# Federal Reserve Unleashes a Host of Final, Interim and Proposed Rules

**August 16, 2010**

The Federal Reserve Board, moving forward with its regulatory agenda despite the impending creation of the Bureau of Consumer Financial Protection, announced a number of regulatory actions today. It issued: (1) a final rule on loan origination compensation practices, (2) a final rule regarding consumer notification of mortgage loan transfers, (3) an interim rule revising disclosure requirements for closed-end mortgage loans, (4) a proposed rule to enhance consumer protections and disclosures for home mortgage transactions and (5) a proposed rule to revise escrow account requirements for jumbo mortgages. While a detailed analysis of these final and proposed changes is beyond the scope of this alert, we wanted to immediately apprise you of this Fed action and highlight some of the more significant sections of the regulations. The links to the Fed's rules are included below.

1. The final rule on Loan Originator Compensation and Steering, effective April 1, 2011, rings the death knell on yield spread premiums. It prohibits payments to loan originators that are based on the loan's interest rate or other terms. Compensation based on a fixed amount of the loan amount is permitted. The rule also prohibits mortgage brokers and loan officers from receiving payments from both the consumer and the lender or other third party and prohibits steering to a lender offering less favorable terms in order to increase the payment to the broker or loan officer. The rule does provide for a safe harbor under which the consumer must be presented with an offer for each type of loan in which he or she expresses an interest, and the consumer is offered the lowest rate, points and; origination fees for which he or she qualifies. In addition, the loan may not contain any risky features, such as prepayment penalties, negative amortization or a balloon payment within the first seven years of the loan.
2. The final rule requiring that the consumer receive notice whenever his or her loan is sold or transferred, provides further guidance and clarification on this notice requirement, which became effective last May under the Helping Families Save Their Homes Act. The Fed's interim rule on this requirement became effective last November; the interim rule must continue to be followed until January 1, 2011, when this final rule becomes effective. In the alternative, mortgage loan purchasers may begin to comply with the final rule as soon as they wish.
3. The Fed's interim rule, whose compliance date is January 30, 2011, revises disclosure requirements for closed-end mortgage loans by implementing provisions of the Mortgage Disclosure Improvement Act. The main thrust of these disclosure requirements is to alert consumers to the effect and risks of payment increases before they become obligated on loans with variable rates or payments. The rule requires that a lender's cost disclosures include a payment summary in tabular format and include (i) the initial interest rate with the corresponding monthly payment, (ii) for adjustable or step rate loans, the maximum interest rate and payment that can occur during the first five years of the loan, and a worst-case example showing the maximum rate and payment possible over the life of the loan, and (iii) the fact that consumers might not be able to avoid increased payments by refinancing their loans. Certain risky features such as balloon payments or other features that may cause the loan amount to increase must also be disclosed.
4. The proposed rule on disclosures regarding home-secured credit, comments on which are due 90 days after the proposal is published in the Federal Register, contains some significant changes. The rule updates rescission rules for both open-and closedend credit, adds clarification to rescission requirements and to the rescission notice, and clarifies the parties' obligations when the extended right to rescind is asserted. It also requires that consumers receive TILA disclosures for modifications of key loan terms and revises the rules regarding when a modification to an existing closed-end loan is deemed to be a new transaction requiring new disclosures. The proposal contains some new safeguards and also significantly changes the disclosures required for both open- and closed-end reverse mortgages, by requiring a new two page notice with key questions regarding such mortgages, requiring consumer counseling, delaying the ability to charge any nonrefundable fees, and prohibiting cross-selling.
5. Finally, the proposed rule on escrow requirements for higher-priced first-lien jumbo mortgage loans, for which comments are due 30 days after the date the proposal is published in the Federal Register, implements a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposal would increase the APR threshold used to determine whether a mortgage lender is required to establish a tax and insurance escrow account for first-lien jumbo

mortgage loans. The threshold, purely for the determination of whether an escrow is required, is proposed to increase from 1.5% above the prime offer rate to 2.5%.

The Fed's voluminous production of final, interim and proposed regulations imposes significant changes and burdens on both lenders and mortgage brokers. If you would like a more detailed analysis of these regulations or if we can be of assistance in interpreting, implementing, or commenting on them, please do not hesitate to contact us.

Federal Reserve announces final rules to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices

Federal Reserve announces final rules regarding consumer notification of mortgage loan sales or transfers

Federal Reserve issues interim rule revising disclosure requirements for closed-end mortgages

Federal Reserve proposes enhanced consumer protections and disclosures for home mortgage transactions

Federal Reserve proposes rule to revise escrow account requirements for jumbo mortgages

If you have any questions regarding this Consumer Financial Services Alert, you may contact **Richard Gottlieb**, director of the Financial Industry Group, at 312-627-2196, or **Arthur Axelson**, the author of this alert and leader of Dykema's Financial Services Regulatory practice, at 202-906-8607.



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