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How the New CFPB Regulations Will Impact the Reverse Mortgage Business

NRMLA

Eastern Regional Meeting &

Finance and Investment Forum

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CFPB Regulatory Authority

In January the CFPB issued 7 Final Rules:

- **January 10:**
  - Ability to Repay (TILA)
  - High-Cost Mortgages (HOEPA) & Homeownership Counseling Amendments to TILA & RESPA
  - Escrow Accounts for Higher-Priced Loans (TILA)
- **January 17:**
  - Mortgage Servicing under TILA & RESPA
- **January 18:**
  - Appraisals for Higher-Priced Mortgage Loans
  - ECOA Appraisals Requirements
- **January 20:**
  - Loan Originator Compensation (TILA)

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Ability to Repay Final Rule

Scope & Overview

- **Does Not Apply to Reverse Mortgages**
- **Creditors must make a reasonable & good faith determination, at or before consummation, that the consumer will have a reasonable ability to repay the loan according to its terms**
- 3 ways to comply:
  - **General ATR Option:** meet 8 general underwriting factors
  - **Qualified Mortgage (QM) Option:** either a safe harbor from or a rebuttable presumption of compliance with ATR factors
    - Includes Temporary QM & Balloon QM
  - **Refinance** of a non-standard mortgage into a standard mortgage
- **Effective Date: January 10, 2014**

Ability to Repay Final Rule

General ATR Option

- **Must consider & verify 8 ATR underwriting factors**
  1) Borrower's **current or reasonably expected income or assets**, except for value of the dwelling that secures the loan
  2) Borrower's **current employment status** (assuming creditor relies on employment income in determining repayment ability)
  3) Borrower's **monthly payment on the covered transaction**, calculated in accordance with the ATR final rule
  4) Borrower's **monthly payment on any simultaneous loan** the creditor knows or has reason to know will be made, calculated in accordance with the ATR final rule
  5) Borrower's **monthly payment for mortgage-related obligations**
  6) Borrower's **current debt obligations**, alimony and child support
  7) Borrower's monthly **debt-to-income ratio (DTI)** or residual income, calculated in accordance with the ATR final rule
  8) Borrower's **credit history**

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Ability to Repay Final Rule

QM Option

- **QMs must meet the following requirements:**
  - **Product features:**
    - Provide regular periodic payments
    - Not include negative amortization, interest-only or balloon features (except for balloon QM)
    - Loan term of 30 years or less
    - **Points & fees not exceeding 3%** of the total loan amount of $100,000 or more, with greater limits for smaller loans
  - **Underwriting requirements**
    - Consider and verify borrower's current or reasonable expected income or assets & current debt obligations in accordance with Appendix Q
    - DTI not to exceed 43% calculated using Appendix Q
    - Monthly payments calculated based on maximum interest rate that may apply during first 5 years of the loan & periodic principal & interest based on such interest rate

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Ability to Repay Final Rule

ATR-QM

- **Because Reverse Mortgages have not Monthly Payments, and Lenders need not verify the Borrowers ability to Repay, Reverse Mortgage Lenders do not need a Qualified Mortgage Exception to the ATR Rules**
- **Thus, the Bureau did not create a Qualified Reverse Mortgage in its final ATR-QM Rule**
- **Because there are no Qualified Mortgages, the 3% Points & fees test for Qualified Mortgages Does not Apply to Reverse Mortgages**
- **Bureau will review and issue Reverse Mortgage Regulations later this year**

LO Compensation Final Rule

Loan Originator Standards/Compensation under TILA

- **Effective Jan. 10, 2014**
- **Generally keeps 3 basic principles of the current provisions**
  - No compensation based on a transaction's terms or a proxy (fixed percentage of amount of credit extended is allowed)
  - No dual compensation
  - No steering
- **"Loan Originator" definition is expanded**
- A person is a "Loan originator" under the new rule if the person engages in any one of the following activities for, or in expectation of, direct or indirect compensation or gain:

  (1) takes a loan application,

  (2) assists a consumer in obtaining or applying to obtain a loan, or

  (3) offers or negotiates terms of a loan
- Also, if a person holds him or herself out (advertises) that he or she can do any of the above, he or she is a Loan originator
- Under the **SAFE Act**, a person is a "loan originator" only if the person engages in both of the following activities: (1) takes a residential mortgage loan application; and (2) offers or negotiates terms of a residential mortgage loan for compensation or gain

LO Compensation Final Rule

Loan Originator Standards/Compensation under TILA

- **"Loan Originator" definition is expanded to include referring a consumer to a loan originator** through directed actions that can affirmatively influence the consumer
- **<u>Removes the words "in connection with a particular transaction" from the definition of "Loan Originator</u>"**
  - Definition applies to persons engaged in the activities describes regardless of whether a loan is closed
  - The term does not include: a person that performs purely administrative or clerical tasks, real estate brokers unless compensated by a creditor or loan originator, servicer employees or contractors for loan modifications, or seller financers that meet certain criteria (no more than 3 properties a year, not a contractor, etc.)
- **Violations are subject to same TILA penalties as Ability to Repay**
- **Enhanced HOEPA Damages**
- **Borrower Defense to Collection of the Loan for the Life of the Loan**

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LO Compensation Final Rule

Payments Based on Loan Terms or a Proxy for Loan Terms

- Maintains existing prohibition on compensation based on a term of a transaction or a proxy for a term
- **Defines "Terms" – <u>Preamble Discussion on "Loan Product" or Loan Type as a Term of a Transaction</u>**
- **Clarifies the definition of a proxy** to focus on whether:
  - The factor consistently varies with a transaction term over a significant number of transactions, and
  - The loan officer has ability, directly or indirectly, to add, drop or change the factor in originating the transaction

Defined Contribution Plans

- Allows for **profit-sharing and bonus plans** if it is not based on the terms of the individual originator's transactions AND
  - Compensation paid in the aggregate does not exceed 10% of the originator's total compensation during the time period the non-deferred profits based compensation is paid OR
  - Originated 10 or fewer transactions during the previous 12 months
- Allows for contributions to **designated tax-advantaged plans** if it is not based on the terms of the individual originator's transactions AND it is one of the enumerated plans in the rule that meets IRS requirements (annuity plans, simple retirement accounts, etc.)

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LO Compensation Final Rule

Pricing Concessions

- Permits decrease in originator compensation **to defray the cost of an unforeseen increase in an actual settlement cost** over an estimated settlement cost disclosed to the consumer or an **unforeseen actual settlement cost** not disclosed to the consumer

Dual Compensation

- LO cannot receive compensation from both the consumer & the creditor
  - **Allows mortgage brokerage firms paid by the consumer to pay commissions to their individual brokers, so long as commission is not based on transaction terms**
- **Requires that parties closely track & document each payment**
  - **Payments from the consumer to the LO include:**
    - Payments to the LO from loan proceeds
    - Payments to the LO pursuant to an agreement by a person other than creditor or its affiliates (i.e., non-affiliated seller or homebuilder)
  - **Payments from the consumer to the LO do not include**:
    - Payments derived from an increased interest rate
    - Funds from the creditor to reduce the consumer's settlement charges, including origination fees paid by a creditor to the LO
    - Payments to the creditor, whether paid directly by the consumer or out of loan proceeds

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LO Compensation Final Rule

Upfront Points & Fees

- Creditors can charge consumers upfront points & fees
- CFPB **declined to put the proposed No-Point, No-Fee** loan option requirement in the Final Rule

No Point Banks

- CFPB briefly indicated that it believes there are no circumstances under which point banks are permissible

Record Keeping Requirements

- Creditors are required to maintain records sufficient to evidence all compensation paid to an originator & the compensation agreement that governs those payments for **3 years after the date of payment**
  - LO organizations have the same requirements plus records of all compensation received from creditors, consumers or another party

Personal Liability for Loan Originators for Violations

- Limited to the greater of actual damages or 3 times the total amount of direct or indirect compensation received, plus costs of the action & reasonable attorney's fees

LO Compensation Final Rule

Originator Qualification & Screening Standards

- Individual loan originators & their employers must be qualified
  - Employers must ensure their loan originator employees are licensed or registered under the SAFE Act where applicable
  - Employers of loan originators not required to be licensed under the SAFE Act must ensure that loan originators **meet character, fitness and criminal background check standards equivalent to those in the SAFE Act**
    - Requires the loan originator receive appropriate training
- Requires individual loan originators' & their employers' **names & license or registration numbers to be included on the following mortgage loan documents:**
  - Credit application
  - Note or loan contract
  - Security instrument

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LO Compensation Final Rule

Additional Requirements and Issues for Reverse Mortgages

- **More Steering Provisions in the Future**
  - Dodd-Frank requires the CFPB to prescribe regulations to prohibit certain kinds of steering, abusive or unfair lending practices, mischaracterization of credit histories or appraisals & discouraging consumers from shopping
  - CFPB to address such regulations in a future rulemaking
- **Issues for Reverse Mortgages**
  - The Loan Amount (Max. Claim or "Maximum proceeds available to the consumer under the loan")
  - LO Comp Rule Only Applies to Closed-End Credit, but RESPA continues to apply to all Federally Related Mortgage Loans
  - In the Preamble, Loan Product is a Term
  - Under current LO Comp Rule, Loan Product might be a "Proxy"
  - Definition of Loan Originator – Broader than SAFE (4 potential disjunctive triggers, instead of two)
  - If Triggered, Qualification standards will apply, not the same as SAFE, and so ***<u>you are No Longer SAFE</u>***
  - The Cost of Compliance is going Up

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High-Cost Mortgage Final Rule

Final Rule for High-Cost Mortgage & Homeownership Counseling

- **Expands HOEPA coverage (High-Cost Mortgage)**
  - To include purchase-money loans & open-end credit plans
    - ***Reverse mortgages remain excluded***
  - **Revisions to HOEPA triggers**
    - **APR Test**: Loan APR exceeds the **APOR** by:
      - **6.5** percentage points for **first-lien** mortgages (8.5 if dwelling is personal property & total transaction amount is less than $50,000)
      - **8.5** percentage points for **subordinate lien** mortgages;
    - **Points & Fees Test**: Loan points & fees exceed **5% of the total loan amount**, or 8% for loans below $20,000; or
    - **Prepayment Penalty Test**: Loan provides that creditor may charge:
      - a prepayment penalty more than 36 months after loan consummation or account opening or
      - penalties that exceed more than 2% of the amount prepaid
  - **New restrictions on HOEPA**
    - Ban fees for modifying loans, cap late fees and restrict the charging of fees for payoff statement
    - Require housing counseling before taking out a high-cost mortgage
  - New general RESPA requirement – list of homeownership counseling organizations must be provided within 3 business days of application
- **Effective Date: Jan. 10, 2014**

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Appraisals for Higher-Priced Loans

Final Rule on Appraisals for Higher-Priced Mortgage Loans

- **Final Rule Amends TILA/Reg Z**
  - **Effective Date: Jan. 18, 2014**
- Before making "**higher-priced mortgage loan**" creditors must:
  - Obtain a written appraisal performed by a certified appraiser and based on a **physical inspection of a property's interior**
  - Provide applicant a **statement** regarding the purpose of the appraisal at time of application and a **free copy** of any written appraisals obtained 3 business days prior to closing
  - Obtain a **second written appraisal at no cost to the borrower** in connection with certain **"flipped" properties** if
    - Seller acquired the home less than 180 days prior, and
    - New sales price is 10% higher (if seller acquired less than 90 days prior) or 20% higher (if 91-180 days)
- **Excludes**: Qualified Mortgages, open end credit plans, ***<u>Reverse Mortgage Loans</u>***, initial construction loans, bridge loans, loans secured by new manufactured homes & transactions secured by a mobile home, boat or trailer

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ECOA Appraisals Final Rule

Equal Credit Opportunity Act (Reg B) – Appraisals

- **Final Rule requires notice and copy of appraisals**
  - **Effective Date: Jan. 18, 2014**
- Requires creditors to:
  - Notify applicants within **3 business days of receiving an application** of their right to receive a copy of written appraisals & valuations
  - Provide applicants a copy of written appraisals & valuations no later than **3 business days before consummation**
- Prohibits creditors from charging a fee for providing a copy of the appraisal or valuation
- Requirements apply only to appraisals & valuations made in connection with **applications for loans secured by a first lien on a dwelling**

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Escrow Account Final Rule

Final Rule on Escrow Accounts for Higher-Priced Mortgage Loans (TILA/Reg Z)

- Final rule issued Jan. 10, 2013 (Board issued Proposed Rule Mar. 2, 2011)
- **Effective Date: June 1, 2013**
- **Implements Dodd-Frank changes that extend the length of time escrow accounts must be maintained for certain higher-priced mortgage loans**
  - Requires accounts to be maintained for at least 5 years (instead of existing 1 year requirement) for closed-end, higher-priced mortgage loans secured by a first lien on a consumer's principal dwelling
    - Account may be cancelled upon termination of the underlying debt obligation, including by repayment, refinancing, rescission and foreclosure
    - After 5 years, account may be cancelled at consumer's request if: (a) the unpaid principal balance is less than 80% of the original value of the property, and (b) the consumer is not currently delinquent or in default
  - Continued exemption for open-end loans, loans secured by shares in a cooperative, loans to finance initial construction of a dwelling, temporary bridge loans with a loan term of 12 months or less & ***Reverse Mortgages***

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Servicing Final Rules

Mortgage Servicing Rule

• Implements Dodd-Frank mandated requirements under TILA and RESPA

– Effective Jan. 10, 2014

1. Monthly Mortgage Statements for Closed-End Loans
2. ARM Adjustment Notices
3. Crediting of Payments and Pay-Off Statements
4. Force-Placed Insurance
5. Error resolution & Information Requests
6. Early intervention with Delinquent Borrowers
7. Continuity of Contact with Delinquent Borrowers
8. Information Management Policies & Procedures
9. Loss Mitigation Procedures

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Servicing Final Rules

TILA (Reg Z) Mortgage Servicing Rule

- **Implements Dodd-Frank mandated requirements under TILA**
  - **Effective Jan. 10, 2014**
- **Monthly Mortgage Statements**
  - Requires servicers to send a periodic statement for each billing cycle that includes:
    - Summary of mortgage terms (e.g., interest rate & principal obligation)
    - Breakdown of payments by principal, interest, fees & escrow
    - Amount of and due date for the next payment
    - Recent transaction activity, including itemization of fees and charges, etc.
  - Includes sample forms that servicers may use
  - ***Excludes Reverse Mortgage Loans***

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Servicing Final Rules

TILA (Reg Z) Mortgage Servicing Rule (continued)

- **Warning Before Interest Rate Adjustments**
  - Requires servicer to notify a consumer with adjustable rate closed-end mortgage 60 to 120 days before an adjustment which causes the payment to change
  - Must notify consumers 210 to 240 days prior to first rate adjustment
- **Payments Immediately Credited**
  - Requires servicers to credit a consumer’s account as of the date a payment is received & clarifies the handling of partial payments
- **Currently, Closed-End Variable Rate HECMs are not very Common**

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Servicing Final Rules

RESPA (Reg X) Mortgage Servicing Rule

- Implements **Dodd-Frank mandated requirements** under RESPA & **additional requirements** proposed by CFPB
  - **Effective Jan. 10, 2014**
- **Force-placed insurance**
  - Prohibits servicers from charging borrowers for force-placed insurance coverage without reasonable basis to believe borrower has failed to maintain hazard insurance
  - Must provide 2 notices: 1st notice at least **45 days before charging** for forced-place insurance coverage & 2nd notice no earlier than **30 days after the 1st notice and 15 days before charging the fee**
  - Must terminate insurance within 15 days if receives evidence that borrower has the necessary insurance & refund the insurance premiums
- **Error resolution & information requests**
  - If consumer notifies the servicer of an error, servicer must acknowledge the notification **within 5 days**, conduct a reasonable investigation & correct the error or respond to borrower with results of the investigation, generally **within 30 to 45 days**

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Servicing Final Rules

RESPA (Reg X) Mortgage Servicing Rule (continued)

- **Early intervention with delinquent borrowers**
  - ***Does Not Apply to Reverse Mortgages***
  - Servicers must make good faith efforts to **notify delinquent borrowers of loss mitigation options** & information on how to obtain more information about loss mitigation options
    - Notice must also provide information about the foreclosure process
    - Must attempt to make live contact no later than the 36th day of delinquency, and send written notice no later than 45th day of delinquency
  - Includes model language servicers may use for these notices
- **Continuity of contact with delinquent borrowers**
  - ***Does Not Apply to Reverse Mortgages***
  - Servicers must provide delinquent borrowers with direct, easy, ongoing access to employees who are dedicated & empowered to help
  - Must assign **dedicated contact personnel** for a borrower no later than 45 days after missed payment

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Servicing Final Rules

RESPA (Reg X) Mortgage Servicing Rule (continued)

- **Loss mitigation procedures**
  - ***Does Not Apply to Reverse Mortgages***
- **Information management policies & procedures**
  - Servicers must establish **reasonable policies & procedures** to provide accurate and current information to borrowers and minimize errors
  - Servicers must **maintain records relating to each mortgage for 1 year** after the mortgage is discharged or servicing is transferred & create a mortgage servicing file for each loan containing certain specified documents and information
  - ***Does Not Apply to Reverse Mortgages***

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CFPB Servicing Guidance

CFPB Issued New Servicing Guidance on Feb. 11, 2013

- Requires mortgage servicers & subservicers to address potential risks to consumers that may arise in connection with transfers of servicing
- CFPB has particular concerns related to servicing transfers that arise from consumer complaints & supervisory work
  - CFPB examiners will carefully review servicers' compliance with federal laws applicable to servicing (e.g., RESPA, FCRA, FDCPA, UDAAP)
  - Will focus on particular concerns related to servicing transfers:
    - Policies, procedures, systems and controls in place to address the risks to consumers in connection with servicing transfers
    - Adequate staffing and employee training to handle consumer communications in the context of servicing transfers
- Servicers engaged in **significant servicing transfers** should expect that the CFPB will, in appropriate cases, require them to **prepare and submit informational plans** describing how they will be **managing the related risks to consumers**

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CFPB Servicing Guidance

CFPB Issued New Servicing Guidance (continued)

- CFPB **putting servicers on notice** that it may require such plans in the course of its supervisory activities
- Information to be included in the plan depends on the circumstances, but generally will require:
  - **Number of loans** involved in transfer & **total servicing volume** being transferred (by unpaid principal balance)
  - Name(s) of and information about transferor's **servicing platform(s)** & information about **compatibility with transferee's systems**
  - Detailed description of transaction & **system testing** to be conducted to ensure accurate transfer of information & a description of the summary report to be generated as a result of this testing
  - Description of how transferee will **identify & correct errors identified** in connection with the transfer, including a **specified time period** for reviewing files and resolving errors
  - Description of the **training plan & actual training materials** for staff involved in reviewing, assessing, utilizing or communicating information regarding the transferred loans
  - **Customer-service plan specific to the transferred loans** that provides for responding to **loss mitigation requests or inquiries** & identifying whether a loan is subject to a pending loss mitigation resolution or application

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Upcoming Regulatory Changes

Other Rules on the Horizon

- **Integrated Mortgage Disclosures Rule under TILA & RESPA**
  - Final Rule now expected in Sept. 2013
  - Proposed 2 new disclosures:
    - Loan Estimate: 3 page replacement for GFE/Initial TIL
    - Closing Disclosure: 5 page replacement for HUD-1/Final TIL
  - Proposed expanded definition of Finance Charge to include the 4(c)(7) real estate related fees currently exempt
  - ***Reverse Mortgages will be Exempt***
- **HMDA Changes**
  - Not effective until CFPB issues final regulation
  - Will require collection of additional data including: points & fees, difference between the loan APR & benchmark rate for all loans, prepayment penalty term, value of any collateral, loan term in months, applicant's age & credit score, originators ID number
- **Credit Risk Retention (QRM)**
  - Final Rule expected in 2013
  - Requires 5% credit risk retention of all but least risky mortgages

Hot Regulatory Requirements

- **CFPB Examinations of Non-Bank Mortgage Companies**
  - Intended to clarify the legality under § 8 of RESPA of compensation provided by HWCs to real estate brokers & agents

- **Don’t Forget about the FHA**
  - Insurance Fund under Pressure
  - PETR’s; QAD Reviews
  - Reduction of PLF’s
  - Claims Processing and Audits getting Tougher

- **RESPA Transferred to the CFPB**
  - CFPB re-opened some dormant HUD investigations into title joint ventures
  - Anticipate CFPB to take consistent & potentially more aggressive positions

Hot Regulatory Requirements

CFPB & FTC Warn Against Misleading Mortgage Ads

- CFPB issued **warning letters** to approximately **12 mortgage lenders & brokers** & FTC to approximately **20 real estate agents, home builders & lead generators** (Nov. 19, 2012)
  - Notified that ads may **violate federal laws** & that company should thoroughly review **all their advertising**
    - Indication of opening or continuing an investigation
- Actions stem from a joint “sweep” of about **800 randomly selected mortgage-related ads** across the country, including ads for **mortgage loans, refinancing and reverse mortgages**
  - Review found **potentially misleading advertisements**, such as:
    - Misrepresentation about government affiliations
    - Inaccurate information about interest rates
    - Misleading information about reverse mortgages
    - Misrepresentation about amount of cash or credit
  - Reviewed public-facing ads in newspapers, the Internet & mail solicitations
    - Some came to agencies’ attention from **consumer complaints**
- Looking for potential violations of the **MAPS Rule**

Hot Regulatory Requirements

MAPS Rule Defines Advertisements Broadly

- **No material misrepresentation, express or implicit, in any commercial communication for any mortgage credit product**
- **Advertisements or "commercial communications" include:**
  - Any written or oral statement, illustration or depiction, in English or any other language, designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a package, insert, radio, television, brochure, newspaper, magazine, pamphlet, leaflet, circular or any other medium
    - Promotional materials & web pages are expressly included
    - Includes any communication on product labels, billboards, blogs other social media & any collateral material handed out in branch offices
- **Rule sets forth a non-exhaustive list of *per se* deceptive practices**
  - Includes deceptive statements regarding interest rate, APR, payments & other loan terms or conditions

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Hot Regulatory Requirements

MAPS Rule Imposes Burdensome Recordkeeping Requirements

- **Imposes a 2-year recordkeeping requirement:**
  - All *materially different* commercial communications
  - Copies of all materials showing what products & rates were offered
  - Copies of all materials showing any additional products or services offered in conjunction with the mortgage credit products offered
  - Records may be kept in any readable format, and may be kept in the same manner as all other materials that are kept in the ordinary course of business
- ***Failure to keep these records is an independent violation of the Rule***

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Hot Regulatory Requirements

Third Party Vendor Oversight

- **CFPB issued guidance in April 2012 on third party vendors**
  - Companies must adequately coordinate with its vendor on correspondence with the consumer

- **CFPB considers an appropriate plan to include:**
  - Consistent, risk-based procedures governing retention and monitoring of service providers
  - Policies and procedures to monitor and test service providers’ compliance with federal consumer financial law

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CFPB Examination Findings to Date

Third Party Vendor Oversight

- **CFPB Bulletin on Service Providers (April 2012)**
  - CFPB expects supervised banks & non-banks to have effective processes for managing the risks of service provider relationships
  - Steps to ensure business arrangements do not present unwarranted risks to consumers, including:
    - Due diligence to verify service provider is complying with consumer laws
    - Request and review service provider's policies, procedures, internal controls & training materials
    - Include in the contract clear expectations about compliance & enforceable consequences for violating compliance responsibilities
    - Establish internal procedures to monitor service providers
    - Take prompt action to address problems

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Conclusion

What Can You Do?

- **Realize – This is not your Father's Compliance Program**
- **The CFPB is a New Type of Regulator**
- **No More merely Checking the Box, but looking holistically at Compliance Management Systems and possible Consumer Harm**
- **Too Big to Fail, or Too Small to Comply**
  - Non-Bank Mortgage Companies not familiar with Bank Supervision Process; CFPB coming at this like a Bank Examination
- **Cannot try to Continue to "Compete on Compliance"**
- **Are we in the mortgage business or the compliance business?**

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Conclusion

What Can You Do?

- **Make Compliance Your Top Priority**
  - Company wide, on every level
  - System for employees to report problems to management
- **Stay Informed**
  - Be ready for upcoming changes
- **Continual Training**
  - Significant amount of new regulatory requirements
- **Work with Integrity & No Shortcuts**
  - Personal responsibility & liability
  - No second chances
- **Those that Invest in Compliance will Survive**
  - Those that Survive will Thrive (because there will be Less Competition)

How the New CFPB Regulations Will Impact the Reverse Mortgage Business

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