Cullen | Dykman

CFPB Updates Guidance on Housing Counselor Requirements

April 21, 2015

The Consumer Financial Protection Bureau ("CFPB") has issued a final interpretive rule ("2015 Rule") on the requirement to provide mortgage applicants with a list of local homeownership counseling organizations. The 2015 Rule restates prior guidance and provides further guidance for lenders that want to build their own lists of housing counselors. It also includes guidance on the qualifications for providing high-cost mortgage counseling and for lender participation in such counseling. The rule is effective on April 21, 2015.

The Dodd-Frank Act and the CFPB's Regulation X require lenders to provide consumer mortgage loan applicants with a written list of homeownership counseling organizations that provide relevant services in the loan applicant's location. The list must be provided within three days of receipt of the mortgage application and can be obtained in one of two ways: (i) by using a CFPB-developed list, available through a tool on the agency's website, or (ii) by generating a list using approved data from the U.S. Department of Housing and Urban Development ("HUD"). The CFPB issued guidance in November 2013 which described data instructions for lenders choosing to generate their own list. That guidance has been updated by this 2015 Rule.

The 2015 Rule provides the following updated guidance with regard to the housing counselor list requirement:

- In situations where the applicant's current address does not include a five-digit zip code, most likely because the applicant currently lives overseas, the lender is permitted to use the five-digit zip code of the property securing the mortgage to generate the list.
- If an applicant's current and mailing addresses are different, the lender will comply with the housing counselor list requirement if it generates the list using the mailing address instead of the current address.
- A lender creating its own list is not required to use the same geolocator or geocoding system as the CFPB, so long as the results are generated in accordance with Regulation X and accompanying guidance.
- Although Regulation X only addresses combining this housing counselor list with other mortgage loan disclosures required under Regulations X and Z, lenders are also permitted to combine this list with other mortgage loan disclosures, unless otherwise prohibited.

Lastly, the 2015 Rule clarifies the qualifications necessary to provide counseling regarding high-cost mortgages, and provides guidance on the issue of lender participation in the counseling. Regulation Z prohibits a lender from extending a high-cost mortgage to a consumer unless the lender receives a written certification that the consumer has received counseling on the advisability of the mortgage. The 2015 Rule advises lenders that HUD-approved counselors are qualified to provide the counseling required for high-cost mortgages, as long as HUD does not limit the current scope of counseling and all necessary topics under Regulation Z are covered during

such counseling.

The 2015 Rule further provides that a lender who insists on participating or listening in to a counseling call or session may be in violation of the anti-steering provision of the counseling requirement set forth in Regulation Z if such behavior results in a consumer's selection of a particular counselor. Lenders can comply with this anti-steering provision by allowing the counselor to request that the lender not participate or listen in on the call.

The complete 2015 Rule can be found online here. As noted above, the rule is effective on April 21, 2015.

If you have any questions regarding this guidance or homeownership counseling requirements in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenllp.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenllp.com.

Practices

Industries

- Real Estate
- Financial Institutions

Attorneys

- Joseph D. Simon