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# SOURCE LINE

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## HFIAA ESCROW AND EXEMPTION UPDATE

The Homeowner Flood Insurance Affordability Act (HFIAA) was signed into law March 21, 2014, and the agencies issued their 190-page joint final rule on June 22, 2015. The most substantial change required by the act is the requirement of certain institutions to escrow flood insurance premiums for those loans required to maintain flood insurance.

Fortunately, as we've seen previously with Dodd-Frank mortgage reform, the agencies have carved out exceptions to the rule for smaller financial institutions.

### Escrow Requirements

Institutions must escrow mandatory flood insurance premiums in connection with any origination, refinance, increase, extension or renewal of a loan on or after January 1, 2016. These requirements apply to residential real estate and mobile home loans. Additionally, the rule requires escrow payments to be made at the same time and frequency as loan payments. The premium cannot be collected as a lump sum and deposited to an escrow account. For those loans subject to RESPA, existing escrow account limitations and administrative requirements remain in effect.

### Loan Exemptions

The escrow rule was designed primarily for consumer purpose transactions. The following types of loans are exempt from the escrow requirement:

- Loans primarily for business, commercial or agricultural purposes
- Subordinate liens
- Loans secured by residential RE/mobile home that is part of a condo, cooperative, homeowner association or other group that pays the premiums for the group
- HELOCs



- Loans with terms 12 months or less
- Nonperforming loans

### Effective Date

This escrow rule is effective January 1, 2016. RESPA's contemporary escrow requirement for escrow of flood insurance premiums will be in effect until December 31, 2015, after which point the HFIAA rule will be the prevailing regulation on the matter.

### Lender Exemptions

While similar to the Dodd-Frank exceptions for small lenders, the qualifiers for exemption from the flood escrow rule are different. Unless otherwise directed by state law, the escrow requirement does not pertain to banks that meet both the following two conditions:

- 1) Total assets of less than \$1 billion
- 2) As of July 6, 2012, (implementation date of Biggert-Waters) the bank was not required under state or federal law to escrow, and did not have a policy of uniformly and consistently escrowing for taxes and insurance

Additionally, if your financial institution is not exempt from the escrow requirements, then you must provide written notice of the flood

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# COMPLIANCE HELPLINE Q&A

## COMPLIANCE HELPLINE AVAILABLE TO CLIENTS

Clients appreciate our Compliance Helpline, which is staffed by compliance professionals who have an average of 18 years industry experience. These professionals respond to questions immediately, or within 24 hours if research is needed.

The Compliance Helpline can be reached Monday through Friday 8 a.m. – 5 p.m. at:

**855.239.8676**  
**compliancehelp@eidebailly.com**

**Is the Right to Receive a Copy of Appraisal notice required if we are relying on the appraisal previously obtained and are not taking a new mortgage?**

The Right to Receive a Copy of Appraisal notice is required for first-lien loans secured by a dwelling and must be provided within three business days of application. An appraisal or other written valuation can be an appraisal report (whether or not the appraiser is licensed or certified) including the appraiser's estimate of value or opinion of value, or a document your staff prepares that assigns value to the property. If a valuation is developed in connection with the application, then you must provide a copy to the applicant, even if you do not use

the valuation or you use it only for a limited purpose.

If you are relying on an existing appraisal or valuation, you are not required to provide the notice because a new appraisal or valuation was not developed in connection with this loan transaction. That said, if you later determine a new appraisal or valuation is required, you could be out of compliance since the notice was not provided within three business days of application. ■

*We recommend you refer to your specific state's statutes for requirements required in your state.*

## HFIAA—continued from page 1

insurance escrow option to your existing covered borrowers. If you are one of these institutions, be prepared to mail the written notice to covered borrowers on January 1, 2016. A sample notice can be found in Appendix B to the regulation.

## Detached Structure Exemption

The most anticipated portion of the act has been the detached structure exemption, but exercise caution when using the exemption. Make certain your evidence and reasoning for excluding the structure are well documented. Refer to staff commentary in the final rule for additional details on certain scenarios. The final rule allows a bank to exempt certain structures from flood insurance coverage. The structure(s) must meet two conditions:

- 1) Not be attached to any portion of the primary residential unit
- 2) The detached structure is not residential in nature

If the bank so chooses, it may exempt these structures from flood insurance coverage. This exemption exists for consumer, commercial and agricultural purpose loans. Common examples of exempt structures would be pole-barns, workshops and detached garages, provided these structures are for personal, family or household use. An example of a non-exempt structure would be a "mother-in-law" unit.

The detached structure exemption is formally effective across all agencies October 1, 2015. Some agencies may be using March 21, 2014, as an effective date as this was the day HFIAA was signed into law.

## Force-placement

Effective October 1, 2015, if during the life of the loan, the bank or servicer determines flood insurance coverage has lapsed or the loan has insufficient coverage, the bank must provide written notice to the borrower allowing them 45 days to obtain the insurance or correct coverage amount. If the borrower fails to obtain the requisite insurance within 45 days of notification, then the bank may purchase insurance effective the day of lapse or insufficiency. The bank may charge the borrower for the force-placed policy. If at any time the bank becomes aware that the borrower obtained the required coverage, they must refund the borrower any premiums effective when the policies overlapped. ■



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## UDAAP: STILL A TOP PRIORITY

As long as you provide products or services to consumers, UDAAP (Unfair, Deceptive, or Abusive Acts or Practices) will be cause for concern. Unlike most consumer protection regulations that specifically define how you are to comply, UDAAP is a principal. There is no single solution to ensure you won't fall victim to a UDAAP violation. This underlying principal requires you to deliver products or services that provide an overall benefit to the consumer audience for which it is intended.

### Defining 'Unfair'

The Dodd-Frank Act makes it unlawful for providers of consumer financial products or services to engage in unfair, deceptive, or abusive acts or practices. The act provides these standards for defining unfair:

- Causes or is likely to cause substantial injury, usually in the form of monetary harm.
- The consumer cannot avoid the injury. Examples include changing fees and terms after the product or service has been purchased without proper prior notification and an opportunity to cancel the product or service.

Whether or not a product or service is unfair depends on several things; public policy, statutes, regulations, judicial decisions, and/or regulatory agency determinations. The lack of precise definitions makes violations difficult to forecast.

### Defining 'Deceptive'

To help determine if a product or service is deceptive, the act provides these standards:

- Representation, omission, or practice is likely to mislead.
- Consumer's interpretation is reasonable under the circumstances.

The Federal Trade Commission (FTC) provides further guidance in determining whether a product or service is deceptive and likely to mislead. Ask these questions:

- Are disclosures prominent enough for consumers to notice?
- Is information presented in an easy-to-understand format?
- Is information placed in a location consumers are likely to look at or hear?
- Is qualifying information in close proximity to the claim being made?

### Steps to Take

Even though your organization has not experienced violations related to other, well-defined consumer regulations such as the Truth in Lending Act or the Truth in Savings Act, it does not ensure you won't encounter UDAAP violations. Taking these simple steps can help your organization avoid the financial, legal and reputation risk that often



accompanies a UDAAP violation.

- Carefully review all consumer communication—account disclosures, subsequent disclosures, account agreements, advertisements, etc. Do they say what you mean and mean what you practice?
- Review policies and procedures, particularly those related to loan servicing, incentive and bonus programs, and error resolution.
- Review consumer complaints.
- Review arrangements with third-party vendors, making sure you have a clear understanding of what your partnership with them means for your customers. ■



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## MEET RYAN CAPOUCH

Ryan is a financial institutions compliance associate and a relative newcomer to Eide Bailly, but he brings a wealth of knowledge and experience to his role. He has more than eight years of experience in banking and accounting, working with financial institutions of varying sizes. He has significant knowledge of many bank regulations, including Truth in Lending, Truth in Savings, Electronic Funds Transfer Act, the Equal Credit Opportunity Act and more.

At Eide Bailly, Ryan works with financial institutions to establish compliance programs and helps monitor bank's compliance programs on an ongoing basis, as well as provide training. He serves as a resource for bank employees who have regulatory questions or concerns, and assists clients with compliance risk assessments, as well as pre-exam regulatory requests. He also works closely with regulators during on-site examinations and completes ACH audits.



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*"The regulatory landscape is complex and ever-changing. When I'm able to help banks understand requirements and take a proactive approach to compliance, I feel good knowing I'm not just helping them now, I'm helping them create a successful future."* ■

## COMPLIANCE REMINDERS/DUE DATES

	Regulation	Description
Effective Date: Sept. 18, 2015	NACHA – Unauthorized Return Rate Threshold & Reinitiation of Entries	The rule will reduce the current return rate threshold for unauthorized debit entries (Return Reason codes R05, R07, R10, R29 and R51) from 1.0 percent to 0.5 percent.
		The new return rate for ACH debit entries returned due to administrative or account data errors will be 3 percent.
		The new return rate level for debit entries (excluding RCK entries) that are returned for any reason will be 15 percent.
		The rules also address new requirements regarding reinitiation of entries.
Effective Date: October 1, 2015 Compliance required by October 3, 2016	Department of Defense – Military Lending Act of 2006	The final rule extends the types of closed-end and open-end consumer credit products covered under the MLA to include those aligned with the definition of credit under Regulation Z and the Truth in Lending Act. The final rule still exempts residential mortgages and vehicle-secured purchase loans. There is also a temporary exemption for coverage of credit cards until October 3, 2017.
		The final rule modifies the process for a creditor in determining whether a consumer is a "covered borrower."
Effective Date: October 1, 2015	Regulation H - Flood Insurance	The rule also modifies the disclosures and implements the MLA enforcement provisions.
		As set forth in the final rule, a lender may charge a borrower beginning on the date that flood insurance lapsed (or was insufficient), or the date of notification to the borrower, whichever is later. A lender must terminate any force-placed insurance within 30 days of receipt of confirmation of sufficient existing coverage, and must refund to the borrower any premium and related fees charged during the overlapping coverage.
		Under the final rule, there is an exemption for flood insurance for detached structures that are part of a residential property, but are detached from the primary residential structure and do not serve as a residence.