



CFPB Issues Proposed Rules Amending Regulations X and Z To Clarify Earlier Dodd-Frank Amendments

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On Thursday, May 2, the Consumer Financial Protection Bureau (the "Bureau") published proposed rules and a request for public comment in the *Federal Register* to amend certain of its final mortgage rules contained in Regulation X (Real Estate Settlement Procedures) and Regulation Z (Truth in Lending), and to make certain corrections to these rules.

On January 30, 2013, the Bureau published final rules in the *Federal Register* with respect to the "ability-to-repay" and "qualified mortgage" standards (see this publication of January 29, 2013); and on February 14, 2013, the Bureau published final rules in the *Federal Register* amending Regulations X and Z with respect to mortgage servicing requirements (see this publication of February 25, 2013).

In addition to making several technical and editorial changes, the Bureau's proposed rules would amend these final rules in the following four main areas:

1. Relation to State Law. The proposed rules clarify that the servicing rules in the Real Estate Settlement Procedures Act and Regulation X do not "occupy the field," and that state laws on mortgage servicers and mortgage servicing that provide more protection to the consumer will not be preempted.

2. Small Servicer Exemption. There is an exemption, in several provisions of the final rules applicable to Regulations X and Z, for "small servicers." The status of "small servicer" is for the most part determined with reference to the number of loans serviced by the servicer. As currently written, it may be unclear what type of loan is to be considered for these purposes. The proposed rules clarify that, in general, mortgage loans considered in determining qualification for the small servicer exemption are closed-end consumer credit transactions secured by a dwelling. Reverse mortgages, mortgage loans voluntarily serviced for an unaffiliated entity for no remuneration, and mortgage loans secured by an interest in a timeshare would not count toward the number of loans serviced.

3. Qualified Mortgages. The proposed rules clarify the extent to which a creditor may rely on the purchase, guaranty and insurance requirements of the government-sponsored enterprises ("GSEs") and the U.S. Department of Housing and Urban Development, the Veterans Administration, the U.S. Department of Agriculture and the Rural Housing Service (collectively, with the GSEs, the "Agencies") for determining "qualified mortgage" status. These requirements are usually set forth in written guides or automated underwriting systems. The proposed rules provide that the creditor is not required to rely on such requirements that are wholly unrelated to assessing the consumer's ability to repay the loan. Nevertheless, a creditor that is relying on approval through an automated underwriting system to establish "qualified mortgage" status must also comply with all conditions of approval required by the system. The proposed rules also provide that a loan that meets the eligibility requirements set forth in an agreement with one of the Agencies is also eligible for purchase or guaranty by the GSEs or guaranteed or insured by the other Agencies, and may therefore be a "qualified mortgage." Finally, the proposed rules provide that a repurchase or indemnification demand by one of the Agencies does not in itself determine a loan's status as a "qualified mortgage."

4. Determination of Debt and Income. The Bureau is proposing to amend Appendix Q to Regulation Z by providing guidance to creditors when determining an applicant's debt-to-income ratio, one of the main considerations for "qualified mortgage" status.

The comment period ends June 3, 2013.

Lenders and servicers may comment, and should do so if they think that these changes, or the specifics of the implementation of these changes as published in the notice, will have an adverse effect on their businesses. Comments must be identified by Docket Number CFPB-2013-0010, or RIN 3170-AA37. The options available for sending the comments are set forth in the notice, which is published in the *Federal Register* of May 2, 2013 (Volume 78, No. 85) at page 25638.

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