



2016 Regulatory Compliance Review

By Justin Robinson

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- A professional services firm with three distinct business lines
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- Offices coast to coast
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Speaker Introduction

Justin Robinson

Justin is a managing director in CLA's financial institutions team, specializing in all aspects of financial institution compliance. He has more than 16 years of experience assisting financial institutions nationwide in complying with consumer protection regulations and has helped financial institutions of all sizes establish compliance management programs to reduce regulatory burden, understand the compliance risks, address compliance deficiencies, and effectively address and implement changes.



Learning Objectives

- At the end of this session, you will be able to:
 - Identify and respond to common issues with MLA, TRID, and other current regulatory issues facing financial institutions
 - Recognize common errors and improve upon recent compliance requirements



Agenda

- Military Lending Act
- TRID
- BSA
- UDAAP
- CFPB Upcoming Agenda



Military Lending Act (MLA)

- Went into effect October 2016 (additional requirements for credit cards due in 2017)
- Many questions and issues leading up to implementation
- Several questions and concerns post consummation



Key Concerns of MLA

- Deposit secured loans
- Right to set-off
- Process for identifying covered borrowers
- Logistics of providing required notice
- Reliance on credit bureaus



MLA Current Issues

- No documented procedures
- Tracking lines of credit
- Reliance on credit bureaus
- Staff training



TRID Common Violations

- Timing
- Technical
- Potentially Reimbursable



TRID Timing Violations

- Loan Estimate delays
 - 3 days after receiving an “application”
 - ◇ “application” defined as the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.



TRID Timing Violations

- Revised LE and CD given on the same date
 - “The creditor may not provide a revised Loan Estimate *on or after* the date the creditor provides the consumer with the Closing Disclosure.”



TRID Technical Violations

- Title Fees
 - Must be itemized
 - Must include “title”
 - Must be alphabetized (this applies to all services)

C. Services You Can Shop For	\$3,198
Pest Inspection Fee	\$135
Survey Fee	\$65
Title – Insurance Binder	\$700
Title – Lender’s Title Policy	\$535
Title – Settlement Agent Fee	\$502
Title – Title Search	\$1,261



TRID Technical Violations

- Taxes and Insurance and Escrow Fields
 - Refinances that do not indicate estimate T&I
 - ◇ Even if there is no escrow, there should be an estimate of T&I

Estimated Taxes, Insurance & Assessments

Amount can increase over time

\$206
a month

This estimate includes

- Property Taxes
- Homeowner's Insurance
- Other:

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

In escrow?

YES
YES



TRID Technical Violations

- Recording and Mortgage Registration Tax
 - Must indicate the entity it is paid to
- Other missing fields:
 - Seller address
 - Payoff table inaccuracies
 - NMLS #
- Missing documents
 - All Loan Estimates and Closing Disclosures must be retained



Potentially Reimbursable Violations

- LENDER CREDITS!
 - They were a pain with the old TIL/RESPA Rule, and that hasn't changed
 - Lender credits cannot be reduced (except in specific circumstances)
 - ◇ You can increase the lender credit
 - ◇ You can decrease the lender credit if it is tied to the interest rate and the loan was not locked when the credit was disclosed. Subsequently locking a new rate allows the lender to adjust the credit



Potentially Reimbursable Violations

- LENDER CREDITS!
 - The errors often occur with no cost loans. These are typically 2nd mortgage products where the lender is trying to cover closing costs.



Potentially Reimbursable Violations

- Services and Tolerance Errors
 - Services the borrower did not shop for
 - ◇ Zero tolerance
 - Services the borrower did shop for
 - ◇ No tolerance restrictions



Potentially Reimbursable Violations

- Services and Tolerance Errors
 - Services the borrower was allowed to shop for, but selected from the lenders list of providers
 - ◇ 10% tolerance
 - Services the borrower was allowed to shop for, but selected from the lenders list of providers and selected an Affiliate of the lender
 - ◇ Zero tolerance



Potentially Reimbursable Violations

- The confusion
 - Did the lender allow the borrower to shop?
 - ◇ Often times, the lender allows the applicant to shop for title fees. The applicant chooses a title company from the lender's list, but the closing disclosure indicates these fees in the section for Services the Borrower Did Shop For.
 - Regulation Z, 12 CFR 1026.38(f)(2) and Comment 38(f)(3)-1, if the borrower selects a service provider from the written list of providers, the cost must be disclosed in the "Services the Borrower Did Not Shop For" section of the Closing Disclosure.



Potentially Reimbursable Violations

- The confusion
 - Did the lender allow the borrower to shop?
 - ◇ We don't allow borrowers to shop, but they have to choose from a list of approved providers (not THE Service Provider List).
 - This is subject to a zero tolerance. Not the 10%.
 - Regulation Z Commentary 19(e)(1)(vi):
Shopping for settlement service providers.
 1. Permission to shop. Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. **In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by creditor.**



Potentially Reimbursable Violations

- Written List of Service Providers
 - Must include at least one example for every service listed on the LE that the applicant can shop for

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BSA

- Still an examiner focus
- Shift from focusing on reporting requirements to program structure
 - Due diligence
 - MSBs
- New Developments:
 - Due Diligence Rule
 - CIP for Prepaid Cards



BSA

- New FinCEN Due Diligence Rule
 - Compliance by May 11, 2018
 - The bulk of the new rule, should have minimal impact
 - Codifies a requirement to perform due diligence on accounts
 - ◇ Consumer
 - ◇ Business
 - Biggest Change: CIP of beneficial owners accounts



BSA

- Due Diligence on Beneficial Owners
 - Reasonable policies/procedures to identify and verify beneficial owners
 - ◇ Model form
 - Beneficial Owner:
 - ◇ 25% + ownership interest in entity or
 - ◇ Significant control of company (CEO, CFO, COO, etc.)



BSA

- CIP for Certain Prepaid Cards
 - Regulatory Interpretation:
 - ◇ CIP on individuals purchasing Prepaid cards if:
 - The card is reloadable, or
 - The card has access to credit or overdraft features



UDAAP: Unclear Expectations

- Strict compliance is not enough
- Examiners and Consumer scrutiny
- SUBJECTIVE!



UDAAP

- Always remember the Four Ps
 - Prominence
 - Presentation
 - Placement
 - Proximity
- Review third party relationships
- Footnotes in marketing and disclosures



UDAAP Examples

- Recent Issues
 - Inaccurate and sloppy credit reporting
 - Credit card add-on products
 - Overdraft programs



UDAAP Violation Causes

- Complaints
- Complexity
- 3rd parties



CFPB Rulemaking

- Spring 2016 Rulemaking Agenda:
 - Debt protection
 - Overdrafts
 - Reg B data collection for commercial loans
 - Arbitration agreements



CFPB Rulemaking

- Debt Protection
 - Looking to expand current FDPA
 - ◇ Currently applies only to 3rd party debt collectors
 - ◇ CFPB indicates similar restrictions would apply in collecting own debt
 - Collecting correct debts
 - Limit excessive or disruptive communications
 - Make debt details clear and disputes easy



CFPB Rulemaking

- Overdrafts
 - Rules are coming
 - We don't have much clarity on what it will look like
 - Potential changes:
 - ◇ Fee limits
 - ◇ More disclosures
 - ◇ Additional opt-in requirements
 - ◇ Strict monitoring requirements



CFPB Rulemaking

- Regulation B Data Collection
 - Potential new rules for commercial loan applications
 - Require financial institutions to collect certain data at application:
 - ◇ Application number
 - ◇ Date the application was received
 - ◇ Type and purpose of loan
 - ◇ Amount of credit applied for and approved
 - ◇ Action taken and date
 - ◇ The census tract of the principal place of business
 - ◇ The gross annual revenue of the business
 - ◇ The race, sex, and ethnicity of the principal owners of the business



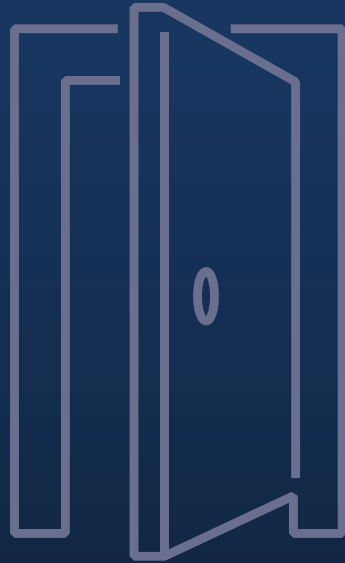
CFPB Rulemaking

- Arbitration Agreements
 - Proposed rule aimed at restricting arbitration agreements
 - ◇ Ban arbitration clauses that block class action lawsuits
 - ◇ Submit arbitration claims filed and awards issued to the CFPB
 - ◇ “The Bureau is also considering publishing the claims and awards on its website so the public can monitor them”



Questions?





Thank you

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