

To the Point!

legal, operations, and strategy briefs for financial institutions

May 13, 2014



Proposed Amendments to Mortgage Rules

On May 6 the CFPB published proposed amendments to its Regulation Z Mortgage Rules (the “Proposal”). The Proposal will permit a creditor that in good faith believed it had originated a qualified mortgage (“QM”) but later learns that the loan exceeds the applicable limit on points and fees to refund excess fees to the borrower and retain the loan’s QM status. The creditor must make the refund no later than 120 days following closing and must have policies and procedures designed both to ensure that the point and fee calculation is correct and for post-consummation review of its calculation. In addition, the points and fees charged must be consistent with those of other loans closed at the same time.

The CFPB requested comment on whether creditors are using a buffer to insure compliance with the 43% debt-to-income ratio requirement for QMs, which could affect access to credit. If so, the CFPB questioned whether it should consider providing a similar correction provision for errors in calculating this ratio.

The Proposal also includes changes to address concerns about exemptions from compliance with the mortgage servicing rules and the ability-to-repay rule for certain nonprofit housing providers.

Creditors have 30 days to comment on the Proposal.



CFPB Fair Lending Report

The CFPB issued its second report to Congress on the agency’s initiatives to promote fair lending compliance and enforce federal fair lending laws. The report emphasized the agency’s risk-based prioritization process for use of its fair lending research, supervision and enforcement resources. The following factors were identified in the report: (i) complaints and tips; (ii) prior supervisory and enforcement history; (iii) quality of the institution’s compliance management systems; (iv) evaluation of developments at the institution and its market levels to gauge its risk to consumers; (v) information from the Bureau’s Markets Offices (Mortgage Markets; Card Markets; Installment and Liquidity Lending Markets; and Credit Information, Collection and Deposit Markets).

The report also provided additional guidance on the CFPB’s review of the quality of an institution’s fair lending compliance program. The report identified mortgage lending, indirect auto finance and unsecured consumer lending as current consumer financial service product priorities. Financial institutions should use this insight in analyzing their likelihood of becoming subject to CFPB fair lending scrutiny.



Update on City of Chicago Vacant Property Ordinance

The City of Chicago and the Federal Housing Finance Agency have entered into a Memorandum of Understanding (“*MOU*”) to settle litigation regarding the application of the City of Chicago Vacant Property Ordinance (the “*Ordinance*”) to properties where either Fannie Mae or Freddie Mac is the mortgagee. The Ordinance imposes registration fees, fines, penalties and maintenance obligations associated with vacant properties located within the City of Chicago. Fannie Mae and Freddie Mac issued Lender Letters advising servicers of the terms of the MOU, which are effective on May 12, 2014. Under the MOU, servicers are required to register vacant properties but are not required to pay any fees associated with the registration or any fees or penalties for failure to comply with the maintenance provisions of the Ordinance. The Lender Letters include a process for servicers to object to any new amounts levied against servicers

related to enforcement of the Ordinance and a process for servicers to submit a claim for fees and penalties previously paid to the City of Chicago.

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