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To: Clients and Friends

From: David F. Dulock

Subject: VA Final Rule - ARM Notification Requirements and Look-Back Period

Recall that in the January 29, 2015, issue of the *Federal Register* (80 FR 4812) the Department of Veterans Affairs (VA) published a proposed rule to amend its ARM regulations at 38 CFR 36.4312(d) that, as stated in the proposed rule’s preamble, “would align VA’s disclosure and interest rate adjustment requirements with the implementing regulations of the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). Specifically, the [proposed] rule would amend the timing, content, and format requirements for the disclosures provided to borrowers prior to an interest-rate adjustment. The proposed regulation would also require that an interest-rate adjustment correspond with the interest rate index available 45 days prior to the adjustment.” See the firm’s January 29, 2015 memorandum discussing this.

In the August 12, 2015, issue of the *Federal Register* (80 FR 48254, [click here](#)) the VA published a final rule adopting the proposed rule without change. The final rule is effective September 11, 2015, and amends §36.4312(d)(2) and (d)(6) to read as follows:

(2) Frequency of interest rate changes. Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 36 months from the date of the borrower’s first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (*i.e.*, base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of the note. For loans where the date of the note is before January 10, 2015, the current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment. For loans where the date of the note is on or after January 10, 2015, the current index figure shall be the most recent index figure available 45 days before the date of each interest rate adjustment.

(6) Disclosures. The lender must provide the borrower with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.20(c) and (d). A copy of these disclosures will be made a part of the lender’s permanent record on the loan.

Note: The above final rule changes to §36.4312(d)(2) and (d)(6) are underlined.

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