

Truth-in-Lending Maine and Federal Update

**Maine Bankers Association Bank Expo
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Truth-in-Lending Maine and Federal Update

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Part I – How did we get here?

A. The CARD Act

May 22, 2009: The Credit Card Accountability, Responsibility and Disclosure Act (“CARD Act”) became law (Pub. L. 111-24). It had multiple effective dates:

EFFECTIVE DATE	REQUIREMENT
August 20, 2009	<ul style="list-style-type: none">• 45 day change in terms requirement• 21 day statement/grace period
November 22, 2009	Toll free number for credit counseling/debt management
February 22, 2010	Everything else, except...
August 22, 2010	<ul style="list-style-type: none">• Assess increased APRs every 6 months• Penalty fees must be “reasonable and proportional”

FRB Rulemaking Prior to CARD Act

January 29, 2009: FRB issues two sets of rules – both effective July 1, 2010.

- Reg Z: FRB made comprehensive changes to Reg Z's open-end (not home secured) credit rules (74 Fed. Reg. 5244)
- UDAP Regulation (Regulation AA): FRB, OTS and NCUA published regulations pursuant to the FTC Act to protect consumers from unfair credit card acts and practices (74 Fed. Reg. 5498)

CARD Act – Reg Z Amendments

July 22, 2009 (Phase I): FRB published an interim final rule to implement the CARD Act provisions scheduled to become effective August 20, 2009 (i.e., 45 day change in terms notice requirement for “significant changes” and minimum 21 day period between statement date and payment due date) (74 Fed. Reg. 36077).

February 22, 2010 (Phase II): FRB published the second phase of CARD Act rulemaking (75 Fed. Reg. 7658).

- This rule incorporated many of the elements of the January 29, 2009, Reg Z and Reg AA rules. As a result, these prior rules were withdrawn by the FRB, the NCUA and OTS (75 Fed. Reg. 23565)

CARD Act – Reg Z Amendments (cont'd.)

- Established a February 22, 2010, effective date for CARD Act revisions, while retaining a July 1, 2010, date for items incorporated into the rule from prior rulemaking

June 29, 2010 (Phase III): FRB published the third phase of CARD Act rulemaking to require reassessment of APR increases and penalty fees to be “reasonable and proportional,” effective August 22, 2010 (75 Fed. Reg. 37526).

CARD Act – Reg Z Amendments (Phase I & II)

Interest rate restrictions:

- Credit card issuers are prohibited from increasing interest rates on existing credit card balances unless the borrower is at least 60 days late on the account. No more retroactive rate increases or universal default clauses
- Credit card issuers can increase rates on new transactions only in limited circumstances, and subject to (i) 45 days advance notice and (ii) borrower's right to opt out of changes
- If the account provides a promotional interest rate period, the promotional interest rate must last a minimum of six months
- Credit card issuers are prohibited from changing interest rates during the first year after the account is opened. This rule does not apply if the borrower is 60 days late in payment

CARD Act – Reg Z Amendments (Phase I & II) (cont'd.)

Fee restrictions:

- Credit card issuers cannot charge over-limit fees unless cardholders opt in. Even with consent, no more than one OTL fee per billing cycle, and no OTL fees if interest charges or other fees are the sole reason for the over limit
- Credit card issuers cannot charge for accepting payments by mail, phone, electronic transfer, or any other means, unless the payment is processed through an expedited service processor
- Fees financed on credit cards cannot exceed 25% of the credit limit when the account is opened

CARD Act – Reg Z Amendments (Phase I & II) (cont'd.)

Payment restrictions and requirements:

- If a payment due date falls on a weekend or holiday, payments received on the next business day must be considered timely (applies to all open-end credit)
- Payments received by 5 p.m. must be credited the same day (applies to all open-end credit)
- Credit card issuers are required to apply any payment in excess of the minimum amount due to the highest interest balance first
- Credit card payments received at a branch prior to closure of branch must be considered received on the day the branch receives the payment

CARD Act – Reg Z Amendments (Phase I & II) (cont'd.)

Credit card periodic statements must disclose:

- How long it will take and total cost to pay off existing balance if cardholder pays only minimum amount due; and
- Payment amount and total cost to pay off existing balance in 36 months

CARD Act – Reg Z Amendments (Phase I & II) (cont'd.)

Miscellaneous:

- Credit card issuers cannot issue credit cards to consumers under age 21 without an “of-age” co-signer, unless they meet sufficient income requirements to repay the debt
- Double-cycle balance calculation is prohibited
- Card issuers must make account terms and cardholder agreements available to cardholders on the Internet
- New formatting and content requirements for “Schumer box” disclosures and periodic statements
- New requirements for timing and content for change in terms notices

CARD Act – Reg Z Amendments (Phase III)

Penalty Fees – Credit card issuers are prohibited from:

- Charging a penalty fee (late fee, returned check fee, overlimit fee) of more than \$25, unless:
 - The same violation occurred in the preceding 6 months, in which case the fee may be up to \$35; or
 - The issuer can show that the costs it incurs as a result of the violation justify a higher fee
- Charging penalty fees that exceed the dollar amount associated with the consumer's violation (e.g., if a consumer is late making a \$20 minimum payment, late fee cannot exceed \$20)
- Charge multiple penalty fees based on a single violation
- Assessing "inactivity" fees

Credit card issuers that increased rates on/after January 1, 2009 must evaluate whether reasons for increase have changed and, if appropriate, reduce the rate.

Part I – How did we get here?

B. Open-End Final Rule

The February 22, 2010 final rule (75 Fed. Reg. 7658) also incorporated many of the open-end credit rules previously issued in January 2009 (74 Fed. Reg. 5244).

- New format/content for account opening disclosures
- New format/content for periodic statements
- New format/content/timing for COT notices
- New disclosure rules for advertisements

These changes apply to all open-end credit plans (other than HELOCs).

Open-End Final Rule (cont'd.)

Account opening disclosures:

- Creditors have to provide “initial” disclosures in a table
- The table is intended to be substantially similar to the Schumer box disclosure table for credit card accounts, but must provide customer-specific pricing information
- Note new model billing error notices

Open-End Final Rule (cont'd.)

Periodic statement disclosures:

- The disclosure requirements in Reg Z for periodic statements for home equity lines of credit are generally unchanged (for now)
- For all other types of open-end credit, the Rule imposed significant new periodic statement disclosure requirements, including new rate and fee disclosures (e.g., interest and fee totals for cycle and calendar year)
- Note new model billing error notices, including version for statement backers

Open-End Final Rule (cont'd.)

Change in terms disclosures –

Creditors generally must provide 45 days' advance notice prior to:

- A change in any term required to be disclosed in the account-opening disclosures
- An increase in the required minimum periodic payment
- An increase in interest rates due to the consumer's delinquency or default or as a penalty

Open-End Final Rule (cont'd.)

Format issues:

- If change affects account opening disclosures, then creditor must provide a summary table in the change-in-terms notice
- If change-in-terms notice is enclosed with a periodic statement, then a table summarizing the change must appear on the front of the periodic statement if the change (i) affects account opening disclosures or (ii) imposes a penalty APR
- Creditors changing terms on open-end accounts (other than HELOCs) will need to follow these new timing and disclosure requirements

Open-End Final Rule (cont'd.)

Advertising disclosures:

Trigger Terms – Stating terms disclosed in account-opening disclosures, either affirmatively or negatively (e.g., “no annual fee”), triggers additional disclosures.

Payment Amounts – Statement of a periodic payment amount must be accompanied, in equal prominence to the payment amount, by disclosure of:

- The time period required to pay the balance
- The total number of payments (assuming only periodic payments are made)

Open-End Final Rule (cont'd.)

Radio/TV Ads – As an alternative to providing full disclosures, creditors can disclose any APRs that may apply, and provide a toll-free number consumers can call to obtain additional information.

Fixed Rates – An advertisement may refer to an interest rate as “fixed” if the advertisement states:

- The time period the rate will be fixed
- That the rate will not increase during that period

If a time period is not specified, then an advertisement may refer to an interest rate as “fixed” only if the rate will not change while the plan is open.

Part I – How did we get here?

C. HOEPA and MDIA

The FRB issued a final rule amending Reg Z in order to implement the Home Ownership and Equity Protection Act of 1994 (“HOEPA” – Pub. L. 103-325) on July 14, 2008, effective October 1, 2009 (73 Fed. Reg. 44522). We will refer to these amendments as the “HOEPA Final Rule.”

HOEPA and MDIA

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (“MDIA” – enacted as part of the Housing and Economic Recovery Act of 2008 or HERA – Pub. L. 110-289). MDIA codified some of the HOEPA Final Rule, and expanded its coverage and requirements, effective July 30, 2009.

MDIA was later amended by the Emergency Economic Stabilization Act of 2008 (“EESA” – Pub. L. 110-343).

On May 19, 2009, the FRB issued a final rule implementing the MDIA requirements effective July 30, 2009 (74 Fed. Reg. 23289). We will call these amendments the “MDIA Final Rule.”

HOEPA Final Rule

“High rate, high fee” mortgage loans (Section 32 loans):

- Consumer, closed-end
- Secured by principal dwelling
- 1st lien – T bill + 8% or total points and fees greater than 8% of the total loan amount
- 2nd lien – T bill + 10% or points and fees greater than 10% of the total loan amount

“Higher priced” mortgage loans (Section 35 loans):

- 1st lien – average prime offer rate + 1.5
- 2nd lien – average prime offer rate + 3.5

HOEPA Final Rule

Protections for higher priced mortgages:

- Prohibits creditors from extending credit without regard to consumer's ability to repay from sources other than the collateral itself
- Requires creditors to verify income
- Limits prepayment penalties to certain conditions
- Requires creditors to establish escrow accounts for taxes and insurance

HOEPA Final Rule

Protections for all closed end credit secured by consumer's principal dwelling:

- Prohibits creditors from coercing appraiser to provide misstated appraisal
- Prohibits mortgage servicers from pyramiding late fees, failing to credit payments as of the date of receipt and failing to provide loan payoff statements upon request within a reasonable period of time

The HOEPA Final Rule also imposed restrictions on advertising.

MDIA Final Rule

Applies to any extension of credit secured by a consumer's dwelling:

- Early TIL not later than 3 business days after creditor receives consumer's written application, and at least 7 days before closing
- No fees before consumer receives good faith estimate (except for consumer credit report)
- Early TIL out of tolerance requires additional, corrected statement no later than 3 days before closing
- Increased civil liability

MDIA also requires disclosure of payment examples for variable rate loans, effective January 30, 2011. On September 24, 2010, the FRB published a final rule implementing this provision, effective October 25, 2010, with compliance optional until January 30, 2011 (75 Fed. Reg. 58470).

MDIA Final Rule re: Variable Rate Loans

Creditors are required to disclose:

- Interest rate together with the corresponding monthly payment (including escrows for taxes and property/mortgage insurance) in tabular format at consummation
- Maximum interest rate and payment during the first 5 years
- Maximum interest rate and payment possible during life of loan

Special disclosures are required for loans with:

- Negatively amortizing payment options
- Introductory interest rates
- Interest only payments
- Balloon payments

Disclosure that there is no guarantee the consumer will be able to refinance the loan in the future.

Clarification of MDIA Final Rule re: Variable Rate Loans

On December 22, 2010, the FRB issued an interim rule clarifying certain aspects of the MDIA Final Rule re: Variable Rate Loans.

- Clarifies the requirements for adjustable rate transactions that are 5/1 ARMs
- Clarifies, for interest-only loans, that the disclosures should reflect the date of the interest rate changes rather than the date the first payment is due under the new rate
- Revises the definition of negative amortization loans

This interim rule is effective January 30, 2011, but compliance is optional until October 1, 2011.

Part I – How did we get here?

D. Miscellaneous Amendments to Reg Z

HEOA Final Rule

Notice Upon Transfer of Mortgage Final Rule

Mortgage Loan Originator Compensation
Final Rule

Appraisal Independence Interim Rule (per
Dodd-Frank)

Jumbo Final Rule

HEOA Final Rule

On August 14, 2008, the Higher Education Opportunity Act of 2008 was enacted (“HEOA” — Pub. L. 110-315). Title X of HEOA (the “Private Student Loan Transparency and Improvement Act of 2008”) amended TILA to add disclosure requirements and prohibit certain practices for creditors making private education loans, even if those loans exceed \$25,000.

On August 14, 2009, the FRB issued a final rule implementing these changes, effective September 14, 2009 (the “HEOA Final Rule” — 74 Fed. Reg. 41194). Compliance with the final rule was optional until February 14, 2010.

HEOA Final Rule (cont'd.)

- Prohibits creditor from using a covered educational institution's name, logo, mascot, or other words or symbols identified with the educational institution
- Requires creditor to give consumer 30 days to accept loan offered (cannot change rates or terms)
- Provides consumer right to cancel up to 3 days after consummation
- Requires disclosures at application, upon approval, and at consummation
- Establishes private right of action

Notice Upon Transfer of Mortgage Final Rule

On November 20, 2009, the FRB issued an interim rule pursuant to a provision of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111-22), requiring notice to a consumer upon the sale or transfer of a mortgage (74 Fed. Reg. 60143).

On September 24, 2010, the FRB issued a final rule regarding the same (75 Fed. Reg. 58489). This final rule was effective January 1, 2011.

Notice Upon Transfer of Mortgage Final Rule (cont'd.)

Acquiring parties (any person who acquires legal title to the debt obligation) must provide disclosures in writing within 30 days after the date on which the loan was sold, transferred or assigned. The disclosures must include:

- Name, address and telephone number of the new owner
- Transfer date
- Name, address and telephone number of an agent or other party authorized to receive the consumer's rescission notice and resolve payment issues (if different than owner)
- Where the transfer of ownership is recorded

Notice Upon Transfer of Mortgage Final Rule (cont'd.)

Exceptions:

- Transfer of interest within 30 days
- Transfer subject to repurchase agreement
- Transfer of partial interest and party authorized to receive rescission notice or resolve payment issues does not change

Mortgage Loan Originator Compensation Final Rule

On October 24, 2010, the FRB issued a final rule, effective April 1, 2011 (75 Fed. Reg. 58509), which bans yield spread premiums, among other things. The final rule does not apply to HELOCs, timeshare transactions or loans secured by real property that does not include a dwelling.

Mortgage Loan Originator—“arranges, negotiates or otherwise obtains” a mortgage loan for another person.

Mortgage Loan Originator Compensation Final Rule (cont'd.)

A mortgage loan originator cannot be compensated based upon profits or pricing.

A mortgage loan originator can be compensated based upon:

- Volume
- Loan performance
- Approval percentage
- Salary or hourly wage
- File quality

In addition, a mortgage loan originator may not steer consumer to a transaction that provides greater compensation to mortgage loan originator.

Appraisal Independence Interim Rule

On October 28, 2010, the FRB issued an interim rule, pursuant to § 1472 of Dodd-Frank (which is addressed later in the presentation), amending Reg Z to establish new requirements for appraisal independence. The rule took effect on December 27, 2010, but compliance was optional until April 1, 2011 (75 Fed. Reg. 66554).

Covered person—creditor and settlement service provider.

Appraisal Independence Interim Rule (cont'd.)

- No covered person shall attempt to directly or indirectly cause valuation to be based on anything but appraiser's independent judgment
- No appraiser may materially misrepresent value
- No covered person may materially alter an appraisal
- Appraiser and appraisal management company cannot have an interest in the transaction
- Bank employee conflict of interest rules vary based on institution size
- Bank may not close loan if influence rule or conflict rule violated, unless first completes curative due diligence
- Covered person must report appraisers who violate Uniform Standards of Professional Appraisal Practice

Jumbo Final Rule

On March 2, 2011, the FRB issued a final rule, pursuant to § 1461 of Dodd-Frank (which is addressed later in the presentation), amending Reg Z to establish a higher APR threshold for determining whether jumbo mortgages loans secured by a 1st lien on a consumer's principal dwelling are higher-priced mortgages that require escrow accounts (76 Fed. Reg. 11319).

The threshold for coverage of the escrow requirement for jumbo loans is average prime offer rate + 2.5% (vs. 1.5%), effective April 1, 2011.

Exceptions:

- Open-end credit plans
- Loans to finance the initial construction of a dwelling
- Temporary or bridge loans with a term of 1 year or less
- Reverse mortgages

Part I – How did we get here?

Recap

Rule/Act	Date	Effective Date/Compliance Date
HOEPA Final Rule	July 14, 2008	October 1, 2009 (escrows 4/1/2010)
MDIA (as part of HERA, later amended by EESA)	July 30, 2008	July 30, 2009
MDIA Final Rule	May 19, 2009	July 30, 2009 (variable rate mortgage disclosures January 30, 2011, see below)
HEOA	August 14, 2008	August 14, 2008
HEOA Final Rule	August 14, 2008	September 14, 2009, compliance by February 14, 2009
Open-End Final Rule	January 29, 2009	July 1, 2010
CARD Act	May 22, 2009	August 20, 2009; November 22, 2009; February 22, 2010; August 22, 2010
CARD Act Final Rule Phase I	July 22, 2009	August 20, 2009
CARD Act technical corrections	November 6, 2009	November 6, 2009

Recap (cont'd.)

CARD Act Final Rule Phase II	February 22, 2010	February 22, 2010; July 1, 2010
CARD Act Final Rule Phase III	June 29, 2010	August 22, 2010
MDIA Final Rule re: Variable Rate Disclosures	September 24, 2010	October 25, 2010, compliance by January 30, 2011
Notice Upon Transfer of Mortgage Final Rule	September 24, 2010	January 1, 2011
Mortgage Loan Originator Compensation Final Rule	October 24, 2010	April 1, 2011
Appraisal Independence Final Rule	October 28, 2010	April 1, 2011
Final Rule Clarifying MDIA Final Rule re: Variable Rate Disclosures	December 22, 2010	January 30, 2011, compliance by October 1, 2011
Jumbo Final Rule	March 2, 2010	April 1, 2011
Increase to Reg Z \$ Threshold Final Rule (described later in presentation)	March 25, 2011	July 21, 2011

Part II – How does Dodd-Frank affect Truth-in-Lending? Title X – the CFPA

Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (“Dodd-Frank”) signed by President Obama on July 21, 2010 (Pub. L. 111-203).

Title X—The Consumer Financial Protection Act (“CFPA”)

Establishes the Consumer Financial Protection Bureau (“CFPB”), which is empowered with:

- Exclusive rulemaking authority over “federal consumer financial law”
- Supervisory and enforcement over large banks and certain non-banks
- Reporting authority over small banks

Also, change in preemption for national banks and federal thrifts, prohibit unfair, deceptive or abusive acts or practices, etc.

“Designated transfer date” is July 21, 2011.

Title X – the CFPA (cont'd.)

On March 25, 2011, the FRB issued a final rule amending Reg Z to increase the threshold for exempt consumer transactions from \$25,000 to \$50,000, as required by § 1100E of Dodd-Frank (76 Fed. Reg. 18354). The final rule is effective July 21, 2011.

Transition rule—If an open-end credit account is exempt on July 20, 2011, based on a firm commitment to extend more than \$25,000 in credit, the creditor has until December 31, 2011 to either retain exemption or comply.

Title X—Rulemaking Under the CFPB

On the designated transfer date (July 21, 2010), proposed rulemaking by the FRB implementing federal consumer financial laws, like TILA, is transferred to the CFPB.

Pending Rulemakings:

- 2009 HELOC Proposal—On August 26, 2009, the FRB issued a proposed rule revising disclosure requirements and addressing account terminations, suspensions and credit limit reductions and reinstatements of accounts for HELOCs (74 Fed. Reg. 43428). Comments were due by December 24, 2009.
- 2009 Closed-End Proposal—On August 26, 2009, the FRB issued a proposed rule revising disclosure requirements for closed end mortgages (74 Fed. Reg. 43232).

Pending Rulings (cont'd.)

- 2010 Mortgage Proposal—on September 24, 2010, the FRB issued a proposed rule clarifying changes to Reg Z regarding: (i) rescission rights for open and closed end loans secured by the consumer's principal dwelling; (ii) rules defining when a modification to an existing closed-end mortgage loan results in a new transaction requiring new TILs; (iii) rules ensuring that certain prime loans are not classified as higher priced mortgages; (iv) providing consumers a right to a refund of fees for 3 days after the consumer receives early TILs, etc. (75 FR 58589). Comments were due by December 24, 2009.
- 2010 Proposal re: Clarifications to CARD Act Regs—on November 2, 2010, the FRB issued a proposed rule clarifying those amendments to Reg Z implementing the CARD Act (75 FR 67458). Comments were due by January 3, 2011.
- 2010 Escrow Proposal—on March 2, 2011 the FRB issued a proposed rule modifying the escrow requirements in Reg Z so as to conform with §§ 1461 and 1462 of Dodd-Frank (76 FR 11598). Comments are due by May 2, 2011.

Part II – How does Dodd-Frank affect Truth-in-Lending?

B. Title XIV – Mortgage Reform and Anti-Predatory Lending Act

Effective dates set by CFPB final rules:

- Rules required within 18 months after designated transfer date (December 21, 2012), with effective date not more than 12 months thereafter (December 21, 2013).
- If no rules within 18 months of designated transfer date, statute becomes effective without rule.

Title XIV – New or Significantly Revised TILA Provisions

- § 129 – High Cost Mortgages – expanded coverage and additional limitations
- § 129A – Notice of Change for Hybrid ARMs
- § 129B – Mortgage Originator Compensation and Conduct (Residential Mortgage Loan)
- § 129C – Ability to Pay Requirements (Residential Mortgage Loan)
 - Prepayment Penalties
 - Credit Insurance
 - Arbitration
 - Negative Amortization Disclosures (includes HELOCs)
 - Anti-deficiency Disclosures
- § 129D – Mortgage Servicing (escrows) (principal dwelling loans)
- § 129E – Appraisal Independence (principal dwelling loans)
- § 129F – Prompt Crediting of Payments (principal dwelling loans)
- § 129G – Payoff Quotes (“home loans”)
- § 129H – Appraisal Requirements Generally (Residential Mortgage Loans)

Title XIV – Mortgage Loan Origination Status

§ 1401 – Amends § 103 of TILA to add

- “Mortgage Originator” – A broader term than SAFE Act, to include taking applications, assisting in obtaining or applying for loan, offering or negotiating terms, but excludes purely clerical workers and real estate brokers; excludes servicers who negotiate loan modifications. Includes advising on loan terms, preparing loan packages, or collecting information on behalf of a consumer. The term is broad enough to pick up many types of bank employees.
- “Residential Mortgage Loan” – All consumer mortgage loans secured by a dwelling except open-end and timeshares are covered (not limited to “principal dwelling”)

Title XIV – Mortgage Loan Origination Status (cont'd.)

§ 1402 – Enacts New § 129B of TILA – Residential Mortgage Loans

- Mortgage Originator (“MO”) has a duty of care to be qualified under SAFE and licensed (if required) under SAFE
- Depository Institution must police employees for SAFE Act compliance

Title XIV – Mortgage Loan Origination Status (cont'd.)

§ 1403 – Steering Incentives and Rules – Residential Mortgage Loans

- (1) No compensation may be paid or received that varies based on terms of loan (except amount of principal): (targets YSP)
- (2) Only the consumer may pay the MO unless
 - The consumer pays nothing to the MO; and
 - The consumer pays no upfront fees or points except bona fide charges to a third party not affiliated with the MO or creditor
 - Etc.

Title XIV – Mortgage Loan Origination Status (cont'd.)

§ 1404

Section 130 civil liability under TILA applies to MOs who are not creditors, capped at 3x compensation to MO, plus attorneys' fees.

§ 1405

CFPB may adopt conduct rules for unfair, deceptive, abusive MO practices and may “condition or prohibit terms, acts or practices relating to mortgage loans.” Need not be UDAP. Standard: “Necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers.”

Title XIV – Minimum Standards of Mortgage Lending

§ 1411 – Ability to Pay

Adopts § 129C of TILA

CFPB to adopt rules requiring creditor to make reasonable and good faith determination that borrower has ability to pay PITI, based on verified and documented information.

- Must underwrite ability to pay multiple loans if know (or reason to know) of other liens
- Use DTI based on all debt service and current income and reasonably assured future income, employment status, credit history, other assets. Must use fully amortizing payment.

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

- Need W-2s or similar. Need IRS or other third party verification
- Limited exemptions for certain government guaranteed refinance loans
- Use fully amortizing payment for DTI, even if option ARM or interest-only loan
- Detailed rules for payment computation
- Use fully indexed rate for discounted ARMs
- Special factor weightings for refinancing hybrid ARMs (to encourage refi approvals)
- Exclusion for reverse mortgages and bridge loans

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

§ 1412 – Presumption (Safe Harbor) Ability to Pay

[Note: Heading reads “Rebuttable Presumption.” Text does not discuss rebuttal.]

Safe harbor for ability to pay determination, if a “**qualified mortgage,**” defined as:

- No negative amortization
- No deferred principal payment
- No balloon payment
- Verified income and assets

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

- If fixed rate, then fully amortizing underwriting with PITI at that rate
- If variable rate, then underwritten at maximum rate allowed under loan documents five years out, with fully amortizing PITI [note effect is to exclude most ARMs from safe harbor]
- Meets any DTI ratios set by CFPB
- Maximum 3% points and fees (with limited additional allowance for up to 2 “bona fide discount points”)
- Maximum term 30 years

[Can you say: “plain vanilla loan”?]

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

(Safe Harbor – cont'd)

- CFPB may define “qualified” balloon mortgage, but limited to creditors in rural or underserved areas, for portfolio only
- CFPB has broad authority to add or delete criteria for “qualified mortgage”
- HUD, VA, Department of Agriculture, Rural Housing Service may define their “qualified loans”

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

§ 1413 – Foreclosure Defense

§ 130 of TILA amended to make violation of 129B(c)(1) and (2) (MO compensation rules) or 129C(a) (ability to pay rules) a foreclosure defense to any holder of loan.

\$ Amount of defense = Set off of amounts creditor would have been liable for in a timely direct action by consumer.

Secondary market effect

- Buy only “qualified loans” (which happen to be exempt from 5% risk retention)
- From solvent originators

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

§ 1414 – Additional Standards and Requirements for Residential Mortgage Loans

§ 129C(c)

- No prepayment penalties permitted unless meets definition of “qualified mortgage loan” and loan is fixed rate less than prime offer rate + 1.5% (2.5% for jumbos)
- Lawful prepayment penalties must step down 1-year (3%), 2 years (2%), 3 years (1%), more than 3 = zero
- Creditor must offer a no-penalty loan side-by-side

§ 129C(d)

- No financing of single-premium credit insurance (MOB allowed)

§ 129C(e)

- No pre-dispute arbitration clauses (also applies to HELOCs)

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

§ 129C(f)

- New special disclosures for negative amortization loans. Includes HELOCs. Counseling required for first-time homebuyers

§ 129C(g)

- Protection of anti-deficiency rights. Lender required to give disclosure of state anti-deficiency rights at consummation and before any refi or other change that would affect those rights

§ 129C(h)

- Lenders must disclose policy regarding acceptance and crediting of partial payments

Title XIV – Minimum Standards of Mortgage Lending (cont'd.)

§ 1416 – Amendments to TILA Penalties and Statute of Limitations

- Non-mortgage penalty increased to \$2,000
- Class action cap to \$1MM
- Statute of limitations for predatory lending (129, 129B, 129C) extended to 3 years

§ 1417 – Fraud

- Borrower convicted of fraud in loan cannot exercise TILA rights with respect to that loan

Title XIV – Disclosure Improvements

§ 1418 – § 128A Added to TILA

- New special change notice disclosure for “hybrid ARMs” – 6 months in advance of initial change. “Hybrid” defined as initial fixed rate followed by variable rate. [NB: This describes any ARM]

Title XIV – Disclosure Improvements (cont'd.)

§ 1419 – Amends § 128 of TILA

Addition to 226.18 “fed box” disclosure:

- For ARMs
 - PITI payment
 - PITI payment at fully indexed rate
- For all loans
 - Settlement charges, broken out by financed and in cash
 - Other charges
 - “Wholesale rate of funds” (?)
 - Mortgage Originator fees – broken out by source
 - Total finance charge as a percentage of loan amount

Title XIV – Disclosure Improvements (cont'd.)

§ 1420 – New Section 128(f) of TILA

- Billing statements required for mortgage loans, except for fixed rate coupon books. Data in either:
 - Current principal, current rate, next reset date, prepayment fees, late fees, phone and email for servicer, HUD counselor information

Title XIV – High Cost Mortgages

§ 1431 – Definition Changes in § 103(aa) of TILA

Rate Trigger

- Average Prime Offer + 6.5% (8.5% for junior liens and loans under \$52K) (Previously T+8% or T+10%)

Fees Trigger

- 5% for loans over \$20K, 8% or \$1,000 for loans under \$20K (Previously 8% / \$400)

Prepayment Penalty Trigger

- If prepayment penalty lasts more than 36 months or exceeds 2% of principal.

PIERCE Note: “High Cost” no longer excludes HELOCs.
ATWOOD

Title XIV – High Cost Mortgages (cont'd.)

APR Triggers clarified:

Fixed Rate = Fixed Rate

- “Clean” variable (“rate varies solely in accordance with an index” + margin) = use fully indexed rate [Query: does this exclude discounted initial rates?]
- Any other variable = Use maximum possible Rate

Limits CFPB ability to adjust triggers (Fed currently has broad authority to adjust).

Title XIV – High Cost Mortgages (cont'd.)

Points + Fees – changed to look like Maine and MA (CRL) definition (adds YSP, table funding premium, prepayment penalties that are charged or chargeable).

- Excludes 2 points of “bona fide discount points” for loans below average prime offer + 1%
- Excludes 1 point of “bona fide discount point” for loans below average prime offer + 2%

Provides rules for computing points and fees for HELOCs.

Title XIV – High Cost Mortgages (cont'd.)

§§ 1432-1433 – Substantive High Cost Mortgage Changes

- Prepayment penalties banned completely
- Balloons banned completely
- Creditor may not recommend default
- Late fees limited to 4% -- 15 days and no pyramiding
- Limits acceleration to payment default, due-on-sale, other material default
- No financing of points or fees or any prepayment penalty payable to same creditor or an affiliate
- Loan modification, extension, amendment fees prohibited
- Free payoff balances up to 4x per year, within 5 business days (courier fees allowed)
- Pre-loan counseling rules expanded
- Error correction procedure added

Title XIV – Mortgage Servicing

§ 1461 – Adds § 129D of TILA

- Generally requires escrows for loans secured by principal dwelling except HELOCs and reverse mortgages
- Requires mortgage escrows for 1st lien, closed-end if conforming at prime offer + 1.5% or jumbo at prime offer + 2.5%
- Exclusion allowed by regulation for small, rural lenders
- Minimum 5 year duration of escrows (Reg Z currently one year)
- Funds held at insured depository and subject to RESPA and state interest rules (will affect federal preemption)
- New (additional to RESPA) pre-closing escrow disclosures

Mortgage Servicing (cont'd.)

§ 1463 – RESPA Amendments

- Servicers – Amends RESPA § 6
 - Servicer needs “reasonable basis” to force place insurance
 - Cannot charge fees for error resolution
 - Must timely respond to payoff disputes, payment allocation
 - 10 days to provide loan owner information, including contact information
 - “Reasonable basis” to force place insurance requires
 - Written notice and disclosure to borrower
 - Second notice 30 days later
 - 15 days more silence from borrower
 - No evidence of insurance received

Title XIV – Mortgage Servicing (cont'd.)

- Force placed must be terminated within 15 days of receipt of evidence of insurance and unearned premium refunded. Unearned = any period of coverage overlap between forced place and borrower-obtained coverage!
- Force placed charges must be bona fide and reasonable
- § 6 penalties increased to parallel TILA (\$2,000 individual and \$1MM class)
- § 6 response times reduced
 - 20 days to 5 days to acknowledge
 - 60 days to 30 days to resolve
- 20 days to refund escrows at payoff

Title XIV – Mortgage Servicing (cont'd.)

§ 1464 – New Section 129F of TILA

- Prompt crediting of payments by servicers – principal dwelling

New § 129G of TILA

- 7 business days to provide payoff quote (“home loan”)

Amendment to § 128(b) of TILA

- TILA closed-end payment disclosures (Section 128(b)) to include escrows (principal dwelling)

Title XIV – Appraisal Activities

§ 1471 – New § 129H of TILA (Appraisals)

For non-qualified residential mortgage loans (see above for “qualified”) where rate is prime offer + 1.5% for conforming or + 2.5% for jumbos, or + 3.5% for junior liens (“higher risk loans”):

- Licensed appraiser must conduct, based on physical visit
- Conforming to new set of regulations issued by federal banking regulators
- Second appraisal (at no charge) required to “flip” property within 180 days
- Appraiser must be state licensed or certified and follow FIRREA Uniform Standards

Title XIV – Appraisal Activities (cont'd.)

§ 1472 – New § 129E of TILA (Appraiser Independence) (Principal dwelling)

Lender must not violate “appraisal independence”

- Coercion or influence on appraiser
- “Suborning mischaracterization of value”
- Encouraging targeted value
- Withholding payment when report done
- Exceptions:
 - Provide additional information
 - Ask for detail or substantiation
 - Correct errors

Title XIV – Appraisal Activities (cont'd.)

- Appraiser and appraisal management company may not have direct or indirect interest in property or transaction
- Mandatory reporting of appraiser misconduct to state regulator
- Lender may not close if knows of violation of independence or conflict rules without completing backup diligence
- Bureau and banking regulators issue joint rules on appraisal independence
- FRB to issue interim final rules within 90 days of enactment that supersede the FHFA/Cuomo home valuation code of conduct

Title XIV – Appraisal Activities (cont'd.)

- Appraisal fees to fee appraiser must be “customary and reasonable” – based on market area
- Civil penalties of \$10k/\$20k per violation in agency action
- FRB stays in rulemaking for appraiser independence as a bank regulator, not supplanted by CFPB

Part III – What is the status of Maine Truth-in-Lending? A. Maine’s Exemption

9-A MRSA § 8-107(1)—Maine Legislature authorizes Administrator to obtain exemption from federal TILA.

Section 123 of TILA (15 USC § 1633), implemented by 12 CFR § 226.29—Exemptions granted if state law is “substantially similar” to TILA and there is “adequate provision for enforcement”.

Official Staff Comment 29(a)-4—FRB granted Maine a partial exemption from federal TILA - lenders who do not hold federal charters are subject to Maine TILA instead of federal law.

9-A MRSA § 8-107(2)—If transaction is subject to federal TILA, then it is not subject to Maine TILA. This means that federally chartered financial institutions do not have to comply with Maine TILA.

Standards for Exemption

- Laws must be “substantially similar”
- Exemption rulings allow:
 - Expanded group to receive same disclosure (e.g., Maine’s current higher \$ exclusion)
 - Expanded time duration of same substantive protection (e.g., Massachusetts 4-year rescission right)
- Exemption principles:
 - Provide general uniformity in TILA protections

Standards for Exemption (cont'd.)

- Exemption principles (cont'd.):
 - Retain same level of consumer protection
 - Permit “minor variations”
 - Should not “significantly complicate compliance by interstate creditors” and “lenders generally”
- True outer limit is TILA preemption - - state laws are preempted (and therefore cannot be exempted) to the extent of “inconsistency” with federal law (e.g., conflicting language in required disclosure).

Procedures to Retain Exemption

Exempt states required to report to FRB:

- Annually, first quarter
- Within 30 days of any change of law, regulation, or ruling
- Explain how new laws meet federal standards

(1982 Order – 47 Fed. Reg. 36961, Aug. 24, 1982))

Part II – How does all of this affect Maine Truth-in-Lending?

B. Actions by the Bureaus to Retain Exemption – Reg Z-2

Regulation Z-2— BOFI and BCCP (the “Bureaus”) have historically adopted changes to federal Reg Z in Maine’s Reg Z-2.

The Bureaus recently re-promulgated Reg Z-2 with an effective date of January 19, 2011:

“The effective and mandatory compliance dates in Federal Regulation Z as of June 29, 2010 will be followed to the extent that any may occur after January 19, 2011.”

Note that some provisions of ME TILA (e.g., credit card and HELOC disclosure provisions) are statutory provisions based on outdated regulatory language borrowed from “old” Reg. Z (which makes new Z-2 inconsistent with existing ME TILA?).

Actions by the Bureaus to Retain Exemption – Reg Z-2 (cont'd.)

This means that those changes to Reg Z issued by the FRB after June 29, 2010 have not yet been incorporated by reference into Maine law, such as:

- MDIA Final Rule re: Variable Rate Disclosures, effective January 30, 2011
- Mortgage Loan Originator Compensation Final Rule, effective April 1, 2011
- Appraisal Independence Final Rule, effective April 1, 2011
- Jumbo Final Rule, effective April 1, 2011
- Dodd-Frank increase to threshold for exempt transactions, effective July 21, 2011

Actions by the Bureaus to Retain Exemption – Joint Advisory Ruling #118

Faced with the looming effective date of the MDIA Final Rule re: Variable Rate Disclosures, the Bureaus issued the following guidance on January 6, 2011:

“The Bureaus hereby confirm that that you must follow Maine’s current version of 226.18 [Reg Z provision re: content of disclosures] when providing disclosures to Maine consumers. However, the Bureaus further declare that they will utilize their regulatory discretion and will not take action to enforce Maine inconsistent disclosure provisions against lender that act in conformity with the Federal Reserve’s Interim Final Rule published September 24, 2010 (75 Fed. Reg. 58470).”

Actions by the Bureaus to Retain Exemption – Joint Advisory Ruling #118 (cont'd.)

Thus, as of January 30, 2011, the effective date of the MDIA Final Rule re: Variable Rate Disclosures, Maine supervised lenders have the option of complying with the new federal disclosure requirements, or delaying compliance until the Bureaus or legislature update Maine's TILA to conform with federal TILA.

Note that Bureaus' regulatory discretion does not protect Maine institutions from potential civil liability.

Maine Truth-in-Lending

C. Maine TILA vs. Federal TILA

Maine TILA can be found at Title 9-A, Article VIII of the Maine Revised Statutes.

In the last legislative session, Maine TILA was amended by “An Act to Conform State Mortgage Laws with Federal Laws” (PL 2009, c. 362).

This Act reorganized Maine’s TILA so as to identify those “enhanced provisions” of Maine’s TILA as compared to federal TILA.

Maine TILA vs. Federal TILA (cont'd.)

Reg Z §§ 226.32 and .34 (high rate, high fee mortgage loans) are supplanted by 9-A MRSA §§ 8-206-A, 8-206-H and 8-206-I.

Reg Z § 226.35 (higher priced mortgage loans) is supplanted by 9-A MRSA § 8-206-I.

Reg Z § 226.36 (credit secured by a consumer's principal dwelling) is supplanted by 9-A MRSA § 8-206-J.

Federal TILA vs. Maine TILA

Federal Provision	Maine Provision	Relationship of Provisions
“Higher priced” loans @ Prime Mortgage + 1.50%	Maine adds “Non Traditional Mortgages”	Maine’s additional trigger for NTMs sweeps in interest only, negative amortization, and simultaneous HELOCs

Federal TILA vs. Maine TILA (cont'd.)

Federal	Maine	Relationship
High rate, high fee loans – “high fee” = 8%	“High fee” = 5%	More loans captured by Maine TILA

Federal TILA vs. Maine TILA (cont'd.)

Federal	Maine	Relationship
High rate, high fee loans – points & fees defined in 226.32	Start with 226.32, add back in all exclusions, plus prepayment penalties and then craft unique set of exclusions	Maine has broader definition of points & fees

Federal TILA vs. Maine TILA (cont'd.)

Federal	Maine	Relationship
<p>Ability to repay test</p> <p><u>Get proof</u></p> <ul style="list-style-type: none"> - Income/assets - Current debts <p><u>Rebuttable</u></p> <p><u>Presumption if:</u></p> <ul style="list-style-type: none"> - Get proof - Use DTI with highest payment in 7 yrs - No negative am for 7 yrs - No balloons in 7 yrs 	<p><u>Get proof</u></p> <ul style="list-style-type: none"> - Income/assets <p>Required to analyze long list of factors, with result depending on “all the facts and circumstances” (same as federal if outside rebuttable presumption)</p>	<p>12 CFR § 226.34(a)(4)(ii) is excluded from Maine law</p>

Federal TILA vs. Maine TILA (cont'd.)

Federal	Maine	Relationship
<p>Flipping – No flipping of high rate, high fee loans. Flipping = refinance of own loan (or affiliate) for 1 year period</p>	<p>No flipping of higher priced. Flipping = any refinance of anyone's loan without "net tangible benefit"</p>	<p>In Maine, more loans subject to "net tangible benefits" test</p>

Maine TILA vs. Federal TILA (cont'd.)

Disclosure requirements:

- Maine TILA has slightly different assignee disclosure language for high rate, high fee mortgages
- Maine TILA has special early TIL disclosure requirement for prepayment penalties
- Compliance w/ MDIA Final Rule re: Variable Rate Disclosures optional (see prior discussion)

Maine TILA vs. Federal TILA (cont'd.)

Other differences (not an exclusive list):

- Maine has stricter rule regarding assignee liability (§ 8-209(5))
- Maine has enhanced restrictions for high rate, high fee loans (§ 8-206-H(1)(B))
- Maine has enhanced restrictions for all residential mortgage loans (§ 8-206-J(2))
- Maine has enhanced liability for violations of enhanced restrictions (§ 8-206-E)

Part II – What is the status of Maine Truth-in-Lending?

D. LD 1338 – An Act to Amend the Maine Consumer Credit Code to Conform with Federal Law

- Aligns Maine TILA w/ federal TILA re: increase to threshold for exempt transactions as of July 21, 2011
- Makes statutory changes necessary to conform Maine TILA w/ federal TILA because of the CARD Act
- Updates BOFI/BCCP rulemaking authority
- Incorporates Dodd-Frank increase to statutory damages (\$500/\$5,000)

LD 1338 also revises certain provisions of Title 9-A relating to the registration of loan officers because those provisions have been supplanted by Maine's SAFE Act.

LD 1338 and Next Steps

In order to incorporate by reference those amendments to Reg Z that were issued after July 29, 2010, the Bureaus will have to once again re-promulgate Reg Z-2. Until then, the following provisions of federal TILA are not in effect under Maine TILA:

- MDIA Final Rule re: Variable Rate Disclosures, effective January 30, 2011
- Mortgage Loan Originator Compensation Final Rule, effective April 1, 2011
- Appraisal Independence Final Rule, effective April 1, 2011
- Jumbo Final Rule, effective April 1, 2011

A Final Note

Despite the best intentions of the Bureaus, Maine's TILA has become stale. Because both the federal statute and Maine statute have been repeatedly amended it is unclear to what extent the two statutes now diverge.

A Modest Proposal: In order to avoid any unintentional discordance with federal TILA, the Maine Legislature may want to repeal Maine TILA and replace it with a simpler statute that lines up with federal TILA while at the same preserving those enhanced provisions of Maine law that were enacted as part of Maine predatory lending law.

Questions?

The Legal Stuff

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