

To the Point!

legal, operations, and strategy briefs for financial institutions

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Qualified Mortgage Points and Fees Cure

The CFPB issued a final rule amending the Ability to Repay Rule contained in Regulation Z allowing lenders to cure loans where the points and fees exceed the 3% cap for Qualified Mortgages (the “*Final Rule*”). The cure provision is available for mortgage loans consummated on and after November 3, 2014.

Under the Final Rule, lenders have 210 days following loan consummation to make the refund necessary to reduce the points paid by the consumer to 3%. Lenders must include in the refund a payment of interest on the excessive amount at the contract rate from consummation until the refund is made. Lenders must also maintain policies and procedures for post-consummation review of points and fees, including procedures for refunding excessive fees.

If a lender also makes a cure payment under Regulation X because the points and fees exceed the Good Faith Estimate tolerance, the lender can offset that payment against the amount of the refund necessary to make the Qualified Mortgage excessive points and fees cure.

The lender loses the right to cure if, before the refund is made, the consumer provides notice that the points and fees exceed the limit, the consumer files any action in connection with the loan, or the loan becomes 60 days or more past due.

Lenders should assess their post-consummation review process to ensure that mortgage loans are reviewed for compliance with the points and fees limitations, the review includes a process for calculating and refunding excessive points and fees, and the review occurs within a time frame after consummation sufficient to allow the lender to make a timely refund if required.



Posting Privacy Notices Online

The CFPB has issued a final rule that provides relief from the requirement to provide an annual privacy notice to customers in writing, effective as of October 28, 2014 (the “*Rule*”). Under the Rule, a financial institution regulated by the CFPB is not required to provide an annual written notice if:

- the financial institution does not share the customer’s nonpublic personal information with nonaffiliated third parties in a manner that triggers opt-out rights under the Gramm-Leach-Bliley Act;
- the financial institution does not include on its annual privacy notice an opt-out notice from information sharing with the financial institution’s affiliates under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (the “*FCRA*”);
- the financial institution’s annual privacy notice is not the only notice provided to satisfy the affiliate marketing opt-out requirements under section 624 of the FCRA; and
- the information included in the privacy notice has not changed since the customer received the previous notice.

If due to the financial institution’s limited information-sharing practices it is eligible to substitute the online privacy notice for the annual written notice, the financial institution must:

- use the model form provided in Regulation P;

- ensure that customers have access to the privacy notice without requiring a log-in or similar steps; and
- include a clear and conspicuous statement at least once per year on a notice or disclosure the financial institution issues under any other provision of law (e.g., an account statement or coupon book) announcing that the annual privacy notice has not changed, is available on the financial institution's website, and will be mailed within 10 days to customers who request it by calling a toll-free number.

Since the Rule applies only if the financial institution does not share information with third parties except as permitted without opt-out (i.e., sharing with third-party service providers, pursuant to joint marketing arrangements, for purposes of maintaining and servicing accounts, securitizations and reporting to consumer reporting agencies), the Rule may incentivize some financial institutions to review and perhaps limit their information sharing.

The CFPB asserts that the Rule will reduce costs for financial institutions by about \$17 million annually and assist consumers by providing access at any time to the privacy notices posted on the financial institution's website.



National Survey of Unbanked and Underbanked Households

The FDIC recently released its 2013 National Survey of Unbanked and Underbanked Households. The survey found that there was a decline in the number of unbanked households from 8.2% in 2011 to 7.7% in 2013. The survey also found that 20% of U.S. households were underbanked, meaning they had a bank account but also used alternative financial services such as payday loans, auto title loans, or check-cashing services.

While the survey focuses on unbanked and underbanked households, it also includes information on U.S. households' use of financial services generally, including ownership of checking and savings accounts, use of prepaid debit cards and alternative financial services, access to mobile phones and the Internet, and methods used to access bank accounts. Of note, the unbanked and underbanked were identified as the majority (55%) of prepaid card users. Twenty-five percent of all households used alternative financial service providers primarily for transaction products, not credit products; 32% of the underbanked favored mobile banking as their banking method over 21% of banked households.

The FDIC identified initiatives for consideration by financial institutions that could help meet consumers' needs for financial services, including developing low-cost safe transaction accounts that meet the specifications of the FDIC Model Safe Accounts Template (available at <https://www.fdic.gov/consumers/template/template.pdf>) and expanding mobile banking technologies to reach unbanked and underbanked households that value anytime, anywhere convenience.

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