

CFPB Focus

EXPAND YOUR EXPECTATIONS™

October 2013

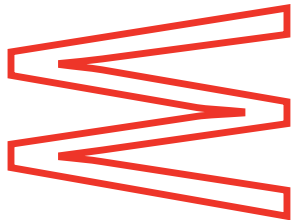
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CFPB Amendments

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The CFPB finalized its amendments and clarifications to the mortgage regulations it initially issued on January 2013, many of which go into effect in January 2014, according to an announcement by the Bureau on Friday. The final revisions include but are not limited to the following:



1. Revised the effective date of certain provisions for loan originator compensation from January 10, 2014 to January 1, 2014.
2. Clarified the definition of a loan originator for purposes of the new rules on loan originator qualifications and compensation by specifying circumstances under which certain employees engaged in clerical or administrative tasks would not be subject to these provisions.
3. Provided additional flexibility to mortgage servicers to offer short term forbearance plans to borrowers suffering temporary hardships who had submitted incomplete loss mitigation applications.
4. Clarified the rule preventing servicers from taking certain actions during the first 120 days a borrower is delinquent to permit loan servicers to send certain early delinquency notices to borrower that period.



Further information regarding the final rules can be found [here](#).

CFPB Demonstrates its Broad Scope

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While it has only just begun its third year, the CFPB has already left its mark with a series of recent enforcement actions. Below are four examples of how the CFPB has wielded the broad scope of its mandate.

Most recently, the CFPB filed suit against debt-relief company Morgan Drexen, Inc. and its president and chief executive officer alleging that the company charged illegal upfront fees and made misrepresentations to potential customers about the benefit of its debt-relief services. The complaint, filed August 20, 2013, claimed that the conduct violated the Telemarketing Sales Rule Act and Dodd-Frank. According to the CFPB, more than 22,000 customers enrolled with Morgan Drexen, Inc. since 2010 and those consumers had been charged millions of dollars in upfront fees. In a preemptively filed suit, Morgan Drexen, Inc. also challenged the CFPB's authority on constitutional grounds. Both suits remain in their initial stages.

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CFPB Demonstrates its Broad Scope, *continued*

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On July 23, 2013, the CFPB sued Castle and Cooke LLC, a Utah mortgage company, and two of its executive officers. The CFPB alleged that the company awarded larger bonuses to loan officers who led consumers to higher-interest mortgage programs, a practice banned in 2011. According to the lawsuit, the company did not have a written policy outlining its program. But the CFPB believes that it can demonstrate the existence of the policy through the company's payroll records. This suit is in its initial stages as well.

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On June 14, 2013, the CFPB filed a Notice of Charges in an administrative action against 3D Resorts-Bluegrass, LLC for violations of the Interstate Land Sales Full Disclosure Act (ILSA). The CFPB alleges material misrepresentations in marketing materials related to a real estate development, and also alleges that the company failed to comply with ILSA registration and filing requirements. The CFPB contends that it is authorized under Dodd-Frank to seek penalties of up to \$1 million per day for knowing violations of ILSA as well as direct penalties under ILSA of \$1,000 per violation. 3D Resorts-Bluegrass, LLC responded to the Notice on July 1, 2013 and the parties are reportedly discussing settlement.

The CFPB again made its presence known on July 18, 2012 when it announced a record-setting settlement with Capital One Bank (U.S.A.), N.A. (Capital One). The CFPB alleged that the credit-card issuer deceptively marketed add-on products, failed to enact programs to prevent unfair and deceptive practices, and committed what the CFPB termed unfair billing practices. The \$210 million settlement includes \$150 million in refunds to affected customers, including approximately 2 million customers who enrolled in the add-on products, and \$60 million in penalties paid to the CFPB. The consent order also imposes ongoing substantial compliance obligations on Capital One. Capital One has further agreed to stop marketing any of the applicable add-on products until a compliance plan is submitted to and approved by the CFPB.

If anything, the CFPB has accelerated the pace and broadened the scope of its investigative and enforcement actions over the past six months, and has demonstrated a clear desire to aggressively regulate the industries it oversees. With a host of new regulations in force in January 2014, CFPB compliance should be a priority for all companies subject to its jurisdiction.



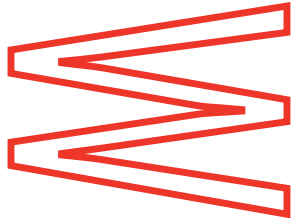
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Who's Who in the CFPB: Key Players in the New Agency

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Richard Cordray became the first Director of the CFPB over the summer when President Obama named him to the post through a controversial recess appointment. This came after the Senate blocked Cordray's nomination in 2011. In an interview with the Washington Post, Cordray explained his idea of the supervisory role of the CFPB as a regulator for industries not used to regulation:

We have a new challenge that's different from other agencies, which is, we're building a program from scratch and supervising nonbank institutions.... It recognizes that only supervising chartered institutions is not a very workable model because in the actual marketplace...you have chartered institutions and non-chartered institutions competing against each other.... [I]n the nonbank sphere, they're often not used to being regulated.... In that area, there has been a real shift toward more of a compliance mentality. And our being on the scene and doing this work caused that shift.



Danielle Douglas, [Richard Cordray Lays Out Plans for Consumer Financial Protection Agency](#), *The Washington Post* (September 15, 2013)

Christopher D'Angelo is the Chief of Staff of the Office of the Director. He serves as Cordray's chief advisor and was promoted after a brief stint as a staff attorney with the CFPB in 2011. D'Angelo came to the CFPB from the Treasury Department where he served as the senior advisor to the undersecretary for domestic finance.

Steven Antonakes serves both as the CFPB's Deputy Director and as the Associate Director for Supervision, Enforcement and Fair Lending. He has been with the CFPB since November 2010, where he started with the agency as an assistant director for large bank supervision.

David Silberman is the Associate Director for Research, Markets and Regulations. Silberman and his department are responsible for researching consumer financial products and writing the proposed rules that banks and other institutions will have to follow when offering those products in the market place.

Sartaj Alag is the Chief Operating Officer. Alag came to the CFPB in November 2011 as assistant director for consumer response. His return to the CFPB, after a brief departure, was announced on July 15, 2013.

Gail Hillebrand is the Associate Director of Consumer Education and Engagement. Hillebrand's job is to educate the public regarding financial products and to facilitate the public's interaction with the CFPB.

Meredith Fuchs is the CFPB's general counsel. Fuchs joined the CFPB in early 2011, shortly after it was created. Before her appointment as general counsel, she served as the Bureau's deputy general counsel and then briefly as chief of staff. Before joining the CFPB, Fuchs served as the chief investigative counsel of the U.S. House of Representatives Committee on Energy and Commerce.

Zixta Martinez is the Associate Director of External Affairs. Among other responsibilities, Martinez organizes CFPB field hearings where industry leaders and consumers can voice their opinions about various industry concerns and regulations proposed by the CFPB.

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CFPB Snapshot: Fast Approaching Deadlines for Compliance with New Regulations

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The Consumer Financial Protection Bureau is gearing up for a busy January, when new regulations directed at the residential mortgage industry are due to be implemented. While lenders scramble to comply with stringent deadlines under the threat of sanctions, one deadline has already passed.

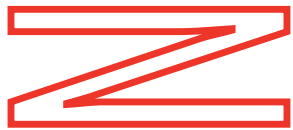
On June 1, 2013, the amended Regulation Z went into effect, requiring the establishment of escrow accounts for a minimum of five years for Higher Priced Mortgage Loan Transactions. One notable exemption that stands out involves mortgage transactions in rural or underserved areas, and lenders with asset size of less than two billion dollars.

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Regulations taking effect on January 10, 2014 include:

- A requirement to make a reasonable, good faith determination of a consumer’s ability to repay the loan along with a limitation on prepayment penalties and a requirement that the lender retain proof of compliance;
- Expansion of Home Ownership and Equity Protections Act of 1994 (HOEPA) protections to additional types of mortgages and imposition of a pre-loan counseling requirement;
- Revisions to the Real Estate Settlement Procedures Act (RESPA, also known as Regulation X) obligating servicers to provide protections in connection with force-placed insurance, continuity of contact with personnel for delinquent borrowers and evaluation of loss mitigation potential; and
- A newly robust Truth in Lending Act (TILA, also known as Regulation Z) that amends the scope, timing, content and format of disclosures to consumers regarding interest rate adjustment, and requires prompt crediting of payments and responses to requests for pay-off quotes.

More rules and regulations take effect on January 18, 2014. Specifically, the Equal Credit Opportunity Act (Regulation B) will require creditors to supply applicants with copies of appraisals free of charge, and the revisions to TILA will require that appraisals for “higher-risk mortgages” (based on annual percentage rates) meet heightened standards, including a notification regarding the use of the appraisals.

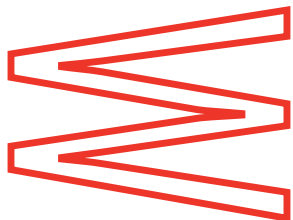


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CFPB Snapshot: Fast Approaching Deadlines for Compliance with New Regulations, *continued*



Finally, requirements for loan originators will follow several deadlines beginning January 1, 2014, but the end effect will be to limit the potential for abuse at origination by imposing the following protocol:

- Originator compensation cannot be based on any of the transaction’s terms;
- If compensation is received directly from a consumer, the originator cannot receive any compensation from another party involved in the same transaction;
- Originators must be licensed under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act); and
- Loan documents must reflect the originator’s name and unique identifier provided by the Nationwide Mortgage Licensing System.



The originator compensation requirements also include compliance procedures for depository institutions, and the CFPB has identified this as a fluid area of study because additional research must be done regarding the function of points and fees in the marketplace and the impact on consumers’ choices.

Application of these new regulations is a hefty burden and requires not only policy development within financial institutions, but also training of personnel, vendor management and self-auditing. And as of now, there will be no extensions provided to institutions, even when they make a showing of good faith effort to comply by the deadlines. The CFPB fully expects compliance by January, and is ready to begin policing the industry to ensure obedience.

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