

To the Point!

legal, operations, and strategy briefs for financial institutions

May 30, 2013



CFPB Amends Regulation Z to Help Enable Stay-at-Home Spouses/Partners to Qualify for Credit Cards

When evaluating an applicant for a new credit card account or an increased credit limit, credit card issuers are now permitted to consider income or assets that an applicant who is 21 or older shares with a spouse or partner, if the applicant has a “reasonable expectation of access” to such income or assets. A creditor may determine an applicant has a reasonable expectation of access if the applicant’s spouse or partner:

- Deposits their salary into a joint account shared with the applicant;
- Regularly transfers a portion of their income to the applicant’s account; or
- Uses a portion of their income to pay for the applicant’s expenses.

In making this change, the CFPB determined that the Federal Reserve Board incorrectly interpreted the requirements of the Credit Card Accountability Responsibility and Disclosure Act (“CARD Act”) when it applied the independent ability-to-pay requirement to all applicants regardless of age, and as a result stay-at-home spouses/partners were experiencing difficulty qualifying for credit.

Please note that the rule does not *require* card issuers to consider income or assets to which the applicant has a reasonable expectation of access, but they may do so, at their option.



Federal Reserve Board issues Guidance on Mortgage Collection, Loss Mitigation and Foreclosures

The Federal Reserve Board (“Board”) recently issued guidance on handling mortgage files that are subject to an imminent scheduled foreclosure sale (i.e., within 60 days). The guidance is effective now, prior to the January 2014 effective date of the CFPB mortgage servicing rules, and follows the requirements of the mortgage loan servicing and processing consent orders. The guidance applies to state member

banks, bank and savings and loan holding companies and their non-bank subsidiaries, and U.S. branches and agencies of foreign banking organizations that service mortgage loans.

The guidance contains a 13-part minimum pre-foreclosure review standard. If a servicer identifies an exception to any of the items contained in the review standard, the servicer should postpone, suspend or cancel the foreclosure sale until the minimum standards have been met.

The Board’s stated purpose of the guidance is to ensure that borrowers will not lose their homes without their mortgage files first receiving a pre-foreclosure sale review that meets the minimum standards set forth in the guidance. If a servicer has more stringent standards, it should continue to comply with those standards pending the effective date of the CFPB mortgage servicing rules. Finally, the Board expects the financial institutions it regulates to immediately confirm that their servicing standards comply with these minimum standards.



CFPB Amends Regulation Z Ability-to-Repay Rule

The CFPB has amended the Ability-to-Repay (“ATR”) rule to facilitate lending by small creditors, exempt certain lenders from the ability-to-repay requirements, and establish exceptions to the requirement that loan originator compensation be included in the total permissible points and fees for a qualified mortgage.

In what the CFPB said was recognizing the unique challenges faced by “small creditors” (as defined in the final ATR rule issued January 10, 2013) in the mortgage market, the CFPB increased the threshold for qualified mortgages originated by small creditors from 1.5 percent above the average prime offer rate (“APOR”) to 3.5 percent above APOR for first-lien loans. As a result, first-lien loans originated by small creditors up to 3.5 percent above APOR will not be considered high-cost mortgages subject to a rebuttable presumption of compliance with ATR requirements, but will instead fall within the safe harbor for qualified mortgages. In addition, the CFPB extended qualified mortgage status to certain loans held in portfolio by small creditors for at least three years, regardless of whether such loans meet the 43 percent limit on monthly debt-to-income ratio. Note, such loans will remain subject to the other ATR requirements applicable to qualified mortgages. The amended rule establishes a two-year transition period during which small creditors can originate balloon loans that will meet the definition of a qualified mortgage, subject to certain conditions.

The amendment also provides an exemption from the ATR requirements for certain types of lenders, including: (i) nonprofit organizations that extend credit no more than 200 times a year and only to low- and moderate-income borrowers; (ii) lenders designated by HUD as either a Community Housing Development Organization or Down-payment Assistance Provider of Secondary Financing; and (iii) credit extended pursuant to a program administered by a housing finance agency, a State Hardest Hit Fund program, or an Emergency Economic Stabilization Act program.

Finally, the amendment modified the rules regarding inclusion of loan originator compensation in the total points and fees by excluding: (i) compensation paid by consumers to mortgage brokers (where such payments have already been included as part of the finance charge); (ii) compensation paid by a lender to its loan originator employees; and (iii) compensation paid by a mortgage broker to its loan originator employee. Any origination charges paid by a consumer to the lender, and compensation paid by the lender to a mortgage broker continue to be counted toward the total permissible points and fees.

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