

Client Alert

Antitrust & Litigation Practice Group

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CFPB Amends Rules Governing Mortgages and Mortgage Servicers

The Consumer Financial Protection Bureau (CFPB) began the new year by continuing to refine Regulation Z, which implements the Truth in Lending Act, and Regulation X, which implements the Real Estate Settlement Procedures Act.

On January 10, 2013, the CFPB amended Regulation Z to implement laws requiring mortgage lenders to make a reasonable, good faith determination of a consumer's ability to repay a credit transaction secured by a dwelling. The announcement and rules are available here:

<http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>.

The amendment to Regulation Z will become effective on January 10, 2014 and mandates that when creditors make ability-to-repay determinations, they must consider at least the following eight underwriting factors:

- current or reasonably expected income or assets;
- current employment status;
- the monthly payment on the covered transaction;
- the monthly payment on any simultaneous loan;
- the monthly payment for mortgage-related obligations;
- current debt obligations, alimony, and child support;
- the monthly debt-to-income ratio or residual income; and
- credit history.

The new rule provides specific guidance on how these eight factors are to be applied. Mortgages that meet certain product-feature prerequisites and affordability underwriting requirements will be deemed to be "qualified mortgages" and will be eligible for greater regulatory deference. There is a safe harbor for loans that satisfy the "qualified mortgage" definition but are not "higher-priced." For "higher-priced" mortgage loans that otherwise meet the "qualified mortgage" requirements, the rule provides a rebuttable presumption of compliance.

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In addition, on January 17, 2013, the CFPB amended Regulations X and Z in a further effort to standardize and reform the mortgage servicing industry. The changes draw from the DOJ Servicing Standards that major servicers committed to follow in order to resolve allegations by the Department of Justice and most State Attorneys General in the National Mortgage Settlement in April 2012.

The January 17, 2013 changes will become effective on January 17, 2014 and address the following components of the servicing process:

- periodic billing statements;
- interest-rate adjustment notices for ARMs;
- prompt payment crediting and payoff statements;
- force-placed insurance;
- error resolution and information requests;
- general servicing policies, procedures, and requirements;
- early intervention with delinquent borrowers;
- continuity of contact with delinquent borrowers; and
- loss mitigation procedures.

The CFPB's announcement is available here: <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>. A summary of the changes is available here: http://files.consumerfinance.gov/f/201301_cfpb_servicing-rules_summary.pdf.

Although these rule changes will not go into effect until 2014, implementation efforts should begin now in light of the CFPB's messaging that it will be a strong enforcement authority, the volume of loan activity, and the complexity of servicing platforms. Moreover, industry participants should ensure they understand how the changes relate to and interact with other applicable requirements, including for many servicers the servicing standards required by the National Mortgage Settlement.

If you have any further questions, please contact the authors.

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