

CFPB Eases Some of the Requirements Under the Dodd-Frank Act Mortgage Rules

November 3, 2014

The Consumer Financial Protection Bureau (“CFPB”) has issued a final rule easing some of the requirements on creditors under the Dodd-Frank Act mortgage rules. The most significant change for most creditors is the addition of a right to cure a mortgage loan that fails to meet the requirements of a “qualified mortgage” due to its total points and fees exceeding the applicable threshold.

Other changes under the final rule are the addition of an alternative definition of small servicer for nonprofit entities that meet certain requirements, and an amendment to the existing exemption from the ability-to-repay/qualified mortgage rule (“ATR/QM Rule”) for nonprofit entities that meet certain requirements.

These amendments address certain issues that have developed under the Dodd-Frank mortgage rules since those rules became effective earlier this year. A summary of the amendments is set forth below.

Cure for Excessive Fees and Points

In order for a creditor to meet the requirements of a qualified mortgage under the ATR/QM Rule, the points and fees charged on a loan may not exceed certain limits. In response to concerns that some creditors and secondary market participants may be avoiding loans that are near the qualified mortgage limit on points and fees out of fear that the limit may be inadvertently exceeded at the time of consummation, the CFPB has provided creditors with an opportunity to cure excess points and fees after consummation in certain circumstances.

Under the amendments, if a creditor or assignee discovers after the loan has closed that it has exceeded the points and fees cap, the creditor or assignee may refund the excess amount to the consumer as long as: (i) the loan otherwise meets the applicable requirements for a qualified mortgage, (ii) the creditor or assignee refunds to the consumer the dollar amount by which the points and fees exceeded the applicable limit (plus interest) within 210 days after consummation and prior to the consumer instituting an action in connection with the loan, the receipt by the creditor, assignee, or servicer of written notice from the consumer that the total points and fees exceeded the applicable limit, or the consumer being 60 days past due on the loan, and (iii) the creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of points and fees and for refunding to consumers amounts that exceed the applicable points and fees limit. This cure will only be available for transactions consummated on or after November 3, 2014, and through a sunset date of January 10, 2021.

Defining Nonprofit Small Servicers

Small servicers that meet certain requirements are already exempt from certain mortgage servicing requirements under the Dodd-Frank Act mortgage rules. However, certain nonprofit entities would not qualify as a small servicer because they serve, for a fee, loans on behalf of an entity that is not an affiliate. This caused concern that if nonprofit servicers were subject to all of the servicing rules, that low- and moderate-income consumers may face increased costs or reduced access to credit.

In response, this final rule revises the scope of the small servicer exemption to include nonprofit entities that service 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor.

Expansion of Nonprofit Exemption from ATR/QM Rule

The current exemption for nonprofit entities under the ATR/QM Rule exempts entities that make no more than 200 mortgages a year. This raised concerns that nonprofit entities would generally limit their lending activities to avoid exceeding the 200-credit extension limit. In response, the final rule amends the nonprofit exemption to exclude certain deferred or contingent, interest-free subordinate liens from the 200-credit extension limit.

These changes made by the final rule are effective as of November 3, 2014, and apply to transactions consummated on or after that date. If you have any questions regarding the final rule or the Dodd-Frank Act mortgage rules in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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