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MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

Facing Today's Real Estate Regulations

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Introduction

- Numerous regulatory changes in the real estate industry within last few years
- Lenders still struggling with new mortgage disclosure implementation
- Soon will be facing more regulatory requirements with the new Home Mortgage Disclosure Act
- Learn how these regulations affect your credit union and how you can prepare

Current Status

- ATR / QM – Where are we today?
- New rules effective January 10, 2014
- Tighter credit based on firm DTI requirements
- Uncertainty in GSE exemption/ready
- Non-QM loans carry additional risk
- Non-QM lending only for high net worth, high loan balances
- FHA added life of loan MIP to all loans

Dodd-Frank Act

Amended TILA to Require Ability Repay

- Creditors must make a reasonable & good faith determination, at or before consummation, that the consumer will have a reasonable ability to repay the loan according to its terms
- Provides for a "qualified mortgage," which has special protection from liability under the ability to repay requirements
- Granted the CFPB with rulemaking authority with respect to the ability to repay with qualified mortgage provisions

Qualified Mortgage (QM) Option

- Provides either a safe harbor or a rebuttable presumption of compliance with the requirement to make an ability to repay determination
- CFPB's "flavors" of QM:
  - Standard QM
  - Temporary QM
  - Small creditor portfolio QM and Balloon QA
  - HUD's QM proposed rule

Ability to Repay – Non QM Loans

- Must consider and verify ***eight*** specific underwriting factors to make a reasonable and good faith determination of ability to repay using reasonably reliable third party records
- This is closely aligned with normal and prudent "Three C's" underwriting.

Ability to Repay – Non QM Loans (Eight Factors)

1. Borrower's current or reasonably expected income or assets, except for value of the dwelling that secures the loan This is closely aligned with normal and prudent "Three C's" underwriting
2. Borrower's current employment status (assuming creditor relies on employment income in determining repayment ability
3. Borrower's monthly payment on the covered transaction, calculated in accordance with the Rule
4. Borrower's monthly payment on any simultaneous loan the creditor knows or has reason to know will be made, calculated in accordance with the Rule

Ability to Repay – Non QM Loans (Eight Factors)

5. Borrower's monthly payment for mortgage-related obligations
6. Borrower's current debt obligations, alimony, and child support
7. Borrower's monthly debt-to-income ratio (DTI) or residual income, calculated in accordance with the Rule
8. Borrower's credit history

Liability for Failure to Comply with ATR Requirement

- There is significant liability for failing to meet the ATR, including actual damages (such as a lost down payment on a property), statutory damages of up to $4,000, all fees and up to three years of finance charges (on an average loan of $200,000 at 4.5%, approximately $25,000), court costs and reasonable attorney's fees This is closely aligned with normal and prudent "Three C's" underwriting.
- Most significantly, an ATR violation maybe made against any creditor, assignee or holder of a residential mortgage loan, and a consumer can assert an ATR violation as a defense to a foreclosure (by recoupment or set-off) without regard to the three-year statute of limitations. So, there is assignee liability and extended opportunity to challenge a foreclosure for the life of the loan.

KBYO (TRID) – Where are we today?

- ***GFE*** and initial ***TIL*** replaced with ***Loan Estimate***
  - Items constituting an "application" are narrowed, requiring lenders to provide earlier disclosures based on limited information
  - "Tolerances" imposed by HUD in 2010 under RESPA that limit changes in estimated costs have been tightened and are now subject to CFPB enforcement and a TILA private right of action
- ***HUD-1/1A*** and final ***TIL*** replaced with ***Closing Disclosure***
  - Disclosure must be received three specific business days before closing, requiring additional work earlier in the process
  - Lender is now responsible for errors in the settlement agent's preparation of the settlement disclosures, creating private liability and vendor management risk

When Rule Does not Apply

- The rule applies to most closed-end consumer mortgage loans, although it establishes different requirements for timeshares and construction loans
- The rule does not apply to:
  - Home-equity lines of credit
  - Reverse mortgages
  - Mortgages secured by a mobile home or by a dwelling that is not attached to land
  - Loans made by a creditor who makes five or fewer mortgages in a year
  - Certain no-interest second mortgage loans made for the purpose of down payment assistance, property rehabilitation, energy efficiency, or foreclosure avoidance

Application Definition and Requirements

- ***Application*** means the submission of the following information for the purposes of obtaining an extension of credit:

Borrower Name	Borrower SSN to Obtain Credit	Borrower Income
Estimated Property Value	Property Address	Loan Amount Sought

- Creditor or broker may attempt to sequence the collection of information but cannot refuse to accept any of the six items
  - Example: Ask for SSN for property address after you receive all other necessary information
  - Cannot require verification documents until you provide LE
  - Cannot collect fees (except for credit report) until you have received an intent to proceed

Loan Estimate Delivery

- ***Loan Estimate*** must be delivered or placed in the mail:
  - Within three general (open for business) days after creditor or broker receives an ***Application***, and
  - Seven specific business days before consummation
- *"Business Day"* has Two Meanings:
  - Three-Day Rule: Days on which the creditor's offices are open to the pubic for carrying on substantially all of its business functions after receiving Application (i.e. not Saturdays if not open) ["general" or "open for business day"]
  - Seven-Day Rule: Calendar days except Sundays and legal public holidays before consummation ["specific business day"]

Loan Estimate Tolerances

- Once the Loan Estimate has been provided, the following tolerances apply:
    - Zero Tolerance: Disclosed amounts cannot increase
    - 10% Aggregate Tolerance: Aggregate disclosed amount cannot increase by more than 10% for: (1) "Shoppable" third-party services selected from List of Providers; and (2) recording fees
    - No Tolerance: Disclosed amount must be based on "best information reasonably available at the time" using "reasonable due diligence" but otherwise no limitation on increases

Changes to the Loan Estimate

1. Changed circumstances affecting eligibility or settlement charges
   a) One of the following affects creditworthiness or the value of the security:
      - Extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction
      - Information specific to the consumer or transaction that the creditor relied upon when providing the LE and that was inaccurate or changed after the disclosures were provided
      - New information specific to the consumer or transaction that the creditor did not rely on when providing the LE (but cannot be ***Application*** information)
2. Consumer request. Consumer requests revisions to terms or settlement that cause an estimated charge to increase

Changes to the Loan Estimate (cont'd)

3. Interest rate dependent charges. Discount points or creditor/mortgage broker charges or credits change because the interest rate was not locked when the LE was provided
4. Expiration. Consumer does not indicate an intent to proceed within 10 general open business days after LE provided
5. New construction. Closing more than 60 days after initial Loan Estimate

Loan Estimate Challenges

- Good Faith Standard:
  - More due diligence is required in many ‘new’ areas
  - Higher standard for data accuracy
  - More thorough interview
  - Tax estimates
  - Written provider list
  - Affiliate fees
  - Local lending quirks
  - Purchase Agreement clauses
  - Title Insurance Simultaneous Reissue Issue

Closing Disclosure

- Initial: Hand deliver to borrower in person at least three specific business days before consummation; otherwise, six specific business days before consummation
  - “Closing” and “consummation” often used interchangeably, but the trigger is consummation, which is the date on which the borrower becomes legally obligated
  - Rescindable Transactions: All borrowers with property interest must receive the initial Closing Disclosure (CD) to start the three day waiting period under the rule

Changes to the Closing Disclosure Part I

- A corrected CD can be provided at or before closing except additional three-day waiting period if:
  - Change in loan product (e.g. fixed rate to variable)
  - Addition of prepayment penalty
  - APR disclosed on initial CD "becomes inaccurate, as defined in § 1026.22"
- A corrected CD can be used to reset tolerances in limited circumstances

Changes to the Closing Disclosure Part II

1. After consummation, a corrected CD can be provided:
   a) Tolerance Violations: If consumer pays amounts in excess of tolerances at consummation, then no later than 60 days after consummation the creditor must (1) refund the excess payment to the consumer; and (2) provide a corrected CD reflecting the refund
   b) Change in Amount Paid: If amount paid by consumer changes during the 30 calendar days following consummation, creditor must provide corrected CD within 30 calendar days of receiving information sufficient to establish the change
   c) Non-numeric Clerical Errors: Must be corrected within 60 days after consummation

Closing Disclosure Challenges

- Coordinating fees
  - > Third party fees and invoices
  - > Title company fees
  - > Seller paid fees
- The black hole
- New construction
  - > Estimating taxes
  - > Estimating escrow payments
- Place holder

Expanded HMDA Data Collection

- Final rule will require financial institutions to collect, record, and report information on a total of 48 data points
  - > 25 New data points
    - – 11 new data points identified in the Dodd-Frank Act
    - – 14 new data points using the Bureau's discretionary authority
  - > 23 existing data points
    - – 14 modified
    - – 9 existing

Expanded HMDA Data Collection

Current Data Points		
Legal Entity Identifier	Universal Loan Identifier	Application Date
Loan Type	Loan Purpose	Pre-approval
Construction Method	Occupancy Type	Action Taken
Loan Amount	State	Action Taken Date
Census Tract	Ethnicity	Race
Sex	Income	Type of Purchaser
Rate Spread	HOEPA Status	Lien Status
Reason for Denial		

Expanded HMDA Data Collection

Data Points Identified in Dodd-Frank Act		
Property Address	Age	Credit Score
Loan Term	Property Value	Application Channel
Introductory Rate Period	Non-amortizing Features	Prepayment Penalty Term
Total Loan Costs, or Total Points and Fees	Mortgage Loan Originator NMLSR Identifier	

Expanded HMDA Data Collection

Data Points Added Under Bureau's Discretionary Authority		
Origination Charges	Discount Points	Lender Credits
Interest Rate	Debt-to-Income Ratio	Reverse Mortgage
Multifamily Affordable Units	Automated Underwriting System	Combined Loan-to-Value Ratio
Open-End Line of Credit	Business or Commercial Purpose	Total Units
Manufactured Home Secured Property Type	Manufactured Home Land Property Interest	

Expanded HMDA Data Collection

- Final rule does not include the following proposed data points:
  - > QM flag
  - > Initial draw
  - > RPIR (risk-adjusted, pre-discounted interest rate)
  - > MSA/MD

Effective Dates of HMDA Final Rule

Jan 1, 2017	Jan 1, 2018	Jan 1, 2019	Jan 1, 2020
Effective date for excluding low volume depository institutions from coverage	Effective date for most provisions related to institutional and transactional coverage, and data collection, recording, reporting, and disclosure	Effective date for changes to enforcement provisions and additional amendments to reporting provisions	Effective date for quarterly reporting provisions

HMDA Purposes

- Are institutions serving the housing needs of their communities?
  - Distributing public-sector investment to attract private investment to areas where it is needed, and
  - Identifying possible discriminatory lending patterns and enforcement of antidiscrimination laws

HMDA Implications Part I

- Why is this important?
  - More available information = more scrutiny
  - Data integrity is critical
  - CFPB is data-driven agency
  - Significant risk for not getting it right (e.g. CFPB enforcement actions, fair lending exposure, etc.)

HMDA Implications Part II

- Supervisory Examinations
  - Reviewed first and sets tone for rest of exam
- Fair Lending/CRA Monitoring Device
  - New data gives government and private litigants access to significantly more key data
  - Hard to do a reliable peer comparison on new data points within the first year
- Compliance with Other Laws
  - Regulatory access to key data in electronic form for almost every loan file your company touches

HMDA Implications Part III

- Start implementation process *now*
- Self-assessment
- Current data points: Identify revisions made; transaction coverage changes
- New data points:
    - What isn't clear?
    - What additional guidance do you need?
    - What can you implement before the effective date?
- Understand the requirements ASAP
- New reporters and those with newly covered or niche products even more urgent

HMDA Implications Part III (cont'd)

- Will be a dynamic learning/implementation process as new information is provided
- Test expected values for more than just HMDA accuracy – think proactively
- Begin identifying and correcting potential concerns now
- Review/analyze, scrub, test, and review again before submitting

Disparate Impact

- Overt discrimination/disparate treatment means treating a person less favorably on a prohibited basis
- Disparate impact occurs when a facially neutral practice has a disproportionately negative impact on a prohibited basis
- Intent is not relevant under the disparate impact theory
- If the lender can demonstrate that the practice is necessary to achieve a substantial, legitimate nondiscriminatory interest, the practice is not discriminatory
- Unless the consumer shows that the lender’s interest could be achieved by a practice that has a less discriminatory effect

Redlining, Reverse Redlining, and Steering

- Redlining occurs when a creditor provides unequal access to credit or unequal terms of credit because of the race, ethnicity or other prohibited characteristics of the residents in a geographical area
- Reverse redlining means targeting borrowers or areas with less advantageous products or services based on prohibited characteristics
- Steering means guiding consumers toward a specific product or service on a prohibited basis, rather than based on neutral or other legitimate factors

Thank you

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