

# Your 2010 mortgage compliance road map

Where we stand and where we're going in mortgage loan compliance

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In the mortgage loan compliance world, 2009 was a wild ride. There were many new things to learn and many old ways to unlearn. And, we're not done yet. So far 2010 promises to provide even more change—something that mortgage lenders in our institutions need to get used to seeing for some time to come.

Looking back to look ahead

In 2009, at the federal level alone, bankers experienced:

**RESPA shifts.** Technical amendments to the Real Estate Settlement Procedures Act and a new option to average settlement costs disclosed on the HUD-1 and HUD-1A, which became effective on Jan. 1, 2009.

**TiLA Shifts.** Changes to the Truth in Lending Act, provided by the passage of the Mortgage Disclosure Improvement Act (MDIA), that impose new restrictions and disclosures on residential mortgage loans, that became effective on July 30, 2009, such as:

- Prohibition against imposing a fee (except for obtaining a credit report) before the consumer receives an early truth-in-lending disclosure

- New seven-business-day waiting period between early TIL disclosures and loan closing

- Expansion of coverage of the early TIL disclosure requirement to include consumer residential mortgage loans secured by vacation homes

**Advertising rules.** New Regulation Z rules relating to advertising of consumer loans secured by a dwelling, that became effective on Oct. 1, 2009.

**Mortgage transfer notices.** New borrower notice for sales or transfers of mortgage loans required under the Helping Families Save their Homes Act, that became effective upon enactment on May 20, 2009, and the subject of amendments to Regulation Z issued by the Federal Reserve Board in November 2009.

**High-cost mortgage shifts.** Changes to Regulation Z relating to "higher-priced mortgage loans," including additional disclosures and consumer protections to prevent unfair and deceptive practices that became effective on Oct. 1, 2009.

**Yield-spread shift.** Changes to the Regulation C/Home Mortgage Disclosure Act rate spread calculation for reporting higher priced mortgage loans that became effective on Oct. 1, 2009.

As I wrote, that's just at the federal level.

At the state level, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) continued to take shape, as state legislatures passed and implemented state licensing laws for mortgage loan originators.

Getting ready for new waves

But everything I've just told you, under current conditions, qualifies as ancient history. Are you prepared for what is coming next?

In 2010, there are more mortgage loan compliance changes coming. Institutions should be gearing up to implement the new compliance requirements that are known to be coming and maintaining a close eye on the horizon for anticipated changes that have not yet taken shape.

Let's break it down into three manageable phases: 1) what institutions should be doing now; 2) what institutions should be doing soon; and 3) what institutions should be watching for down the road. What institutions should be doing

## NOW

## 1. RESPA fine-tuning

Although the effective date for the new Good Faith Estimate (GFE) and HUD-1 settlement statement has passed, institutions should be continuing to fine-tune RESPA compliance to ensure accuracy and completeness. It is likely that there will continue to be confusion about the application of the new forms to various loan scenarios and circumstances that will need to be resolved. [Continue to watch the Department of Housing and Urban Development RESPA web page for additional FAQs and instructions. (Click here)]

Don't be fooled about the announcement by HUD that it intends to use "restraint" in enforcement of the RESPA rules for the first four months following the effective date. Restraint in enforcement applies to lenders that have demonstrated a good faith effort to comply—not those who waited until the last minute to implement the new requirements.

## 2. Implementation of the Regulation Z Amendment requiring a Mortgage Transfer Disclosure to borrowers regarding the sale or transfer of any consumer mortgage loan

The Mortgage Transfer Disclosure technically became effective upon enactment of the Helping Families Save their Home Act on May 20, 2009. However, in November 2009, the Federal Reserve Board issued regulations relating to the disclosure, which clarify the scope and detailed requirements of the disclosure. For example, the act broadly requires the disclosure be provided within 30 days of the transfer or sold date of a mortgage loan. The Fed regulation attempts to narrow that requirement by not requiring the disclosure in the event the creditor transfers or sells the loan again to another party during that 30-day period, thus avoiding consumer confusion with too many disclosures in a short period of time.

Therefore, although this disclosure requirement has been in place since May 2009, there may be some adjustments to an institution's processes as a result of the Nov. 20, 2009, FRB Regulation Z amendment that became effective on Jan. 19, 2010.

## 3. Fair-lending program enhancements

Institutions cannot be complacent about their fair-lending programs. Fair lending is a major compliance and business focus now. The regulators are focusing on fair lending. The media is focusing on fair lending. Congress is focusing on fair lending. The public is focusing on fair lending.

If you haven't updated your fair-lending program, including training, data analysis, monitoring, and documentation, the time to do it is now. The fair-lending program that you have had in place for several years needs to be reevaluated and updated. If you have not conducted formal analyses of your lending performance, it is past time to do so.

## 4. Update monitoring and audit programs

Now that the changes have been implemented, it is time to update the audit and monitoring programs to correspond to the changes. It's also about time to start verifying whether the implementation efforts from last year have been effective.

## 5. Refresher training

Most likely the affected staff received compliance training on the new compliance requirements last year as the changes were implemented. But training is an ongoing responsibility, so start planning for the refresher training for 2010 that takes into consideration the lessons learned and the questions received over the past year—and employee turnover.  
What Institutions Should be Doing SOON

## 1. Escrows for higher-priced mortgage loans

An institution that offers "higher-priced mortgage loans," as defined under Regulation Z, should be gearing up to provide escrow services for the taxes and insurance payments for such new loans beginning on April 1, 2010. For higher-priced mortgage loans secured by manufactured housing, the deadline for required escrow services is Oct. 1, 2010.

## 2. Data accuracy and integrity provisions of the FACT Act

New regulations and guidelines have been issued by the regulatory agencies that address the FACT Act provisions requiring furnishers of credit information to consumer reporting agencies to adopt reasonable policies and procedures for ensuring the accuracy and integrity of information reported to the consumer reporting agencies. The mortgage lending department, along with other lending areas of an institution that furnish credit record information, will need to develop

conforming policies and procedures that meet these new requirements by July 1, 2010.

### 3. Regulation Z changes to closed-end credit secured by real property or a dwelling

The Federal Reserve has issued a lengthy proposal to completely overhaul the requirements affecting closed-end consumer loans secured by real property or a dwelling.

The changes affect the timing and content of the disclosures, the method of calculating the APR, additional disclosures earlier in the loan process, a new monthly statement requirement for payment option loans with negative amortization, and much more.

The comment period for the proposal ended on Dec. 24, 2009, and the Fed was expected to move quickly to finalize the regulation. Even though the regulation is in proposal form, because of the significance of the anticipated changes, it is important that institutions start planning for the changes as soon as possible.

### 4. Regulation Z changes to open-end credit secured by real property or a dwelling

The FRB is also proposing significant changes to home equity lines of credit disclosures and restrictions on creditors' ability to suspend credit advances or reduce the credit limit on an existing credit account. The changes would impact application disclosures, account opening disclosures, periodic statement requirements, and change-in-terms notices. The comment period for the proposal ended on Dec. 24, 2009, and the Fed is expected to move quickly to finalize the regulation. Because of the significance of the anticipated changes, it is important that institutions start planning as soon as possible.

### 5. Reverse mortgage loan guidance

Institutions that make reverse mortgages should be watching for final guidance to be issued by the federal banking regulators. The Federal Financial Institutions Examination Council (FFIEC) issued for comment proposed guidance relating to the compliance and reputational risks associated with private label reserve mortgage lending (reverse mortgages that are not insured by the Federal Housing Administration under its Home Equity Conversion Mortgage program. The guidance focuses on the need for adequate consumer disclosure and education, avoidance of potential conflicts of interest by lenders, and controls.

What Institutions Should be Watching for DOWN THE ROAD

#### 1. More Unfair and Deceptive Acts or Practices Rules

The Federal Trade Commission is considering new mortgage acts and practices rules and rules relating to mortgage assistance relief services. Advance notices of proposed rulemaking were published in the Federal Register on June 1, 2009. The proposals cover mortgage advertising practices, appraisal practices, loan originations, and servicing practices. Any rules that result would apply to mortgage entities other than banks, thrifts, and federal credit unions. However, when the FTC issues UDAP rules the banking regulators are required to consider similar rules for banks, thrifts, and federal credit unions.

#### 2. Possible new federal Consumer Financial Protection Agency

The Administration and Congress have been working on legislation that would, in part, create a new super consumer protection agency that would be charged with protecting consumers in the financial products and services markets. The agency would regulate banks as well as non-bank creditors and service providers. Exactly how the agency would be structured and operate remains to be seen. Keep watching Congress for status. While chances of the new agency being created have somewhat lessened, some say, nothing is certain about legislation, in Washington, until the President signs the bill.

#### 3. Community Reinvestment Act opportunities

Even in these challenging economic times, banks still have to help meet the credit needs of their local communities. The Community Reinvestment Act is still in place, but how CRA manifests itself in real communities is evolving. Banks should be taking a fresh look at their CRA activities and programs and determining how they can be most effective in the current environment.

#### 4. Risk-based pricing notice rule

Coming on Jan. 1, 2011, is a new consumer notice requirement that applies when credit is offered to a consumer on less-favorable terms based on risk. Consumers who receive this risk-based pricing notice would be entitled to obtain a free credit report from the consumer reporting agencies. Institutions will need to start looking at their mortgage loan pricing practices to determine whether they fall under the new rule.

The changes in mortgage lending compliance keep on coming. Institutions should continue to monitor new developments and begin to plan for change well in advance of effective dates.

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