Proposed Rules Published on Dodd-Frank Requirements for Appraisals for Higher-Risk Mortgage Loans

10.01.2012

BY: EDMUND D. HARLLEE

On Wednesday, September 5, 2012, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, National Credit Union Administration, Bureau of Consumer Financial Protection (the "Bureau") and Federal Housing Finance Agency (collectively, the "Agencies") issued proposed rules and a request for public comment on changes to Regulation Z (Truth in Lending) to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") with respect to appraisals for "higher-risk mortgages."

The Act generally defines a "higher-risk mortgage" as a closed-end consumer transaction secured by a principal dwelling, and having an annual percentage rate (or "APR") of 1.5% above the average prime offer rate (or "APOR") for first-lien loans, 2.5% above the APOR for first-lien jumbo loans and 3.5% above the APOR for junior-lien loans. "Qualified mortgages" under the Act, which will be defined when the Bureau issues rules implementing the "ability-to-pay" requirements of the Act, reverse mortgages and manufactured homes would be excluded from the definition of "higher-risk mortgages" under the proposed rules.

The proposal would allow a creditor to make a "higher-risk mortgage" only if the following conditions are satisfied:

- The creditor obtains a written appraisal.
- The appraisal is performed by a certified or licensed appraiser.
- The appraiser conducts a physical property visit of the interior of the property.
- At application, the applicant is provided with a statement containing information on appraisals, and the applicant's rights to obtain a copy of the appraisal and to obtain a second appraisal at the applicant's cost.
- The applicant is provided with a free copy of the appraisal at least 3 business days before closing.

In addition, if (i) the mortgage is a purchase-money loan for the consumer's principal dwelling, (ii) the property is being purchased from a seller who acquired the property within 180 days prior to the consumer's purchase of the property, and (iii) the consumer is paying more for the home than the seller did, the creditor must obtain, at no charge to the consumer, an additional written appraisal. The proposed rules contain content requirements for this additional appraisal.

The Federal Register notice also contains a request for comment on a proposed method of calculating the APR on certain mortgage loans. Under the proposal, which has also been published in the Bureau's notice regarding the integration of mortgage disclosures, more types of charges would be considered "finance charges" under Regulation Z. Since an APR is the finance charge figure expressed as a percentage, the more fees that are included, the higher the finance charge number, and the higher the corresponding APR figure. This is worth noting, because one result will be that a loan that would not ordinarily be considered a "higher-risk mortgage" would now be considered one if the APR has increased above the rate floors noted above. "Higher-risk mortgages" are generally more heavily regulated, and contain more consumer protections, than other mortgages.

Comments on the proposed rules must be submitted by October 15, 2012. Comments must be identified by the Docket Number or RIN applicable to the Agency to which the comments are to be sent. These numbers, and the options available for sending the comments, are set forth in the notice, which is published in the Federal Register of September 5, 2012 (Volume 77, No. 172) at pages 54722 and 54723.

If you have any questions about the information in this alert, please contact Ed Harllee at eharllee@williamsmullen.com.

Related People

- Edmund D. "Ed" Harllee – 703.760.5208 – eharllee@williamsmullen.com

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