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RKL REGULATORY COMPLIANCE FOR FINANCIAL INSTITUTIONS >

July 2021

CFPB Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X

June 28, 2021

- The final rule establishes temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages.
- In addition, the final rule would temporarily permit mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application.
- The Consumer Financial Protection Bureau (CFPB) is also finalizing certain temporary amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.
- This final rule includes five key amendments to Regulation X, all of which encourage borrowers and servicers to work together to facilitate review for foreclosure avoidance options.
- Effective August 31, 2021

[Additional Information](#)

CFPB Issued Interpretive Rule to Explain Basis for Authority to Conduct Examinations of the Military Lending Act

June 16, 2021

- The Consumer Financial Protection Act of 2010 (CFPA) authorizes CFPB to conduct examinations of supervised nonbanks for the purposes of assessing and detecting “risks to consumers.”
- As explained in the additional information link below, the risks to active-duty servicemembers and their dependents from conduct that violates the Military Lending Act (MLA) fall squarely within that category.
- Effective June 23, 2021

[Additional Information](#)

HUD Proposes Restoring Discriminatory Effects Rule

June 25, 2021

- HUD will publish in the Federal Register a notice of proposed rulemaking (NPRM) entitled *Restoring HUD's Discriminatory Effects Standard*. The publication proposes to rescind the Department's 2020 disparate impact rule and restore the 2013 discriminatory effects rule.
- The discriminatory effects (also referred to as disparate impact) doctrine is a tool for addressing policies that cause systemic inequality in housing. It has long been used to challenge policies that unnecessarily exclude people from housing opportunities, including zoning requirements, lending and property insurance policies and criminal records policies.
- Under the 2013 rule, the discriminatory effects framework was straightforward: A policy that had a discriminatory effect on a protected class was unlawful if it did not serve a substantial, legitimate, nondiscriminatory interest or if a less discriminatory alternative could also serve that interest.
- The 2020 rule complicated that analysis by adding new pleading requirements, new proof requirements and new defenses, all of which made it harder to establish that a policy violates the Fair Housing Act. HUD now proposes to return to the 2013 rule's straightforward analysis.
- The public will have 60 days to file comments on the NPRM.

[Additional Information](#)

House Passes Resolution to Override OCC True Lender Rule

June 23, 2021

- “The OCC’s rule establishes a clear test for determining the “True Lender” when a bank makes a loan, which clarifies what legal frameworks are applicable to a loan. The rule provides that a bank is the “True Lender” when it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan. This clarification is critical for banks to partner with third parties and does not undermine the myriad consumer protection laws enforced by state and federal regulators.”
- President Biden is expected to sign the resolution.

[Additional Information](#)

BSA/AML Manual Updated

June 21, 2021

- The Federal Financial Institutions Examination Council (FFIEC) today released updates to four sections of the BSA/AML Manual.
- The FFIEC members have revised content in the Purchase and Sale of Certain Monetary Instruments Recordkeeping, Special Measures, Reports of Foreign Financial Accounts, and International Transportation of Currency or Monetary Instruments Reporting sections.
- The agencies made revisions to ensure language clearly distinguishes between mandatory regulatory requirements and considerations set forth in guidance or supervisory expectations. Further, the revisions incorporate regulatory and other changes since the last update of the Manual in 2014.
- These updated sections provide further transparency into the BSA/AML examination process and do not establish new requirements. The FFIEC revised the sections in close collaboration with Treasury's Financial Crimes Enforcement Network.

[Additional Information](#)

Observation of New Federal Holiday, Juneteenth National Independence Day

June 17, 2021

- The CFPB, along with the other Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) regulators, is aware of concerns regarding implementation of the new Juneteenth federal holiday, particularly as it relates to mortgage lender compliance with the Truth in Lending Act and TILA-RESPA Integrated Disclosure (TRID) timing requirements.
- The CFPB recognizes that some lenders did not have sufficient time after the federal holiday declaration to consider whether and how to adjust closing timelines. The CFPB understands that some lenders may delay closings to accommodate the reissuance of disclosures adjusted for the new federal holiday.
- The CFPB notes that the TILA and TRID requirements generally protect creditors from liability for bona fide errors and permit redisclosure after closing to correct errors.
- Any guidance ultimately issued by the CFPB would take into account the limited implementation period before the holiday and would be issued after consultation with the other FIRREA regulators and the Conference of State Bank Supervisors (CSBS) to ensure consistency of interpretation for all regulated entities.

[Additional Information](#)

FDIC announces “tech sprint” to reach more unbanked people

June 16 , 2021

- The Federal Deposit Insurance Corporation announced a “tech sprint” designed to explore new technologies and techniques that would help expand the capabilities of banks to meet the needs of unbanked individuals and households.

[Additional Information](#)

CFPB Published Spring 2021 Rulemaking Agenda

June 11 , 2021

- CFPB is continuing to work on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services, including mortgages, debt collection, and small business lending, among others.
 - For example, section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. **The Bureau's next action for section 1071 is to release a Notice of Proposed Rulemaking.**
- CFPB is also working on a rulemaking to address the availability of consumer financial account data in electronic form, which has helped consumers understand their finances and make better-informed financial decisions in a variety of ways.
- CFPB is working to implement section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), Public Law 115-174, 132 Stat. 1297, which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to “Property Assessed Clean Energy” (PACE) financing.

CFPB Published Spring 2021 Rulemaking Agenda *(continued)*

- PACE financing is a tool for consumers to finance certain improvements to residential real property. It is authorized by state and local governments and is typically available for projects promoting energy and water conservation, among other public policy goals identified in state statute. PACE is a hybrid product, with characteristics of both home equity lending and real property taxes.
- CFPB is also participating in interagency rulemaking processes with other Federal regulators concerning appraisals. It is also continuing a rulemaking to address the anticipated expiration of the LIBOR index.
- CFPB has proposed to extend the mandatory compliance date or effective date of certain final rules issued in 2020.
 - Proposed on March 5, 2021, to extend the mandatory compliance date for a final rule issued in late 2020 amending the “qualified mortgages” (QM) provisions of Regulation Z.
 - Issued on April 19 a proposed rule to extend the effective date of two final rules issued in late 2020 to implement the Fair Debt Collection Practices Act (FDCPA).
- In light of [the Bureau’s] other rulemaking priorities, [they] are no longer pursuing two HMDA rulemakings that were listed in the proposed rule stage in previous agendas – one that concerns the data points that lenders must report and another related to the public disclosure of HMDA data.

[Additional Information](#)

CFPB issues FAQs for “Unauthorized Electronic Fund Transfers, Subpart A to Regulation E”

June 4, 2021

- CFPB issued a set of frequently asked questions (FAQs) under the topic of “Unauthorized Electronic Fund Transfers, Subpart A to Regulation E.”
- This set of FAQs provide guidance on several areas financial institutions have struggled with over the years, including topics like determining how to handle instances where consumer share account access information with third parties who fraudulently obtain the information, consumer negligence, private network rules, and requiring police reports.
- These FAQs appear to be the first of several topics, so compliance professionals should stay tuned over the next few years to see if more Reg E FAQs are released by the CFPB.

[Additional Information](#)

Effective Date	Implementing Rule/Regulation	Additional Details
July 1, 2020	Final Amendments to Reg. CC Funds Availability	<ul style="list-style-type: none"> • Rule
November 1, 2020	New URLA Required Use	<ul style="list-style-type: none"> • Issuance
November 19, 2020	Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date	<ul style="list-style-type: none"> • Issuance
January 1, 2021	Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA and Qualified Mortgages)	<ul style="list-style-type: none"> • Rule
January 1, 2021	CRA Asset Size Adjustment for Small and Intermediate Small Institutions	<ul style="list-style-type: none"> • Rule
January 1, 2021	HMDA Adjustment to Asset Size Exemption Threshold	<ul style="list-style-type: none"> • Rule
March 1, 2021	New URLA Required Use	<ul style="list-style-type: none"> • Issuance
November 30, 2021	Final rule creating implementing regulations for the Fair Debt Collection Practices Act	<ul style="list-style-type: none"> • Rule
January 1, 2022	Reg C Final rule establishing 200 loans as the permanent HMDA data reporting threshold for open-end lines of credit	<ul style="list-style-type: none"> • Rule
October 1, 2022	Mandatory Compliance for QM definitions under Reg Z	<ul style="list-style-type: none"> • Rule



DID YOU KNOW?

- In 2004 the FTC introduced **UDAP – Unfair Deceptive Acts or Practices**. In the beginning, the crux of the rule focused on the intent to deceive pertaining to extensions of credit. **UDAAP** goes beyond extensions of credit and introduces an enterprise-wide focus on all products and services offered by an institution.
- With the addition of “**abusive**” in UDAAP, which is not defined in the rule, it is incredibly challenging for institutions to determine what will be considered an abusive act or practice.
- Also, the CFPB has made consumer complaints a focal point. Now an institution must make sure it’s not simply monitoring consumer complaints, but recording the complaint, action taken and the consumer’s response for all complaints.
- Consumers can go directly to the CFPB’s website, the Better Business Bureau, State Attorney General, and any other federal or state agency. The CFPB also monitors social media for complaints and looks for a number of consumers who have all used the same products or services and have had a negative result, which may be viewed as abusive.
- Keep in mind that not only do you oversee your institution, but also your third parties.
- **Our advice:** Maintain a well-managed compliance program, including complaint management and third party risk management. Search for negative public news on your own institution, and review recent enforcement actions to prevent them from happening to you!



FOCUSED. ON YOU. >

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