Mark E. Aldrich
Janet M. Bonnefin
Robert K. Olsen
Eric G. Baron
Keith R. Forrester
Anne M. McEvilly

ALDRICH & BONNEFIN
Professional Law Corporation

Tricia E. Engelhardt
Stephanie A. Shea
Joel N. Cook

Our File Number:

CALIFORNIA BANKERS ASSOCIATION
2015 REGULATORY COMPLIANCE CONFERENCE

LENDING REGULATIONS UPDATE

October 7, 2015

Janet M. Bonnefin
Principal
Aldrich & Bonnefin, PLC

18500 Von Karman Avenue, Suite 300 ■ Irvine, California 92612
949.474.1944 ■ Fax 949.474.0617 ■ ab@ablawyers.com ■ www.ablawyers.com
Mailing Address: P.O. Box 19686 ■ Irvine, California 92623-1029
Tax I.D. Number: 33-0027849

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LENDING REGULATIONS UPDATE

I. INTRODUCTION

II. NEW MILITARY LENDING REGULATIONS

A. New MLA Regulations. Part of the Military Lending Act ("MLA"), specifically 11 U.S.C. 987, imposes limitations on the terms of consumer credit extended to service members and their spouses and dependents. The Department of Defense (DoD) originally promulgated regulations in August 2007 to implement the MLA lending requirements. 32 CFR Part 232; 72 FR 50580.

On July 22, 2015, the DoD issued a final rule amending its MLA regulations to broaden the scope of the loans subject to the MLA. 80 FR 43560.

B. Effective Date. Compliance with the new MLA regulations is not mandatory until October 3, 2016. The new MLA regulations will apply to covered consumer credit transactions or open-end accounts established on or after October 3, 2016, subject to one exception for credit cards. The mandatory compliance date for credit cards is October 3, 2017. Section 232.12(c).

C. Current Rule Until October 3, 2016. The current regulations only apply to three types of consumer-purpose, closed-end credit (i) payday loans; (ii) vehicle title loans; and (iii) tax refund anticipation loans. The current regulations remain in place until October 3, 2016.

D. Coverage of 2015 Final Rule. Under the 2015 Final Rule, the scope of coverage of the MLA regulations is much broader – it applies to "consumer credit" that a "creditor" offers or extends to a "covered borrower," which terms are explained below.

1. Consumer credit. The term "consumer credit" is defined as credit offered or extended to a covered person for personal, family or household purposes, and that is subject to a finance charge or payable by a written agreement in more than four installments, which is consistent with the definition of "consumer credit" under TILA & Regulation Z.

   a. Examples. The types of Covered Loans include:

      (1) Personal loans;

      (2) Credit cards, beginning October 3, 2017;

      (3) Overdraft lines of credit;

      (4) Short-term, small-dollar loans, which are closed-end loans made in accordance with a federal law (other than the Military Lending Act) that expressly limits the interest rate that a federal credit union or an insured depository institution may charge to a maximum APR of 36 percent, provided that the loans are made in accordance with the applicable regulations and those regulations restrict these loans to a maximum term of nine months; and impose a fixed limit on application fees; and

      (5) Loans to refinance a car or other personal property.

   b. Exceptions. Covered Loans do not include:

      (1) Credit cards under an open-end (not home-secured) consumer credit plan but only until October 3, 2017 (the DoD may extend this date to October 3, 2018);

(2) A residential mortgage, meaning any credit transaction secured by an interest in a dwelling, including purchase, initial construction and refinance transactions, home equity loans or lines of credit, and reverse mortgages;

(3) Credit expressly intended to finance the purchase of a motor vehicle when secured by the vehicle being purchased;

(4) Credit that is expressly intended to finance the purchase of other personal property when secured by the property being purchased; and

(5) Any credit transaction that is exempt from Regulation Z.

2. Covered borrower. The term "covered borrower" means a "consumer" who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a "covered member" of the armed forces or a "dependent" of a covered member. Section 232.3(g)(1).

a. Consumer. A consumer means a natural person. Section 232.3(e).

b. Covered member. The term "covered member" means an active-duty member of the U.S. armed forces, including the Coast Guard and National Guard, with an exception for persons serving under a call or order for a stated period of less than 30 days.

c. Dependent. The term "dependent" with respect to a covered member means:

(1) The covered member's spouse;

(2) A child who

(a) Is under 21 years old;

(b) Is under 23 years old but enrolled in a full-time course of study at an institution of higher learning and is dependent on the member or former member for over one-half of the child's support; or

(c) Is incapable of self-support because of a mental or physical incapacity and is dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of the person's support and residing in the member's household; and

(4) An unmarried person who is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a possession of the United States) for a period of at least 12 consecutive months and who meets certain other criteria (which are set forth in 10 U.S.C. 1072(2)(D), (E), or (I)).

d. Temporal component. The regulations do not apply to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction and, thereafter, only applies while the consumer continues to be a covered borrower.

E. Terms of Consumer Credit Extended to Covered Borrowers.

1. MAPR. Section 232.4 focuses on the "military annual percentage rate" or "MAPR." The MAPR is the cost of the consumer credit expressed as an annual rate, which must be calculated in accordance with Section 232.4(c). Generally a creditor may only impose an MAPR if certain conditions are met and the MAPR does not exceed 36 percent.

2. Maximum MAPR. A creditor may not impose an MAPR that exceeds any other applicable state or federal limits or is greater than 36 percent in connection with a covered an extension of closed-end credit or in any billing cycle for open-end credit. Section 232.4(b).

3. Charges included in the MAPR. The MAPR is similar to the annual percentage rate under Regulation Z but is "grossed up" to include five additional categories of charges ("Five Categories") even if they would be excluded from the finance charge under Regulation Z. Section 232.4(c)(1)(iv).

   a. Category #1: Credit insurance premiums or fees, and the like;

   b. Category #2: Fees for credit-related ancillary product sold in connection with the credit transaction;

   c. Category #3: Finance charges – the creditor must include all finance charges associated with the consumer credit in the MAPR calculation, unless it is a bona fide fee charged to a credit card account;

   d. Category #4: Application fees, except those charged by a federal credit union or an insured depository institution when making a short-term, small-dollar loan as long as the application fee is charged to the covered borrower not more than once in any rolling 12-month period, or unless the fee is a bona fide fee charged to a credit card account; and

e. Category #5: Participation fees – unless the fee is a bona fide fee charged to a credit card account, the MAPR includes any fee imposed for participation in any plan or arrangement for consumer credit, subject to the rules regarding computing the MAPR when there is no balance during a billing cycle.

4. Bona fide fees charged to a credit card account. As noted above, charges in Categories #3 through #5 above do not have to be included in the MAPR calculation if they are bona fide fees charged to a credit card account. The bona fide fee exclusion only applies to the extent that the charge is a bona fide fee and is reasonable for that type of fee. Section 232.4(d)(1). Extensive rules govern what is a bona fide fee; refer to Section 232.4(d)(3) for details regarding these rules.

F. Identifying Covered Borrowers. A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower. Section 232.5(a).

1. General rule. There are no restrictions on the method a creditor uses for determining whether for a borrower is covered by the MLA regulations. However the new MLA regulations provide a "safe harbor" that creditors can follow which will prevent liability for violations if the creditor wrongly determines that the borrower is not a covered borrower.

2. Safe harbor. A creditor may conclusively determine whether credit is offered or extended to a covered borrower by assessing the status of a consumer in accordance with the rules and the recordkeeping requirements set forth in Section 232.5(b), which are described below in Paragraph 3.

3. Methods to check the status of a consumer. Section 232.5(b)(2).

a. DoD database. Using information obtained directly or indirectly from the database maintained by the DoD, available at **https://www.dmdc.osd.mil/mla/welcome.xhtml**. A search of the DoD's database requires the entry of the consumer's last name, date of birth, and Social Security number.

b. Consumer report. A creditor instead may verify the status of a consumer by using a statement, code, or similar indicator describing that status contained in a consumer report obtained from a nationwide consumer reporting agency.

c. Historic lookback prohibited. Once the creditor makes a covered loan, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any DoD database to determine whether a consumer was a covered borrower as of the date of the covered loan or as of the date the open-end account was established. Section 232.5(b)(2)(i)(B).

d. Recordkeeping requirement. A creditor who makes a determination as of a consumer's covered status as discussed above is deemed to be in compliance so long as the creditor timely creates and maintains a record of the information it obtained. Section 232.5(b)(3).

G. Mandatory Loan Disclosures. With respect to any Covered Loan, a creditor must provide the covered borrower with three items of information (two of which are Regulation Z disclosures): (i) a statement regarding the MAPR; (ii) the usual Regulation Z disclosures required for the particular type of credit; and (iii) a description of the borrower's payment obligation ("Mandatory Military Loan Disclosures"). The Mandatory Military Loan Disclosures must be provided to the covered borrower either before or at the time the borrower becomes obligated on the loan.

1. MAPR Disclosure. Creditors must provide a covered borrower with a statement of the MAPR that is applicable to the extension of consumer credit ("MAPR Disclosure"). Section 232.6(a)(1).

a. In general. A creditor may satisfy the requirement to provide the MAPR Disclosure by describing the charges the creditor may impose, in accordance with the MLA regulations and subject to the terms and conditions of the agreement, to calculate the MAPR.

b. Method of providing the MAPR. A creditor may include the MAPR Disclosure in the credit agreement or promissory note. Section 232.6(a)(2).

c. No requirement to actually disclose numerical MAPR. It seems natural for the new MLA regulations to require the creditor to disclose the amount of the MAPR, but the rule does not require such a disclosure.

(1) Creditors are not required to describe the MAPR as a numerical value or to describe the total dollar amount of all charges included in the MAPR that apply to the extension of consumer credit (Section 232.6(c)(1)).

(2) In addition, creditors are not required to include a statement of the MAPR in any advertisement relating to those types of loans subject to the MLA regulations. Section 232.6(c)(2).

(3) The DoD explained that it wrote the MLA regulations "to require a creditor to provide a 'statement' of the MAPR that describes the charges the creditor may impose, instead of the periodic rate of the MAPR itself."

(4) The DoD's rationale is that it "recognized 'the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by [its] regulation and the APR required by TILA)'" and "Section 987(c)(1)(A) of the MLA does not require the disclosure of a particular annual percentage rate or the 'amount of all charges' applicable to the extension of consumer credit." 80 FR at 43587.

d. Model statement. A creditor may include a statement substantially similar to the following statement for purposes of the MAPR Disclosures:

Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account). Section 232.6(c)(3).

2. Regulation Z disclosures. The creditor is also required to provide the disclosures required by Regulation Z. Section 232.6(a)(2).

3. Description of payment obligation. In addition to a statement regarding the MAPR and the required Regulation Z disclosures, the creditor is required to provide a clear description of the payment obligation of the covered borrower. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement. Section 232.6(a)(3).

H. Delivery of Mandatory Military Loan Disclosures.

1. One-time delivery. The MAPR Disclosure and the description of the payment obligation are not required to be provided to a covered borrower more than once for a transaction or account. Section 232.6(b)(1).

2. Methods of delivery.

a. Written disclosures. A creditor must provide the MAPR Disclosure and the description of the payment obligation in writing in a form the covered borrower can keep. Section 232.6(d)(1).

b. Required oral disclosures. A creditor also must orally provide the MAPR Disclosure and the description of the payment obligation. Section 232.6(d)(2)(i). A creditor may satisfy this oral disclosure requirement if the creditor provides:

(1) The information to the covered borrower in person; or

(2) A toll-free telephone number which a consumer may use to contact the creditor in order to obtain the information. Section 232.6(d)(2)(ii). The toll-free telephone number must be included on:

(a) An application form the creditor directs the consumer to use to apply for credit; or

(b) The written disclosure the creditor provides to the covered borrower as described in Paragraph a. above.

I. Substantive Prohibitions. According to Section 232.8, it is unlawful for a creditor to extend consumer credit to a covered borrower if it includes any of these prohibited terms.

1. Rollover or renewal prohibition (payday loans made by non-depository institutions). The creditor is not permitted to roll over, renew, repay, refinance, or consolidate any consumer credit made by the creditor to a covered borrower with the proceeds of other consumer credit extended by that creditor to the same covered borrower.

For the purposes of the rollover restriction, the term "creditor" does not include a person that is chartered or licensed under federal or state law as a bank, savings association, or credit union. Section 232.8(a).

2. Waiver of right to legal recourse prohibited. The creditor is not permitted to require a covered borrower to waive the covered borrower's right to legal recourse under any otherwise applicable provision of state or federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*). Section 232.8(b).

3. Arbitration clause prohibited. The creditor is not permitted to require a covered borrower to submit to arbitration or impose "other onerous legal notice provisions" in the case of a dispute. Section 232.8(c). An arbitration clause that is included in a Covered Loan is unenforceable. Section 232.9 (d).

4. Unreasonable notice as a condition of legal action prohibited. A creditor is prohibited from requiring an unreasonable notice from the covered borrower as a condition for bringing a legal action against the creditor. Section 232.8(d).

5. Access to deposit accounts restricted. A creditor is not permitted to use a check or other method of access to a deposit, savings, or other financial account maintained by a covered borrower, except that, in connection with a consumer credit transaction with an otherwise lawful MAPR, the creditor may:

   a. Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law (note that EFTA and Regulation E prohibit a financial institution from conditioning a loan to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account);

   b. Require direct deposit of the consumer's salary as a condition of eligibility for Covered Loans, unless otherwise prohibited by law; or

   c. Take a security interest in funds deposited after a Covered Loan is made, in an account established in connection with the Covered Loan. Section 232.8(e).

6. Vehicle security interest prohibited in connection with non-purchase money loans made by non-depository institutions. A creditor is not permitted to use the title of a vehicle as security for a Covered Loan (unless the loan is to finance the purchase of the vehicle). For the purposes of this prohibition, the term "creditor" does not include a person that is chartered or licensed under federal or state law as a bank, savings association, or credit union. Section 232.8(f).

7. Allotment prohibition. A creditor is not permitted to require a covered borrower to establish an allotment (the military term for a payroll deduction) to repay a Covered Loan. Section 232.8(g).

8. Prepayment penalty prohibition. A creditor is not permitted to impose a prepayment penalty for prepaying all or part of a Covered Loan. Section 232.8(h).

J. Penalties and Remedies.

1. Criminal penalties are possible. A creditor that knowingly violates the MLA regulations is guilty of a misdemeanor.

2. Contracts void if violations occur. Any credit agreement, promissory note or other contract that violates the statute or the MLA regulations is void from the inception of the contract.

3. Civil liability for violations. A creditor that violates the statute or the MLA regulations is civilly liable to the consumer for actual damages but not less than $500 for each violation, punitive damages, appropriate equitable or declaratory relief, and if the borrower's civil action is successful, the creditor is also liable for the borrower's court costs and attorney fees.

4. Bona fide error defense. A creditor cannot be civilly liable under the MLA regulations if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

   Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under 10 U.S.C. 987 as implemented by the MLA regulations is not a bona fide error.

5. SCRA protections unaffected. Section 232.11 provides that the MLA regulations do not affect the protections under SCRA.

III. REGULATION Z COVERAGE OF CONSUMER LOANS TO TRUSTS

A. Don't forget that consumer-purpose loans to family trusts are no longer automatically exempt under Regulation Z. This is true regardless of the capacity or capacities in which the loan documents are signed.

B. The exemption of loans to family trusts under Regulation Z Section 1026.3(a) was eliminated as of October 3, 2015 as part of the TRID rule. Refer to new Comment 3(a)-10(i).

C. The new treatment of loans to trusts applies to any loans consummated on or after October 3, 2015, regardless of when the application was received (whether before or after October 3rd).

IV. SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

A. Foreclosure Relief and Extension of Servicemembers Act (Pub. L. 113-286). This statute was enacted in December 2014.

1. The Foreclosure Relief and Extension of Servicemembers Act temporarily extended SCRA foreclosure protections.

2. Currently, the foreclosure protections allow for a stay of court proceedings in an action secured by a mortgage during the servicemember's active duty and for 12 months thereafter.

3. This 12-month foreclosure protection is set to expire December 31, 2015.

4. Note: Come December 31, 2015, barring any further congressional action, the period for servicemember foreclosure protection will revert to just 90 days following the end of a servicemember's military service as originally enacted under SCRA Section 533.

B. HUD SCRA Notice Disclosure. HUD updated its SCRA Notice Disclosure (Form 92070) in late December 2014 to reflect the statutory changes made by the Foreclosure Relief Act.

C. Recent SCRA Enforcement Actions.

1. Santander Consumer USA Inc. In February 2015 the motor vehicle lender agreed to pay at least $9.35 million to resolve a lawsuit by the U.S. Department of Justice in which the DOJ alleged that the lender engaged in the improper repossessions of 1,112 motor vehicles between January 2008 and February 2013.

   a. SCRA protects servicemembers against certain civil proceedings that could affect their legal rights while they are on active duty. It requires a court to review and approve any repossession if the servicemember took out the loan, and made a payment, before entering military service.

b. The court may delay the repossession or require the lender to refund prior payments before repossessing. The court may also appoint an attorney to represent the servicemember, require the lender to post a bond with the court and issue any other orders it deems necessary to protect the servicemember.

c. By failing to obtain court orders before repossessing motor vehicles owned by protected service members, the DOJ stated that Santander prevented servicemembers from obtaining a court's review of whether their repossessions should be delayed or adjusted in light of their military service.

2. Bank of America, N.A. In May 2015 the OCC issued a consent order against BofA and $30 million in CMPs for the following deficiencies in complying with SCRA:

a. Failure to have effective policies and procedures in place to ensure compliance with SCRA;

b. Failure to devote sufficient financial, staffing and managerial resources to ensure proper administration of its SCRA compliance processes;

c. Failure to devote to its SCRA compliance processes adequate internal controls, compliance risk management, internal audit, third-party management, and training; and

d. Engaging in identified violations of SCRA.

3. Security National Automotive Acceptance Company. In June 2015 the CFPB filed an action against the auto loan company for aggressive debt collection tactics against servicemembers, including:

a. Exaggerating potential disciplinary action that servicemembers may face;

b. Contacting or threatening to contact commanding officers to pressure servicemembers into repayment;

c. Falsely threatening to garnish servicemembers' wages; and

d. Misleading servicemembers about legal action.

V. FAIR LENDING ISSUES ASSOCIATED WITH SPOUSAL GUARANTIES

A. Signature Rule Under ECOA/Regulation B. Regulation B's basic signature rule is that a person applying for individual credit in the applicant's own name must be evaluated on his or her own merits. If the individual applicant, whether married or otherwise, meets the creditor's standards of creditworthiness for the type and amount of credit requested, the creditor cannot ask for or require the signature of a spouse or of any other person on the application, the promissory note or any other obligation to repay, unless one of the express exceptions under Regulation B applies.

B. Exception to Signature Rule Where Applicant Doesn't Qualify. A creditor is permitted under Regulation B to request a cosigner or guarantor if an applicant does not meet the creditor's standards of creditworthiness.

1. Cannot require spouse to be cosigner or guarantor. A creditor is restricted in making such a request and cannot require the applicant's spouse to be a co-applicant or guarantor, but must allow the applicant to designate the cosigner or guarantor of his or her choice. The applicant's choice is, of course, subject to the creditor's approval.

2. The spousal trap. Due to California's community property and equal management and control laws, the spouse of an applicant should not become a co-borrower or guarantor unless the spouse either:

   a. Has enough separate property to supplement the income and property that the applicant can control to allow the combined parties to qualify; or

   b. Has sufficient future earnings to allow the applicant to qualify for the credit, provided that the creditor is following the decision of the ITT case, which most creditors do not. This applies equally to business-purpose loans that require the additional support of a guarantor or co-maker. This rule also applies in connection with registered domestic partners since they can own community property.

3. Qualifications of additional parties. In establishing guidelines for eligibility of guarantors, cosigners or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

C. Exception to Signature Rule For Business Insiders.

1. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy.

2. However the creditor cannot discriminate on prohibited basis. The requirement to obtain the signatures of business insiders must be based on the guarantor's relationship with the business or corporation and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

3. Bottom line is that where an insider guarantees a loan to a business, the creditor cannot automatically require the insider's spouse to guarantee the business loan unless the spouse also qualifies as an insider under the creditor's loan policy.

D. Guarantors Not Allowed to Sue for ECOA Signature Rule Violations. The Eighth Circuit Court of Appeals recently held that only borrowers, not guarantors themselves, could file suit for violations of the signature rule under the Equal Credit Opportunity Act (ECOA) because, according to the text of the ECOA, guarantors are not "applicants." *Hawkins v. Cmty. Bank of Raymore*, 761 F.3d 937 (8th Cir. 2014).

1. According to the court, "the ECOA clearly provides that a person does not qualify as an applicant under the statute solely by virtue of executing a guaranty to secure the debt of another. To qualify as an applicant under the ECOA, a person must "appl[y] to a creditor directly for . . . credit . . .."

2. In March 2015, the United States Supreme Court granted certiorari on the *Hawkins* case, which means the Supreme Court has preliminarily decided to hear the case. *Hawkins v. Cmty. Bank of Raymore*, 135 S. Ct. 1492 (2015). Until the Supreme Court rules on the case, for lenders in California the question remains open as to whether the Ninth Circuit Court of Appeals will follow the Eighth Circuit's view.

VI. HOME MORTGAGE DISCLOSURE ACT & REGULATION C

A. Where Things Stand With Final Rulemaking.

1. CFPB issued proposed amendments to Regulation C on August 29, 2014 to implement changes made to the Home Mortgage Disclosure Act (HMDA) under the Dodd-Frank Reform Act. 79 FR 51732. The comment period ended October 29, 2014.

2. According to the Bureau's Spring 2015 rulemaking agenda, a final rule was expected to be issued in August 2015. However, in an article published by the American Banker on August 28, 2105 it was reported that a final rule is expected sometime this fall.

B. Timing and Effective Date of Changes.

1. The earliest possible date when the new data would have to be collected is likely going to be January 1, 2017.

2. The earliest possible data submission under a final rule would be March 1, 2018.

C. Quick Overview of Proposed Changes. The proposed amendments represent the most significant changes to HMDA and Regulation C since 2002. Following is an overview of the changes.

1. Determining HMDA-coverage. A new 25-loan threshold would be established for determining whether a lender is subject to the data collection and reporting requirements. This would be in addition to the existing criteria for determining whether a lender is subject to HMDA/Regulation C.

2. Expansion of reportable loans. The types of applications and loans that are reportable under the regulation would be greatly expanded.

a. The current focus of collecting and reporting data based on the "purpose" of the loan – specifically, home purchase, home improvement, and refinancing would be revised.

b. Instead, HMDA data collection and reporting would be tied to the "type of collateral" securing a loan – that is, financial institutions would be required to collect and report data on all "dwelling-secured loans" (referred to under the proposal as "covered loans)." The term "covered loan" would include:

(1) Closed-end mortgage loans.

(2) Open-end lines of credit.

(3) Reverse mortgages.

(4) Business-purpose loans and lines of credit secured by a dwelling.

3. Expansion of reportable data. The items of information HMDA lenders must collect and report would be more than doubled.

a. Currently lenders collect and report 20 items of data.

Current HMDA Data Collected and Reported

Application/loan number	Application date
Loan type	Property type
Purpose of loan	Occupancy status
Loan amount	Preapproval status
Action taken	Action taken date
Property location	Purchaser type
Ethnicity	Rate spread
Race	HOEPA status
Sex	Lien status
Income	Denial reasons (required only for national banks and federal savings associations; others optional)

b. Dodd-Frank expanded the types of information to be collected and reported to include an additional 13 items of data.

New HMDA Data Required by the Reform Act

Age	Credit score
Application channel	Loan term
Loan originator unique identifier (NMLS ID)	Prepayment penalty term
Negative amortization	Property value
Property's parcel number	Term of introductory rate period
Rate spread for all loans	Universal loan identifier
Total origination points and fees	

c. Additional data required by CFPB. The Reform Act also gave the CFPB discretion to require other information it deems relevant.

Additional HMDA Data Proposed by CFPB

Interest rate (actual interest rate and non-discounted rate)	Debt-to-income (DTI) ratio
Manufactured home loan property interest (that is, whether borrower owns or leases the land)	Manufactured home legal classification (that is, real or personal property)
Number of dwelling units	Number of affordable housing multifamily dwelling units (income restricted units)
Reverse mortgage loan identifier	Automated underwriting system identifier
Ability to repay (ATR) or qualified mortgage identifier	Open-end line of credit identifier
"Lender credit" to reduce interest rate	Amount of first advance under line of credit

4. Quarterly reporting for large-volume HMDA lenders. Lenders that reported at least 75,000 reportable transactions in the prior year would be required to submit data within 60 days following each quarter end.

5. HMDA disclosure statements. Covered lenders would be permitted to refer requests for a copy of the lender's HMDA disclosure statement to the FFIEC website where the disclosure statement can be downloaded. Changes also have been proposed with respect to providing a modified loan application register.

VII. CANCELLATION OF PRIVATE MORTGAGE INSURANCE

A. Homeowners Protection Act of 1998 (HPA). The HPA requires servicers to cancel private mortgage insurance (PMI) upon a borrower's request and to automatically terminate PMI, each based on reaching specified loan-to-value ratios.

B. Applies to Residential Mortgages. HPA generally applies to residential mortgage transactions made on and after July 29, 1999. The CFPB issued Bulletin 2015-03 in August 2015 which points out that since HPA applies to residential mortgage loans consummated on or after July, 29, 1999, the final termination requirements began to impact standard 30-year loans in August 2014.

C. CFPB Bulletin 2015-03.

1. The CFPB bulletin outlined HPA requirements regarding:

a. Borrower-requested cancellation of PMI (80% LTV).

- Based on amortization schedule or on actual payments on the loan.
- Good payment history, current on payments and satisfies any requirements imposed by the holder of the loan (evidence of the property's current value, for example).

b. Automatic termination of PMI (78% LTV).

- Based on original property value and scheduled amortization.
- Current on loan payments or on first day of the first month beginning after the borrower brings the payments current.

c. Final termination of PMI (mid-point in amortization schedule).

- Provided borrower is current on the payments.

d. PMI refunds; and

e. Annual PMI disclosures.

2. The bulletin also provided examples from CFPB examinations of servicing practices that reflected noncompliance with HPA.

   a. The bulletin indicated that CFPB examiners identified violations of the "termination date" requirement in one or more examinations, both for borrowers who were current on the "termination date" and for borrowers who were delinquent on the "termination date" but later became current.

      (1) The termination date is the date on which the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the property securing the loan (irrespective of the outstanding balance for that mortgage on that date).

      (2) The CFPB encouraged servicers to be mindful that in contrast to the cancellation date, the termination date does not permit a mortgage holder to require evidence of the property's current value, nor is a servicer required to determine the actual principal balance based on actual payments. Rather, the automatic termination date is triggered when the mortgage is scheduled to reach a 78 percent LTV, provided that the borrower is current on payments.

   b. When a servicer collects unearned PMI premiums, the HPA requires the servicer to return such unearned premiums to the borrower no later than 45 days after the termination or cancellation of the borrower's PMI coverage. In one or more mortgage servicing examinations, CFPB examiners found instances of improper collection of unearned PMI premiums and excessive delays in processing borrower requests for PMI cancellation.

   c. Lenders or servicers that have any loans with PMI are reminded to ensure that appropriate policies and procedures are in place to comply with the final termination requirements.

VIII. CONCLUSION

Speaker Contact Information:

Janet M. Bonnefin
Principal
Aldrich & Bonnefin, PLC
18500 Von Karman Avenue, Suite 300
Irvine, California 92612
Bus: 949-474-1944
Email: **JBonnefin@ABLawyers.com**