



Proposed Rules Published on Dodd-Frank Requirements for HOEPA Loans

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On August 15, 2012, the Bureau of Consumer Financial Protection (the “Bureau”) issued a proposed rule and request for public comment on changes to its Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures Act) to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) with respect to mortgage loans subject to the Home Ownership and Equity Protection Act of 1994 (“HOEPA”). The final rule would modify the above regulations in two ways:

1. Expansion of Coverage under HOEPA. Loans covered by HOEPA are subject to special disclosure requirements and substantive restrictions on loan terms. Borrowers under these loans are also given enhanced remedies for violations of the statute. Prior to the effective date of these provisions of the Act, HOEPA applied generally to closed-end consumer mortgages, excluding purchase money mortgages and reverse mortgages. Coverage was triggered where the loan’s APR exceeded a certain threshold, or where points and fees on the loan exceeded 8% of the total loan amount or a dollar threshold.

Under the Act, HOEPA protections would apply to more types of loans, including purchase money mortgages and home-equity lines of credit. In addition, the high-cost triggers have been enhanced. HOEPA protections would be triggered where (i) the loan’s APR exceeds the average prime offer rate by 6.5% for most first-lien loans and 8.5% for subordinate lien loans, (ii) the loan’s points and fees exceed 5% of the total transaction amount (or a greater threshold for loans of under \$20,000), or (iii) the lender may charge a prepayment penalty of more than 2% of the amount prepaid, or a prepayment penalty may be imposed more than 36 months after closing.

2. Additional Restrictions on Loans. Under the revised regulations, loans subject to HOEPA would have to meet the following additional requirements:

- Balloon payments would be prohibited for the most part.
- Prepayment penalties and the financing of points and fees would be prohibited.
- Late fees would be restricted to 4%.
- Fees for providing payoff statements would be restricted.

- Fees for loan modification or loan deferral would be prohibited.
- Lenders under open-end credit plans would be required to assess the borrower's ability to repay.
- Lenders and mortgage brokers would be prohibited from encouraging borrowers to default on debts to be refinanced with a high-cost mortgage.

In addition to the above HOEPA-related modifications, the proposed rule would amend Regulations Z and X to implement the following two provisions of the Act with respect to homeownership counseling:

- Regulation X would be amended to require lenders to provide a list of federally certified or approved homeownership counselors or organizations to consumer borrowers within 3 business days of applying for any mortgage loan.
- Regulation Z would be amended to require lenders to obtain a confirmation that a first-time consumer borrower has received homeownership counseling from a federally certified or approved homeownership counselor or organization, before the lender makes a negatively amortizing loan to the borrower.

Comments on the proposed rule must be submitted by September 7, 2012. Comments must be identified by Docket No. CFPB-2012-0029 or RIN 3170-AA12, and may be sent by any of the methods set forth in the notice, which is published in the *Federal Register* of August 15, 2012 (Volume 77, No. 158) at page 49090.

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