

To the Point!

legal, operations, and strategy briefs for financial institutions December 13, 2012



Debt Collection

The Dodd-Frank Act gave the CFPB express authority to supervise nonbank entities engaged in residential mortgage, private education lending and payday lending. The CFPB was also authorized to supervise other “larger participants” involved in markets for other consumer finance products and services. To date, the CFPB has exercised this authority over larger participants in the consumer credit reporting industry and has now issued a second rule asserting its authority over larger nonbank participants in the consumer debt collection market. In addition to the final

rule, the CFPB has issued debt collection examination procedures.

In its final rule, the CFPB identified those nonbank entities with greater than \$10 million in annual receipts resulting from consumer debt collection (averaged over three years and including their affiliates’ receipts) as being subject to the rule. In response to comments received on the proposed rule, the CFPB further clarified which consumer debt collection entities were covered by the final rule:

Covered	Not Covered
Collection of student loans, including guaranteed student loans	Entities engaged in loan servicing
Collection of debts incurred for personal, family or household purposes	Not-for-profit consumer credit counseling services
Lawyers providing legal services to commercial clients to collect a consumer debt (litigation)	Collection by the creditor originating the consumer credit transaction

The CFPB emphasized that in addition to examination of covered nonbank participants in the consumer debt collection market, the CFPB will also examine those larger entities subject to its supervision to ensure they have in place processes for managing the risks of service provider relationships including the management of third-party debt collectors. Consistent with its April Bulletin regarding service-provider management, the examination is to make certain that the supervised entities’ relationships with third party service-providers engaged in debt collection activities do not present unwarranted risks to consumers. To that end, the CFPB stated that it expects the entities it regulates to monitor whether service-providers are complying with consumer financial law, including a review of service-provider’s policies, procedures, internal controls and training materials, to ensure that the service-provider conducts both training and oversight of employees that have consumer contact or compliance responsibilities.



Mortgage Banking

The CFPB has delayed the effective date of the mortgage loan disclosures integrating the requirements of TILA and RESPA mandated by the Dodd-Frank Act. Although this delay is significant and welcomed, the Bureau has also announced plans to issue final rules in January 2013 implementing other requirements of the Dodd-Frank Act related to mortgage loans that have not been delayed. Following is a list of those rules:

- Mortgage Loan Originator Rule--mortgage loan originator compensation and qualifications and restrictions on payments of certain fees;
- Improved Consumer Access to Appraisal Reports--automatic provision of appraisal reports and valuations for applications for credit to be secured by a first lien on a dwelling;
- Appraisals for Higher Risk Mortgages--appraisal requirements for high-cost mortgage loans under HOEPA;
- Ability to Repay--requirements for creditors to determine that a consumer can repay a mortgage loan;
- Mortgage Loan Servicing Amendments--enhanced protections for consumers related to mortgage servicing, including required statements, notices of rate changes and prompt crediting of payments; and
- High-Cost Mortgages and Homeownership Counseling--expansion of HOEPA and additional protections for high-cost mortgage loans.

Mortgage lenders should familiarize themselves with the proposed rules and monitor the CFPB closely for the issuance of the final rules in January. Even though the proposed rules are not final, lenders should begin to identify those areas of their institution that will be impacted by each rule. For example, the mortgage loan originator rule establishes registration requirements and limits compensation, while the appraisal rules expand existing rights to appraisals under the ECOA. Each is different and will require changes to a wide range of practices and processes, and potential revisions to third-party service agreements, to ensure compliance by each final rule's effective date.



Expiration of the Temporary Unlimited Deposit Insurance Coverage of Noninterest-Bearing Transaction Accounts

Without congressional action, the temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts provided under the Dodd-Frank Act is set to expire on December 31, 2012. The FDIC has issued Financial Institution Letter 2012-45 providing guidance to depository institutions on the steps they should take to comply with this change and inform their depositors of the change and its impact

on their deposits. Beginning on January 1, 2013, noninterest-bearing transaction accounts will be added to a depositor's other accounts held in the same ownership category and the aggregate balance will be insured up to \$250,000 per depositor.

The FDIC stated that because noninterest-bearing transaction accounts will not be eligible for unlimited deposit insurance coverage, sweep disclosure requirements in 12 CFR 330.16(c)(3) will not apply after December 31, 2012. All signs at branch locations and internet sites notifying depositors of the unlimited coverage should be removed by January 2, 2013 or, if removal by January 2, 2013 is not possible, as soon as practicable following January 2, 2013. Finally, the FDIC stated that while there are no statutory requirements that depositors be notified of the change in insurance coverage and the impact it will have on their accounts, the FDIC encourages depository institutions to notify their depositors by "any reasonable method," such as statement notices or electronic notices for depositors who receive notices electronically. For this purpose, the FDIC provided a model notice, including an abbreviated notice for statements where there are space concerns.

Depository institutions should take steps to comply with the FDIC's requirements contained in its Financial Institution Letter and to ensure that the depository institution's employees are prepared to discuss with depositors the impact of this law change on insurance coverage limits.



2013 Dollar Annual Threshold Adjustments

As required under the Dodd-Frank Act, the CFPB announced annual adjustments to the coverage of certain transactions under TILA effective January 1, 2013. Consumer credit and lease transactions in an amount equal to or less than \$53,000 will be subject to TILA. The fee-based trigger for disclosures under HOEPA has been increased to \$625. Private education loans and loans secured by real property to be used as the principal dwelling of the consumer are subject to TILA regardless of the amount of the loan.

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