain areas related to the rule's safe harbors regarding the conflict of interest provisions pertaining to in-house appraisers, especially for smaller institutions. ABA also requested added clarifications in determining what constitutes "customary and reasonable" compensation to fee appraisers, noting that the new rules are hazy on the issue of acceptable supporting documentation for price negotiations, particularly with regard to signed documents that reflect a price agreement that should be deemed acceptable and sufficient.

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

Fed Issues Interim Rule to Clarify Previous Interim Rule on Regulation Z

The Federal Reserve issued an [interim rule](#), on December 29, amending Regulation Z to clarify certain aspects of its previous [September 24 interim rule](#). The September 24 interim rule implements Mortgage Disclosure Improvement Act (MDIA) provisions -- effective January 30 -- requiring mortgage lenders to disclose examples of how a loan's interest rate or monthly payments can change.

Under that rule, lenders' cost disclosures must include a payment summary in the form of a table stating the initial rate and corresponding periodic payment and, for adjustable rate loans, the maximum rate and payment that can occur during the first five years, as well as a "worst-case" example showing the maximum rate and payment possible over the loan's life.

In the December 29 interim rule, the Board clarifies that creditors' disclosure should reflect the first rate adjustment for a "5/1 ARM" loan because the new rate typically becomes effective within five years after the first regular payment due date. It also corrects the requirements for interest-only loans to clarify that creditors' disclosures should show the earliest date the consumer's interest rate can change rather than the due date for making the first payment under the new rate. Finally, it clarifies which mortgage transactions are covered by the special disclosure requirements for loans that allow minimum payments that cause the loan balance to increase.

Compliance with the provisions of the new interim rule is optional for transactions for which an application for credit is received by the creditor before October 1, 2011. (This interim rule does not, however, change the January 30, 2011 mandatory compliance date of the September 2010 interim rule.)

Click [here](#) to read the revised interim rule published in the *Federal*

Register.

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

Exemption Threshold for Collecting HMDA Data Rises to \$40 Million

Banks with assets of \$40 million or less as of Dec. 31 will be exempt from Regulation C requirements to collect Home Mortgage Disclosure Act (HMDA) data in 2011, the Federal Reserve said on December 20.

The [notice](#) states that the asset-size exemption will increase to \$40 million in 2011 from \$39 million in 2010 based on the 2.21 percent rise in the Consumer Price Index during the 12-month period ending in November 2010, Fed officials said.

They emphasized that an institution's exemption from collecting HMDA data in 2011 does not affect its responsibility to report the data it was required to collect in 2010.

[Read more.](#)

Regulators Adopt Expanded CRA Rule to Support HUD Program

The federal bank and thrift agencies issued a final rule, on December 15, making changes in the Community Reinvestment Act (CRA) regulations intended to encourage depository institutions to support the Department of Housing and Urban Development's Neighborhood Stabilization Program (NSP). HUD uses the program to provide funds to state and local governments, and to nonprofit organizations, that enable them to buy and redevelop abandoned and foreclosed properties.

The final rule, which is similar to the June 24 proposal, encourages institutions to make loans and investments, and provide services to support NSP activities in areas with HUD-approved plans. The rule supplements existing CRA consideration for community development activities, including those involving neighborhood stabilization. It will be effective 30 days after publication in the Federal Register.

[Read more.](#) [Read the final rule.](#)

REGULATORS

CFPB, State Regulators Sign Cooperation Agreement

On January 4, the Consumer Financial Protection Bureau (CFPB) and the Conference of State Bank Supervisors [announced](#) a Memorandum of Understanding (MOU) to coordinate the supervision of providers of consumer financial products and services.

The memorandum states that the CFPB and state regulators “will endeavor to promote consistent examination procedures and effective enforcement of state and federal consumer laws and to minimize regulatory burden...” Also, state regulators and the CFPB “will consult each other regarding the standards, procedures, and practices used...to conduct compliance examinations of providers of consumer financial products and services, including non-depository mortgage lenders, mortgage servicers, private student lenders, and payday lenders.”

According to the announcement, the consumer financial protection regime established by the Dodd-Frank Wall Street Reform and Consumer Protection Act strikes a “constructive balance between federal and state regulation of firms offering many of the financial products families rely on every day.” This MOU is, therefore, an important step in implementing this new balance and “provides a starting point for additional state agreements as the states and the CFPB work to fulfill their mandates.”

NMLS Launches Resource Center on SAFE Registry Information

In December, the Nationwide Mortgage Licensing System & Registry posted the “NMLS Resource Center.” This web page will serve as the “official gateway into the Nationwide Mortgage Licensing System & Registry (NMLS)” and according to Conference of State Bank Supervisors (CSBS) staff, will provide users with tools, tips, news and updates, and will assist institutions learn about the registration steps to highlight what can be done now to prepare for the registration period.

The Center’s resources include: (i) diagrams and explanations of the various processes institutions can adopt to use in the NMLS Federal Registry process; (ii) sample institution and mortgage loan originator forms which include the data requirements for the registry; (iii) information regarding the two-factor authentication data security requirement for certain users; (iv) registration information for the [2011 NMLS User Conference](#) which will have representation from the federal banking agencies and the Farm Credit administration, as well as a one-day Federal Registry training session; (v) schedule of additional online and in-person training opportunities; (vi) additional tools and resources.

These pages will be updated with additional information as it

becomes available. Member banks are advised to check this page for all breaking information on the loan originator registry system.

To access the new NMLS web-page, go to [NMLS Resource Center](#).

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

FDIC Confirms Mortgage Loan Originators Registry to Be Launched Around January 31

The federal banking agencies expect the system for federal registration of residential mortgage loan originators to begin operation on or around January 31, the FDIC said on January 4. The agencies' rules implementing the Secure and Fair Enforcement for Mortgage Licensing Act require mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry within 180 days of the date the registry begins accepting federal registrations. The agencies will confirm the opening date for federal registration closer to the actual date, and will publish a notice in the Federal Register, the FDIC said. The federal banking agencies expect the system for federal registration of residential mortgage loan originators to begin operation on or around January 31, the FDIC said on January 4. The agencies' rules implementing the Secure and Fair Enforcement for Mortgage Licensing Act require mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry within 180 days of the date the registry begins accepting federal registrations. The agencies will confirm the opening date for federal registration closer to the actual date, and will publish a notice in the Federal Register, the FDIC said.

[Read more](#). For more information, contact ABA's [Rod Alba](#).

LEGISLATIVE NEWS

President Signs Extension of Service Member Foreclosure Protection

On December 29, President Obama signed the Helping Heroes Keep Their Homes Act of 2010 (Pub. L. 111-34). The Act preserves the provisions of the Housing and Economy Recovery Act of 2008 (HERA) that offer protections for service members by extending the stay of foreclosure and legal proceedings from 90 days to nine months after the service member's release from active duty.

For a copy of the Act, [click here](#).

Bachus: Congress To Address Mixed Messages from Regulators, Overzealous Examiners

Congress must address the mixed messages from bank regulators and field examiners -- along with the new financial laws -- that are creating regulatory uncertainty, so that banks can make loans and expand the economy, House Financial Services Committee Chairman Spencer Bachus (R-Ala.) said last week in a letter to Rep. Virginia Foxx (R-N.C.).

“We will exercise rigorous oversight of the banking regulatory agencies and insist that the more than 300 new federal rules mandated by Dodd-Frank be written in a way that does not further impede economic recovery by strangling America’s small businesses in a sea of bureaucratic red tape,” Bachus said.

He was responding to a December letter from Foxx, asking him to hold oversight hearings to ensure “balanced bank examinations that protect both the integrity of the banking system and the ability of banks to support their communities.” Foxx’s letter, prompted by a North Carolina Bankers Association resolution requesting such hearings, echoes concerns ABA has expressed about overzealous examiners and the regulatory burden.

[Read Bachus’ letter.](#) [Read Foxx’s letter and the NCBA resolution.](#)

OTHER NEWS

FHA Issues Guidance Regarding Audits

On January 5, 2011, the Federal Housing Administration released a Mortgagee Letter ([2011-05](#)) making immediate changes to previously announced audit requirements for FHA-endorsed lenders.

In 2009 FHA issued a Mortgagee Letter (2009-31) which required all direct endorsement FHA lenders to submit annual audits within 90 days of the end of their fiscal year. Many smaller FHA lenders are not required by their prudential regulators to have an audit, so this is a costly and burdensome requirement which may drive many lenders from the FHA program.

ABA has worked with FHA to develop a solution which is more workable for lenders, and the most recent Mortgagee Letter, allowing the use of Holding Company audits in some instances, should provide some relief. However, ABA will continue to work with FHA, the prudential regulators and Members of Congress to find broader solutions which serve to both protect the FHA program and prevent additional costs for banks.

For further information contact ABA's [Joseph Pigg](#).

New FHA Guidance on Home Equity Conversion Mortgage Property Charge Loss Mitigation

On January 3, HUD issued a new [Mortgagee Letter 2011-01](#) to provide loss mitigation guidance for the resolution of Home Equity Conversion Mortgages (HECM) that are delinquent due to unpaid property charges and mortgages wherein due and payable requests were previously deferred by HUD. The guidance in this Mortgagee Letter applies to all HECMs where the mortgagor is delinquent in paying property charges or the mortgagee has advanced corporate funds to satisfy an unpaid property charge on behalf of the mortgagor, or both.

Under the new guidance, mortgagees must report to HUD all loans that are delinquent as of January 3 and report future delinquencies as they occur (or through submission of monthly reports). When the mortgagor is delinquent due to failure to pay property charges, the mortgagee will be required to offer loss mitigation options. Such options must include realistic repayment plans, contacting HUD-approved Housing Counseling Agency (HCA) to receive free assistance in finding viable resolution, and refinancing the delinquent HECM to a new HECM if there is sufficient equity to satisfy the existing mortgage and outstanding property charges. Finally, HUD's guidance includes certain information on the contents for letters to mortgagors and timing regarding the sending of such letters.

For more information, contact ABA's [Joseph Pigg](#).

FHA Introduces New Product

As part of the Administration's priority on enabling more homeowners to improve their homes' energy efficiency, FHA is introducing a new mortgage insurance product. FHA's new PowerSaver program will extend financing for credit-worthy borrowers to make cost-effective, energy-saving improvements to their homes.

The program will begin as a two-year pilot program launching in early 2011, and HUD is seeking a limited number of lenders to participate. To be eligible, lenders must be approved participants in either the FHA Title I or Title II programs. If selected, lenders will be required to target PowerSaver loans to markets that have already taken affirmative steps to expand home energy improvements.

Key product features include:

- Credit scores of at least 660, total DTI no higher than 45 percent, and combined LTV (including the PowerSaver loan) of no more than 100 percent.
- FHA insurance will cover up to 90 percent of the loan amount.
- Consumers will be able to borrow up to \$25,000 with loan terms up to 20 years. Interest rates are expected to be 5 to 7 percent.
- Loans will be secured by mortgages or deeds of trust, which will be in a subordinate position to the first mortgage on the home.
- Loans limited to owner-occupied, detached single-family properties.
- Loan proceeds must be used to make proven cost-effective, energy-saving improvements based on a list of measures published by FHA and DOE. (Examples: insulation, duct sealing, energy efficient doors and windows, energy efficient HVAC systems and water heaters, solar panels, and geothermal systems.)

For more information, [click here](#).

Mortgage-Fraud SARs Up Slightly in 2010's Third Quarter

Suspicious Activity Reports (SARs) indicating possible mortgage-loan fraud increased 2 percent to 16,693 in 2010's third quarter, up from 16,339 in the third quarter of 2009, according to the Financial Crimes Enforcement Network's Mortgage Loan Fraud SAR Filings report released January 6. The report also showed that mortgage-fraud SARs accounted for 9 percent of all SARs filed during 2010's third quarter, and 80 percent of the mortgage-fraud SARs involved amounts under \$500,000.

[Read more.](#) [Read the report.](#)

ABA NEWS

ABA Real Estate Lending Conference
April 10 – 12, 2011
Baltimore Hilton, Baltimore, MD

New Rules. New Game.

Make sure your team is represented at the only residential and commercial lending event designed specifically for bankers. The program will address specific residential and commercial lending themes in a series of concurrent sessions, including adapting your business strategies to address Dodd-Frank Act limitations, and

what to expect from the Consumer Financial Protection Bureau.

Plan to attend the 2011 ABA [Real Estate Lending Conference](#) and learn how to play by the new rules. [Register online](#) or call 1-800-BANKERS.

Appraisal Workflow and Compliance Solution

The new Federal Interagency Appraisal Guidelines have just been issued; the Fannie/Freddie Loan Quality Initiative is pending, and new Dodd-Frank appraisal requirements are imminent. FNC, a partner of ABA's subsidiary, Business Solutions, offers an appraisal compliance and workflow solution to help ABA members deal with these new mandates. ABA members receive special pricing and assistance from FNC's experienced professionals.

Visit the [FNC Web page](#) or contact [Jerry Sebold](#) for more information.