Compliance Update

NCSHA 2018 HFA Institute

Washington, D.C.

January 11, 2018

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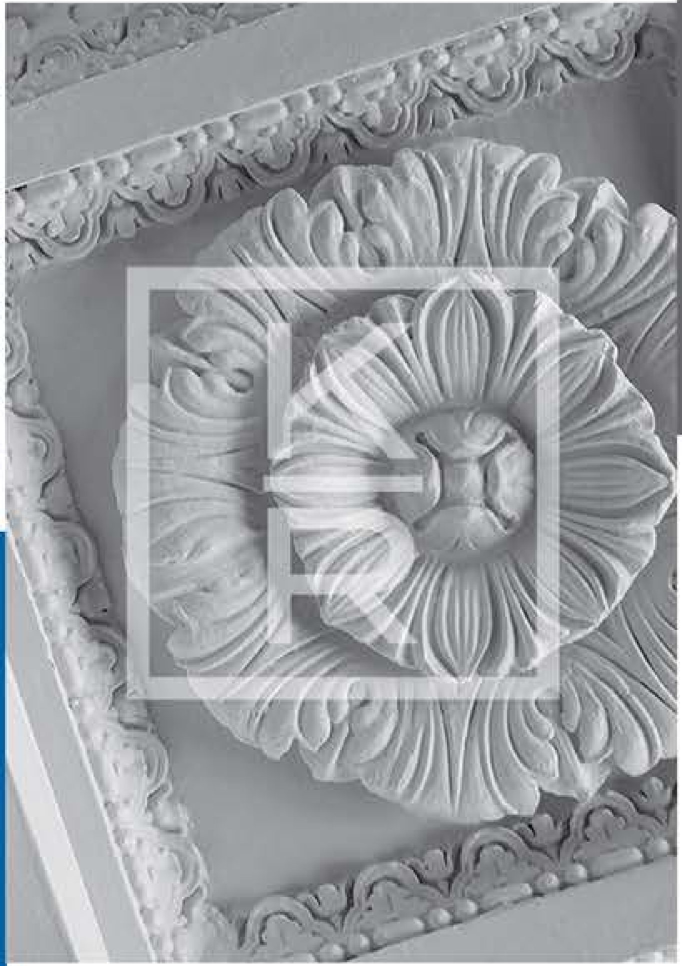

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Discussion Leader:

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Connecticut Housing Finance Authority

Participants:

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Two-Part Discussion

- July 7, 2017 TRID Amendment
  - Excludes recording fees and transfer taxes from the Partial Exemption's 1% cap on fees.
  - Allows the use of the TRID Disclosures (LEs and CDs) under the Partial Exemption.
- Compliance Management Systems
  - The analysis to determine whether your HFA is subject to CFPB supervision and examination.
  - If so, the elements of a compliance management system.

Three Sets of Disclosure Forms

- Truth-In-Lending Disclosures
  - Truth-In-Lending Disclosure Statement (Initial TIL)
- Real Estate Settlement Procedures Disclosures
  - Good Faith Estimate (GFE)
  - HUD-1 Settlement Statement (HUD-1)
- TRID Disclosures
  - Loan Estimates (LE)
  - Closing Disclosure (CD)

Three Questions to Determine Which Disclosure Forms Apply

- Is the mortgage loan subject to TILA?
- Is the mortgage loan subject to RESPA?
- Does the mortgage loan pass the Partial Exemption?

Question #1: Is the mortgage loan subject to TILA?

- An extension of credit (e.g., a loan) is subject to TILA when the following four conditions are met:
  - The credit is offered or extended to consumers;
  - The offering or extension of credit is done regularly;
  - The credit is subject to a finance charge **or** is payable by a written agreement in more than four installments; and
  - The credit is primarily for personal, family or household purposes.

See 12 CFR 1026.1(c)

Question #2: Is the mortgage loan subject to RESPA?

- RESPA applies to all Federally Related Mortgage Loans (“FRML”) which is a mortgage loan secured by a structure designed for occupancy of 1 - 4 families and has any one of several features, the most relevant of which are:
  - The mortgage loan is made by a “lender” that is either regulated by or whose deposits or accounts are insured by any agency of the federal government.
    - Under RESPA, “lender” means the secured creditor named in the note and/or security instrument. For table-funded transactions, lender means the person to whom the loan is assigned at or after settlement.
  - The mortgage loan is insured, guaranteed, assisted by, or made in connection with a housing-related program administered by HUD or any other federal agency.

See 12 CFR 1024.2

Question #3: Does the mortgage loan pass the Partial Exemption?

- A mortgage loan passes the Partial Exemption if each of the following criteria is satisfied:
  - The mortgage loan is secured by a subordinate lien;
  - The mortgage loan is for one of the following purposes:
    - Down payment, closing costs or similar assistance;
    - Property rehabilitation assistance;
    - Energy efficiency assistance; or
    - Foreclosure avoidance or prevention.

Question #3: Does the mortgage loan pass the Partial Exemption?

- The credit contract does not provide for the payment of interest;
- The credit contract provides that repayment of the loan is either:
  - Forgiven, subject to certain ownership and occupancy conditions;
  - Deferred for a minimum of 20 years;
  - Deferred until the property is sold; or
  - Deferred until the property is no longer the borrower's principal dwelling.

Question #3: Does the mortgage loan pass the Partial Exemption?

- The total costs payable by the borrower are limited to:
  - Recording Fees;
  - Transfer Taxes;
  - A bona fide and reasonable application fee; and
  - A bona fide and reasonable fee for housing counseling services;

- The total costs payable by the borrower for the application fee and fee for housing counseling services is less than 1% of the principal amount of the loan; and

- Either the Truth-In-Lending Disclosures or the TRID Disclosures are provided.

Optional compliance period from October 10, 2017 through October 1, 2018 and mandatory compliance period after October 1, 2018.

Required Disclosures

If the mortgage loan is subject to:	And the mortgage loan:	Then the lender should disclose using:
TILA and RESPA	Fails the Partial Exemption	TRID Disclosures (LE and CD)
TILA and RESPA	Passes the Partial Exemption	TIL Disclosures (Initial TIL) or TRID Disclosures (LE and CD)
TILA but not RESPA	Fails the Partial Exemption	TRID Disclosures (LE and CD)
TILA but not RESPA	Passes the Partial Exemption	TIL Disclosures (Initial TIL) or TRID Disclosures (LE and CD)
RESPA but not TILA	Fails the Partial Exemption	RESPA Disclosures (GFE and HUD-1)
RESPA but not TILA	Passes the Partial Exemption	TIL Disclosures (Initial TIL) or TRID Disclosure (LE and CD)
Neither TILA nor RESPA	N/A	No disclosure is required, but the lender may use the TRID Disclosures (LE and CD)

CFPB Supervision & Examination Authority

- The CFPB examines Supervised Entities for their compliance with "Federal Consumer Financial Law."
  - Federal Financial Consumer Law includes 19 different federal statutes and related regulations, including:
    - Truth In Lending Act ("TILA")
      - TRID Rule
      - QM Rule
    - Real Estate Settlement Procedures Act ("RESPA")
    - Equal Credit Opportunity Act
    - Fair Debt Collection Practices Act

See 12 USC 5481(14) and (15)

CFPB Supervision & Examination Authority

- Four Groups of Supervised Entities
  - Supervised Banks
  - Supervised Nonbanks
  - Service providers to Supervised Banks and Supervised Nonbanks
  - Service providers to a large number of small insured depository institutions or credit unions

See 12 USC 5514, 5515 and 5516

Is your HFA a Supervised Nonbank?

- A Supervised Nonbank is
  - Any covered person who offers or provides **origination**, **brokerage** or **servicing** of loans secured by real estate for use by consumers primarily for family or household purposes, or **loan modifications** or **foreclosure relief services** in connection with such loans.

See 12 USC 5514(a)(1)(A)

CFPB Supervision & Examination Authority

- Supervised Banks are examined "regularly" and those examinations occur simultaneously with prudential regulators' examinations.

- Supervised Nonbanks are not examined regularly. They are identified for examination on the basis of the risk they pose to consumers.

CFPB's Purposes for Supervision and Examinations

- Assess compliance with Federal Consumer Financial Laws;
- Obtain information about activities and compliance systems or procedures; and
- Detect and assess risks to consumers and to markets for consumer financial products and services.

CFPB SUPERVISION AND EXAMINATION MANUAL –

CFPB Supervision and Examination Process, at pg. Overview 3

Compliance Management System

- A Compliance Management System is how a supervised entity:
  - Establishes its compliance responsibilities;
  - Communicates those responsibilities to employees;
  - Ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes;
  - Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
  - Takes corrective action and updates tools, systems and materials as necessary.

CFPB SUPERVISION AND EXAMINATION MANUAL –
Compliance Management Review, at pg. CMR 1

Compliance Management System

- An Effective Compliance Management System Has Two Interdependent Control Components:
  - Board and Management Oversight; and
  - Compliance Program, which includes:
    - Policies and Procedures;
    - Training;
    - Monitor and/or audit; and
    - Consumer complaint response.

CFPB SUPERVISION AND EXAMINATION MANUAL – Compliance Management Review, at pg. CMR 1-2

Compliance Management System

- "While all of the firms under our jurisdiction must follow the law, we understand that the means that they employ to achieve that goal will – and likely should – differ. We recognize that large, complex entities necessarily have different compliance oversight and management systems than smaller entities or those offering a more limited number of products or services."

CFPB SUPERVISION AND EXAMINATION MANUAL –
CFPB Supervision and Examination Process, at pg. Overview 4

Compliance Management System

- "CFPB understands that compliance will likely be managed differently by large banking organizations with complex compliance profiles and a wide range of consumer financial products and services at one end of the spectrum, than by entities that may be owned by a single individual and feature a narrow range of financial products and services, at the other end of the spectrum."

CFPB SUPERVISION AND EXAMINATION MANUAL –

Compliance Management Review, at pg. CMR 2

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