

# Compliance Update



COMMUNITY BANKERS FOR COMPLIANCE NEWSLETTER

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## Servicemembers Delinquency Notice Updated

By Bill Elliott, CRCM; Manager of Compliance Services

The United States Department of Housing and Urban Development (HUD) requires all consumer mortgage customers who become 45 days past due on their mortgage to receive a special notice regarding servicemember rights. This notice is sent to all consumer mortgage customers, as the financial institution likely will not know who is entitled to the information and who is not entitled to the information.

The notice is intended to inform delinquent borrowers that, if they are qualifying servicemembers or their dependents, they have important rights and protections under the SCRA. The notice also tells them how to get more information – through either the Military OneSource website or toll-free telephone number.

That notice has been updated by HUD.

### Background

Section 688 of the National Defense Authorization Act for Fiscal Year 2006 amended the required content of notifications of homeownership counseling availability (homeownership counseling notice) under the Housing and Urban Development Act and directed the Department of Housing and Urban Development (HUD) to develop and disseminate a format for the required notice.

The Servicemembers Civil Relief Act (SCRA), which replaced the Soldiers and Sailors Civil Relief Act, provides various protections to active duty military members and reservists, or members of the National Guard called to active duty, and, in limited situations, dependents of military members. The SCRA is intended to ease the economic and legal burdens on military personnel by postponing, suspending, or mitigating obligations, such as mortgage payments and foreclosure actions.

HUD released a preliminary version of the prescribed notice in its Mortgagee Letter 2006-28 in November 2006, and a final version in the *Federal Register* in March 2007.

### Revised SCRA notice

The current version of the document (issued in 2007) was updated in December 2014. However, HUD made no public announcement of this change. The new document has an expiration date of December 31, 2017. While there is no significant difference between this notice and the previous notice, you should upgrade to the new notice immediately. It can be found in .pdf form at [portal.hud.gov/hudportal/documents/huddoc?id=92070.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=92070.pdf). □

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## The Other Aspects of SCRA

By Terri Klemann; Consultant

Bankers are generally knowledgeable about the lending side of the Servicemembers Civil Relief Act (SCRA). The SCRA is a comprehensive and enduring package of protections, passed by Congress, to benefit service members. The act protects any member of the armed services, which includes members of the Army, Navy, Air Force, Marines, and Coast Guard, as well as members of the National Guard and officers of the National Oceanic and Atmospheric Administration that are called to active duty. Under provisions of the SCRA, active duty service members may qualify for:

- Reduced interest rates on mortgage payments
- Reduced credit card interest rates, and
- Protections when it comes to safe deposit boxes (SDBs)

Yes, safe deposit boxes. As noted by the American Bankers Association, examiners are questioning financial institutions about policies and practices related to SDBs and servicemembers.

### What you need to know

A safe deposit box is a lease of property, a contract, which is covered under Section 532 of the act. The SCRA states that a lease of such property may not be rescinded or terminated for breach of terms occurring before or during a person's military service. The property may not be repossessed for breach of contract without a court order. You may not drill a servicemembers SDB for non-payment of rent during a period of active duty.

Section 537 covers "Enforcement of Storage Liens" which prohibits foreclosure or enforcement of a lien on the property of a servicemember during any period of military service and for 90 days after, without court order.

Section 523 of the SCRA prohibits fees and penalties, which would include charging overdue rental fees. Your rental contract may state that you have the right to prevent access until rents are paid, but you will want to consider reputational risk if you contemplate enforcing that part of the contract.

Although requirements by the Department of Housing and Urban Development (HUD) require notification of protections under SCRA for residential mortgages, there is no such federal requirement for delinquent safe deposit box rentals.

### What you should do

To take advantage of the six percent interest rate cap in the SCRA, it is the responsibility of the servicemember to take action in notifying his lender. However, the same is not true for other SCRA protections.

Before a financial institution can take action on a safe deposit box with past due rent, the financial institution must determine active duty status. This may be accomplished by accessing the Department of Defense website of active duty members at [www.dmdc.osd.mil/appj/scra/scraHome.do](http://www.dmdc.osd.mil/appj/scra/scraHome.do). You may also review account statements to determine if military pay is being deposited.

Review your SCRA policy and develop procedures to be followed that include the rights and protections afforded servicemembers in relation to safe deposit box rentals, delinquencies, fees, and notices, as well as drilling a SDB. Include a statement on late notices that if the renter is an active duty servicemember, to please notify your institution. □

## Homeownership and High-Cost Mortgage Counseling Interpretive Rule Issued

By Bill Elliott, CRCM; Manager of Compliance Services

The Consumer Financial Protection Bureau (CFPB) reissued a previous interpretive rule regarding the provision of lists of HUD-approved housing counseling agencies to mortgage loan applicants, but included some additional interpretations and further details.

The rule provides guidance on the qualifications for providing high-cost mortgage counseling and on creditor participation in this process. It also discusses the data instructions for creditors to use in complying with the requirements of this rule. The rule was effective upon publication in the *Federal Register* on April 21, 2015.

### General guidance

This rule restates the previously issued guidance and adds further guidance to address additional questions that have been raised. This new guidance covers:

- How to provide applicants abroad with homeownership counseling lists
- Permissible geolocation tools



- Combining the homeownership counseling list with other disclosures, and
- Use of a consumer's mailing address to provide the list

The Dodd-Frank Act amended the Real Estate Settlement Procedures Act (RESPA) to require creditors to provide federally related mortgage loan applicants with a "reasonably complete or updated list of homeownership counselors" [§5(c), 12 USC 2604(c)]. There are two compliant methods for obtaining this list. The first is using the tool maintained by the CFPB, while the second is to use data made available by the CFPB or the Department of Housing and Urban Development (HUD).

The creditor must provide a written list of 10 HUD-approved homeownership counseling organizations to applicants.

### **Location by zip code**

Regulation X [12 CFR 1024.20(a)(1)], which implements RESPA, requires creditors to provide the written list based on the loan applicant's location. The original CFPB interpretive rule provides that this is to be done by using the five-digit zip code of the applicant's home address (which uses the "centroid," geographic center, of the zip code area) as a default. Creditors may offer the applicant the choice of another zip code (e.g., of a property being purchased), or also may be more precise, using the actual street address.

The updated interpretive rule adds some more options in dealing with more situations. In circumstances where the applicant's current address does not include a five-digit zip code (e.g., the applicant currently lives overseas), the creditor may use the five-digit zip code of the property securing the mortgage to generate the list.

Also, there may be circumstances where an applicant's current and mailing addresses are different (i.e., a post office box). A creditor using an applicant's mailing address instead of the current address to generate the list would be consistent with the default requirement that the list be generated based on the loan applicant's location. A creditor may also use an applicant's mailing address to generate a list if the mailing address includes a zip code but the current address does not.

### **Homeownership counselor contact information**

Creditors comply with the contact information required when they provide the following data fields (unchanged from the original interpretive rule):

- Agency name
- Phone number
- Street address
- City, state, zip code
- URL, e-mail address
- Counseling services provided, and
- Languages spoken

Providing a street address is preferable for this disclosure. There is accompanying boilerplate language explaining the purpose of the list and that the counselling agencies are approved, etc. We have elected to omit it from this article.

### **Combining the list with other disclosures**

The CFPB does not consider combining the list of organizations with other mortgage loan disclosures to be a violation of RESPA, unless otherwise prohibited. As long as the other requirements are met, and if not otherwise prohibited, combining the list with another disclosure (including any beyond those required by Regulations X or Z, which were the only ones referenced in the original interpretive rule) does not violate the rule.

### **High-cost mortgage counseling**

This updated rule also adds interpretation of the Regulation Z pre-loan counseling requirement for high-cost mortgages. Specifically, the interpretive rule focuses on the qualifications necessary to provide such counseling and provides guidance on the issue of lender participation in the counseling.

Regulation Z provides that a creditor "shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by the Secretary of the U.S. Department of Housing and Urban Development or, if permitted by the Secretary, by a State housing finance authority."

HUD requires counselors to analyze the financial situation of their clients and establish a household budget for their clients when providing housing counseling. To the extent that a counselor from a HUD-approved counseling agency covers the matters described in the commentary, the counseling requirement is met. Counseling agencies that are already approved by HUD to offer homeownership counseling are also qualified to provide the counseling required for high-cost mortgages, provided such counseling does indeed cover the topics prescribed by the commentary.

Some consumers may be receiving high-cost mortgage counseling by telephone in a creditor's office while the creditor is present and listening. The CFPB discourages but does not prohibit this practice, provided the creditor does not steer an applicant to any particular counselor, and the creditor removes themselves from the discussion when requested by the applicant or counselor.

The updated interpretive rule may be read at [www.gpo.gov/fdsys/pkg/FR-2015-04-21/pdf/2015-09244.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-04-21/pdf/2015-09244.pdf). □

## FRB Issues Alert About HMDA Reporting of Multifamily Dwellings

By William J. Showalter, CRCM, CRP



The Federal Reserve Board's (FRB) HMDA Operations unit is currently conducting its analysis of calendar year 2014 Home Mortgage Disclosure Act (HMDA) data to identify possible misreporting and to give institutions the opportunity to revise their data files. This is part of the preparation of HMDA data for the annual release of aggregated and individual institutions' HMDA disclosure statements and data.

The HMDA Operations unit has identified some reporting lenders with possible anomalies in their data, and are requesting them to verify certain data. Other HMDA reporters can also learn from this action.

### Background

The HMDA statute has a two-fold purpose. It is intended to provide lenders, regulators, and the public with sufficient information to be able to determine whether depository institutions are fulfilling their obligations to serve the housing credit needs of the communities where they are located. The law is also intended to assist public officials determine the appropriate distribution of public sector investments to improve the private investment environment.

Banks and thrifts come under HMDA coverage by being located (at least one branch) in a Metropolitan Statistical Area (MSA), a geographic area designated by the federal Office of Management and Budget for census and other purposes. There is an exemption for smaller financial institutions that have total assets of less than a specified asset level that is adjusted annually – currently those with assets less than \$43 million as of December 31, 2014 are exempt from 2015 HMDA data collection and reporting.

HMDA reporting lenders are required to file their raw HMDA data in the form of a loan/application register (LAR) for each calendar year by March 1 of the following calendar year. The FRB HMDA Operations unit processes the data on behalf of the other federal regulators and issues the annual reports by early September each year.

### Data field to verify

The FRB HMDA Operations unit is instructing certain reporting lenders to check the accuracy of one of their data fields – the “property type” field. Apparently, the FRB unit has concerns regarding the accuracy of reported “multifamily dwellings.”

The likely source of confusion or lack of consistency by reporting lenders is that there is no definition of “multifamily dwelling” in Regulation C, which implements the HMDA statute. The closest we have is in the Official Staff Commentary, in the second sentence of the first comment on the definition of the term “dwelling,” which states, “A dwelling also includes a multifamily structure such as an apartment building.”

This alert from the FRB HMDA Operations unit now gives us a definition of term, as follows, “Definition: A multifamily dwelling is a SINGLE structure that contains five or more 1-to-4 family dwellings.”

The FRB unit gives examples of loans reported erroneously with the property type of “multifamily.” Each of the below loan scenarios is a loan for multiple one- to four-family dwellings or multiple manufactured housing units:

- A single loan for five or more single one- to four-family dwellings and/or manufactured housing
- A single loan for multiple duplexes
- A single loan for multiple triplexes
- A single loan for multiple quadplexes
- A single loan for a trailer park/community containing any number of manufactured homes

### Required action

The FRB HMDA Operations unit is requesting lenders receiving its notification to review all loans reported with a “property type” of “multifamily.” Notified lenders are asked to confirm the

continued to next page ↴



**Federal Deposit  
Insurance Corporation**  
<http://www.fdic.gov>

**Office of the Comptroller of the  
Currency**  
<http://www.occ.gov>

**Federal Reserve**  
<http://www.federalreserve.gov>

**Housing and Urban  
Development**  
<http://www.hud.gov>

**Federal Financial  
Institutions Examination  
Council**  
<http://www.ffeic.gov>

**U.S. Department of Treasury**  
<http://www.treas.gov>

**Financial Crimes  
Enforcement Network**  
<http://www.fincen.gov>

**Consumer Financial  
Protection Bureau**  
<http://www.consumerfinance.gov>

information as accurate or correct the property type to either “one- to four-family” or “manufactured housing,” where appropriate. So that the FRB unit may monitor incoming revised data files due to this communication, notified lenders are requested to reply to the FRB e-mail by simply adding to the existing subject heading either “Resubmitting” or “Verified as Accurate,” and to include the institution’s HMDA Respondent ID.

As noted above, this action should be viewed as instructional by all HMDA lenders. It requires action only by those directly notified by the FRB.

### Additional HMDA notifications

The FRB HMDA Operations unit asks lenders to note that other e-mails will be going out regarding other HMDA data fields over the few days following its “multifamily dwelling” alert. Since those lenders might receive some of the other e-mails, the FRB unit suggested that lenders wait to resubmit, if necessary, until Wednesday, April 22, 2015 to minimize the number of necessary resubmissions. □

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## E-Sign Act Consumer Consent Requirements

By Michelle R. Graber, CRCM; Consultant

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. The E-Sign Act took effect on Oct. 1, 2000 with record retention requirements effective beginning March 1, 2001.



### Common violation cited by examiners

When you are legally required to make information available to a consumer “in writing,” such as the RESPA good faith estimate (GFE) or the Truth in Lending disclosure, the information may be delivered electronically, such as by e-mail, as long as the customer has affirmatively consented to the use of electronic records and has not withdrawn that consent. Electronic delivery of federally mandated disclosures for five consumer protection regulations are subject to the E-Sign Act. These federal rules are: Regulation B (Equal Credit Opportunity), Regulation E (Electronic Fund Transfer), Regulation M (Consumer Leasing), Regulation Z (Truth in Lending), and Regulation DD (Truth in Savings).

To take advantage of the electronic delivery ability conferred by the E-Sign Act, all of the following steps must be taken:

- The financial institution must disclose the requirements for accessing and retaining disclosures in that format.
- The applicant must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery.
- The financial institute must provide the disclosures in accordance with the specified requirements.

Federal financial institution regulatory agencies are permitted to interpret the E-Sign Act’s consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, the agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

However, interpretive information regarding the E-Sign Act is somewhat limited in that there are no implementing regulations or enforcement agencies responsible for interpreting the act itself. The federal court system is the only body with the authority to interpret the statute. Up to this point there has been very little case law to help determine whether actual practices are in compliance with statutory provisions. However, we are finding out that examiners have recently included E-Sign issues on their list of “common violations.”

### Conclusion

The E-Sign Act presents many challenges and opportunities that need to be managed. Bank management should determine whether staff provide disclosures to consumers via e-mail and ensure proper disclosures required by the E-Sign Act are provided or implement a policy to not provide such disclosures electronically. You should also determine what other products, disclosures, or statements are delivered through electronic means and the systems that support them to ensure compliance with applicable provisions of the law.

Failure to comply with the provisions of the E-Sign Act could be a serious issue in the event of legal action. Specific issues and questions should be raised with the bank’s legal counsel or with your primary regulator. The full text of the E-Sign Act is available at [www.gpo.gov/fdsys/granule/USCODE-2011-title15/USCODE-2011-title15-chap96/content-detail.html](http://www.gpo.gov/fdsys/granule/USCODE-2011-title15/USCODE-2011-title15-chap96/content-detail.html). □

## FICO® Scores Available through Non-Profit Counselors

By Karen Clower, CRCM; Consultant

On April 21, 2015, FICO announced that its FICO® Score Open Access program is expanding to provide FICO® Scores to approximately one million consumers annually who are in need of credit and financial guidance. This expansion to the program will be available through qualified non-profit credit counselors and participating government entities.

As part of this expansion, FICO has reached agreements with the three largest credit reporting agencies (Experian, Equifax, and TransUnion), that will allow these non-profit credit counselors to provide consumers with the credit score that was purchased on their behalf. Historically, counseling organizations have been prohibited, by their contracts, from providing consumers with copies of their credit bureau reports or credit scores. So far, Experian is the only credit reporting agency that has agreed to provide these credit counseling consumers with both a copy of their credit report and the credit score.

The FICO® Score Open Access program is a program that was launched by FICO in November 2013 to offer aid to consumers who have credit management problems by providing FICO® Scores along with credit education material that helps consumers understand credit scoring and learn about responsible financial health management.

The Consumer Financial Protection Bureau (CFPB) stated, “Ending restrictions on sharing credit scores and reports by consumer financial counseling organizations will empower consumers to take more control of managing their credit and help counselors to do their jobs more efficiently.”

Community banks should remind all of their customers that they can annually receive a free copy of their credit bureau reports from each of the three largest credit reporting agencies (Experian, Equifax, and TransUnion). They should visit [www.annualcreditreport.com/index.action](http://www.annualcreditreport.com/index.action) for further information.

FICO’s release about this expansion in its program may be found at [www.fico.com/en/newsroom/fico-scores-available-to-financially-struggling-consumers-through-non-profit-credit-and-financial-counselors-04-21-2015](http://www.fico.com/en/newsroom/fico-scores-available-to-financially-struggling-consumers-through-non-profit-credit-and-financial-counselors-04-21-2015).

CFPB’s blog entry about FICO’s expansion may be read at [www.consumerfinance.gov/blog/millions-of-consumers-will-now-have-access-to-credit-scores-and-reports-through-nonprofit-counselors](http://www.consumerfinance.gov/blog/millions-of-consumers-will-now-have-access-to-credit-scores-and-reports-through-nonprofit-counselors). □



### Wondering What is Going on Around You?



Sometimes it seems as if we operate in a vacuum, and no one has the issues that we have. And sometimes, we are not even sure what issues are happening outside our own bank. To assist with this, the Financial Crimes Enforcement Network (FinCEN) is now offering a service that will help you see what banks and others around you are using as the basis for filing Suspicious Activity Reports (SAR).

There are a number of filters in this new tool that allow you to direct your focus. We recommend that BSA personnel look from time to time to see what is happening around them. You can find this tool at [www.fincen.gov/Reports/SARStats](http://www.fincen.gov/Reports/SARStats).

It is interesting to note that FinCEN is also publishing gross totals for SAR filings, based on the type of business filing the SARs. For “financial institutions,” the numbers for the first quarter of the last three years are:

- 2012 79,039
- 2013 209,611
- 2014 213,280

Regular use of FinCEN’s new tool can enhance your SAR filing process. □

## Compliance Calendar

*This calendar is designed to help you address current and upcoming requirements related to compliance with federal consumer protection and other select rules. The calendar is not intended as general advice on when to perform ongoing compliance management functions, but as a reminder of due dates for completing these tasks. And, as always, consult the particular law or regulation for details on coverage, etc.*

### July 2015

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2015 by July 31, 2015.
- Update FHHLDS home loan activity format with second calendar quarter 2015 data by July 31, 2015 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### August 2015

- Rule requiring use of combined TILA/RESPA disclosures, Loan Estimate and Closing Disclosure, effective August 1, 2015.

### October 2015

- Update HMDA-LAR with loans and applications that reached final disposition in third calendar quarter 2015 by October 31, 2015.
- Update FHHLDS home loan activity format with third calendar quarter 2015 data by October 31, 2015 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### November 2015

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2015.

### December 2015

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2015.

### April 2016

- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2016 by April 30, 2016.
- Update FHHLDS home loan activity format with first calendar quarter 2016 data by April 30, 2016 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### July 2016

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2016 by July 31, 2016.
- Update FHHLDS home loan activity format with second calendar quarter 2016 data by July 31, 2016 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### October 2016

- Update HMDA-LAR with loans and applications that reached final disposition in third calendar quarter 2016 by October 31, 2016.
- Update FHHLDS home loan activity format with third calendar quarter 2016 data by October 31, 2016 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

### November 2016

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2016.

### December 2016

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2016.

### January 2017

- Extensive HMDA changes mandated by Dodd-Frank Act expected to be effective January 1, 2017.

### April 2017

- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2017 by April 30, 2017.
- Update FHHLDS home loan activity format with first calendar quarter 2017 data by April 30, 2017 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].