



July 8, 2013

CFPB Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Reg B), Real Estate Settlement Procedures Act (Reg X), and the Truth in Lending Act (Reg Z)

Executive Summary

- The Bureau is proposing to change the effective date of certain portions of the final mortgage loan originator compensation rule from January 10, 2014 to January 1, 2014. Specifically, the record retention, definitions, scope, compensation, anti-steering, qualifications, and compliance policies and procedures sections of the final rule would be subject to the new effective date.
- CUNA will be filing a detailed comment letter and urges credit unions to weigh in with us so we can address your concerns in our letter. Meanwhile, this Comment Call notes a few areas that we will be addressing specifically and your input on them is welcome as well.
- The proposal outlines procedures for mortgage servicers to follow in instances in which a servicer conducts an initial review of a loss mitigation application and sends a notice to the borrower, and subsequently finds that it, the servicer, does not have the information needed to complete the assessment.
- The proposal would make it easier for servicers to offer short-term forbearance plans for delinquent borrowers without going through a full loss mitigation evaluation process.
- The proposal would allow small creditors that do not operate predominantly in rural or underserved counties to make high-cost mortgages with balloon payments as long as the loans meet certain restrictions.
- The proposal would also revise an exemption from a requirement to maintain an escrow account for certain higher-priced mortgage loans for small creditors that operate predominantly in rural or underserved areas that also meet other criteria. To prevent creditors from losing eligibility for the exemption, the proposal would extend availability to small creditors that qualified in any of the previous 3 calendar years. CUNA plans to raise concerns that credit unions be eligible for such an exemption even if they don't operate in predominantly rural or

underserved areas if the mortgage loan is for an individual in one of those areas or is a lower income borrower, based on local income levels.

- The proposal clarifies what constitutes financing of credit insurance premiums by a creditor, and provides guidance on when credit insurance premiums are calculated and paid on a monthly basis for purposes of an exclusion from the statutory prohibition on financing of credit insurance premiums.
- The proposal is seeking comment on whether to adjust the effective date on the ban on financing credit insurance premiums from the current effective date of January 10, 2014.
- The proposal clarifies the definition of loan originator for purposes of the mortgage loan originator final rule.
- The proposal would clarify the points and fees thresholds for manufactured housing employees under the CFPB's Ability-to-Repay final rule.
- The proposal provides clarification on the definition of "valuation" under Regulation B.

Comments are due to the CFPB on **July 22, 2013** and may be filed directly with www.regulations.gov, identified by docket number CFPB-2013-0018 or RIN 3170-AA37. Comments may also be mailed or hand delivered to Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G. Street, NW, Washington, D.C. 20552. **Please submit comments to CUNA by July 18, 2013.**

For more information about this proposed rule, contact CUNA Deputy General Counsel [Mary Dunn](#) or Associate General Counsel [Jared Ihrig](#).

Click [here](#) for the proposal.

Detailed Summary

Effective Dates:

Except for the amendments regarding the mortgage loan originator compensation final rule and the escrows final rule discussed further below, the CFPB is proposing an effective date of January 10, 2014 for each of the provisions contained within the proposed rule. However, the CFPB is seeking comment on this proposed effective date, including on any suggested alternatives.

For the escrows rule, the CFPB is proposing to amend section 1026.35(b)(2)(iii)(A), which provides an exemption from the higher-priced mortgage loan (HPML) escrow requirement for creditors that extend more than 50% of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar

year, meet other small creditor criteria, and don't escrow loans serviced by themselves or an affiliate. The proposed amendment would prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of the changes the CFPB has made to the recently finalized list of counties which meet the definition of "rural." This amendment would allow creditors to qualify for the exemption if they qualified for any of the previous 3 calendar years. Additionally, the CFPB is proposing to amend section 1026.35(b)(2)(iii)(D)(1) to prevent creditors that were previously ineligible for the exemption, but now qualify in light of the proposed changes, from losing eligibility because they had established escrow accounts for HPMLs (for which applications were received after June 1, 2013), as required when the rule took effect and prior to the proposed amendments taking effect. Because the exemption applies based on a calendar year, the CFPB is proposing an effective date of January 1, 2014 for these two provisions, and is seeking comments on this date.

For the mortgage loan originator compensation rule, the CFPB is proposing a January 1, 2014 effective date of the rule for the following sections, regardless of when the application was received: 1026.36(a) – Definitions; 1026.36(b) – Scope; 1026.36(e) – Anti-Steering provisions; 1026.36(f) – Loan Originator Qualification Requirements; 1026.36(j) – Compliance Policies and Procedures for Depository Institutions;; and 1026.25(c)(2), which addresses specific record retention requirements.

Additionally, for section 1026.36(d), the CFPB has proposed an effective date of January 1, 2014. This section includes prohibitions against compensation paid on loan terms or a proxy for loan terms, and contains exceptions for contributions to tax-advantaged plans and payments under non-deferred profit-based compensation plans, and also contains a prohibition against dual compensation. With the exception of section 1026.36(d)(1)(iii) discussed below, these provisions would apply to transactions that are consummated, and for which the creditor or loan originator organization paid compensation on or after January 1, 2014. The date the application was received would not matter. The CFPB rationalizes that for purposes of compensation under non-deferred profit-based compensation plans, all transactions consummated in 2014 could be considered for paying compensation based on such a plan, even if the application was received in 2013. Additionally, the CFPB believes that this change would provide a cleaner transition period that more closely aligns with changes to employers' annual compensation structures and registration, licensing, and training requirements.

Section 1026.36(d)(1)(iii) dealing with contributions to tax-advantaged plans discussed briefly above, would apply to transactions for which the creditor or loan originator organization paid compensation on or after January 1, 2014, regardless of when the transactions were consummated or the applications were received.

The Bureau is seeking comment on the effective date of section 1026.36(i), dealing with the prohibition of financing credit insurance premiums. Currently, the effective date of this provision is January 10, 2014, as urged by CUNA, from the initial effective date of June 1, 2013. The CFPB requests comments on whether the effective date for this provision of the rule may be set earlier than January 10, 2014, and still permit time for creditors to adjust credit insurance premium practices, as may be required after a rule is finalized on this provision.

Credit Insurance Financing Prohibition Revisions

The CFPB is proposing to clarify and revise two aspects of the Dodd-Frank Act prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. First, the CFPB is proposing to add new section 1026.36(i)(2)(ii) to clarify what constitutes financing of such premiums by a creditor. Second, the CFPB is proposing to add new section 1026.36(i)(2)(iii) to clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis, for purposes of the statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements.

CUNA has actively advocated surrounding this particular provision of the final mortgage loan originator compensation final rule, and the CFPB has delayed the original June 1, 2013 effective date until January 10, 2014, in response to our concerns. .

The CFPB is also proposing to amend section 1026.36(i) to clarify the scope of the prohibition, which may be problematic for credit unions and we urge you to let us know your reaction.

Specifically, the CFPB is proposing to strike the “single-premium” from the heading of section 1026.36(i). This means that if adopted as proposed, the addition of any credit-related insurance premium to the loan balance would be prohibited. Additionally, the CFPB is proposing to add redesignated section 1026.36(i)(2)(ii) to define “finances,” and clarify that a creditor finances credit insurance premiums or fees – which will be prohibited under the rule -- when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer, consistent with the definition of “credit” under section 1026.2(a)(14). In other words, a creditor would not be able to, for example, require monthly credit insurance premium payments that have been added to the loan balance and that interest is charged on the payment. The agency is seeking comment on this proposed comment as to whether this clarification is appropriate or whether a creditor should instead be considered to have financed credit insurance premiums or fees only if it charges a “finance charge,” as defined in section 1026.4(a), on or in connection with the credit insurance premium or fee.

The CFPB further proposes to clarify in section 1026.36(i)(2)(iii) that credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the monthly outstanding balance (e.g., the loan balance following the consumer's most recent monthly payment). A premium or fee that is "calculated...on a monthly basis" is a premium or fee that declines as the consumer pays down the outstanding principal balance. Under the proposed clarification, credit insurance cannot be excluded from the scope of the prohibition on the ground that it is "calculated and fully paid on a monthly basis" if its premium or fee does not decline as the consumer pays down the outstanding principal balance.

The CFPB notes that a creditor only violates the prohibition if *the creditor* finances the credit insurance premium or fee. To the extent that a creditor acts merely as a passive conduit, and does not charge a finance charge on such premium or fee, the creditor will not have violated the prohibition.

Regulation B

"Valuation" Definition

The CFPB is proposing to remove official commentary from Regulation B that refers to a valuation as an "estimate or opinion." The Dodd-Frank Act specifically refers to a valuation as an "estimate" of the value of a dwelling. However, the 2013 Equal Credit Opportunity Act (ECOA) final rule contains two official comments referring to a valuation as an appraiser's "estimate or opinion" of the value of the property. The proposal would remove the words "or opinion" from the official comments.

Regulation X

Loss Mitigation Revisions

The CFPB is proposing several modifications to the Regulation X loss mitigation provisions in section 1024.41. Two of the revisions relate to the requirement in section 1024.41(b)(2)(i) that servicers review a borrower's loss mitigation application within 5 days and provide a notice to the borrower acknowledging receipt and informing the borrower whether the application is complete or incomplete. If the servicer does not deem the application complete, the servicer's notice must also list the missing items and direct the borrower to provide the information by the earliest remaining date of four possible timeframes.

The proposed changes would provide servicers with more flexibility in setting and describing the date by which borrowers should supply missing information and would set forth requirements and procedures for a servicer to follow in the event that an

application is late found by the servicer to be missing information or documentation necessary to the evaluation process.

Review of Loss Mitigation Application

The CFPB is proposing to add additional comments to clarify a servicer's obligations: First, a comment would be added that clarifies that once a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), the servicer must request additional information from the borrower if the servicer determines, in the course of evaluating the application, that additional information is required. Second, a comment would be added to clarify that the provisions and timing requirements generally triggered by a complete loss mitigation application under section 1024.41 are not triggered by an incomplete application. Third, a comment would be added to require that, if a servicer creates a reasonable expectation that a loss mitigation application is complete, but later discovers information is missing, a servicer must treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to complete the application.

Time Period Disclosure

Under section 1024.41(b)(2)(ii), a servicer is required to provide a date by which a borrower should submit any missing documents and information necessary to make a loss mitigation application complete. The date must be the earliest remaining of four specific dates: (1) the date by which any document or information submitted by the borrower will be considered stale or invalid under any requirements applicable to any loss mitigation option available to the borrower; (2) the date that is the 120th day of the borrower's delinquency; (3) the date that is 90 days before a foreclosure sale; and (4) the date that is 38 days before a foreclosure sale. The CFPB is proposing to replace this requirement to give the earliest remaining date, and replace it with a more flexible requirement that a servicer determine and disclose a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. Three proposed comments would (1) clarify that in determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under section 1024.41, except when doing so would be impracticable; (2) clarify that a servicer should consider the four deadlines mentioned above as factors in selecting a reasonable date; and (3) clarify that if a foreclosure sale is not scheduled, for purposes of determining a reasonable date, a servicer may make a reasonable estimate of when a foreclosure sale may be scheduled.

Timelines

The CFPB is proposing to add a new provision in section 1024.41(b)(3) addressing the timelines when no foreclosure sale is scheduled as of the date a complete loss mitigation application is received or a foreclosure sale is rescheduled after receipt of a complete application. For purposes of section 1024.41, the CFPB is proposing that timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received. A new proposed comment would clarify that if a foreclosure sale has not yet been scheduled as of the date that a complete loss mitigation application has been received, the application must be treated as if it were received at least 90 days before a foreclosure sale. An additional proposed comment would clarify that such timelines would remain in effect even if at a later date, a foreclosure sale was rescheduled.

Complete Loss Mitigation Application

Section 1024.31(c)(1)(ii) requires a notice be delivered to the borrower regarding the loss mitigation options available to the borrower. The proposal would amend this notice requirement to state explicitly that the notice must state the deadline for accepting or rejecting a servicer's offer of a loss mitigation option, along with the requirement to specify, where applicable, that the borrower may appeal the servicer's denial of a loan modification option, the deadline for doing so, and any requirements for making an appeal.

Incomplete Loss Mitigation Application Evaluation

Another modification being proposed would provide servicers more flexibility in providing short-term payment forbearance plans based on an evaluation of an incomplete loss mitigation application. Currently, section 1024.41(c)(2) prohibits servicers from offering a loss mitigation option to a borrower based on the review of an incomplete loss mitigation application. The proposal would provide that a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. This would apply to short-term payment forbearance programs, defined by a proposed comment that would allow the forbearance of payments due over periods of up to two months, regardless of the amount of time the servicer provide the borrower to make up the forborne payments, and providing examples illustrating this principle.

If a servicer chooses to offer such a short-term forbearance program, the servicer must notify the borrower that the forbearance is based on an incomplete loss mitigation application, and state that the servicer will not review the incomplete application without further action by the borrower. Additionally, the borrower must be notified that he/she

must submit additional information if the borrower elects to be considered for other loss mitigation options.

Servicer Creates Reasonable Expectation That a Loss Mitigation Application is Complete

The CFPB is proposing new section 1024.41(c)(2)(iv) which would clarify that a servicer must treat as complete an incomplete application for purposes of the foreclosure referral prohibition under section 1024.41(f)(2) and the foreclosure sale prohibitions under section 1024.41(g). Additional proposed commentary on this section would also give guidance on what would be a reasonable opportunity for the borrower to complete a loss mitigation application.

Denial of Loan Modification Options

The CFPB is proposing to clarify the requirement in section 1024.41(d)(1), recodified as section 1024.41(d), that a servicer must disclose the reasons for the denial of any trial or permanent loan modification option available to the borrower. The Bureau believes that it is appropriate to clarify that the requirement to disclose the reasons for denial focuses on only those determinations actually made by the servicer and does not require a servicer to continue evaluating additional factors after a decision has been established. For example, if a borrower must meet qualifications A, B and C to receive a loan modification, but the borrower does not meet any of the qualifications, the servicer needs only to provide reasons for denial of qualification A, and does not need to evaluate or provide reasons as to the remaining qualifications B or C.

Prohibition on Foreclosure Referral

The CFPB is proposing new comment 41(f)-1 to clarify what servicer actions are prohibited during the pre-foreclosure review period. Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan is more than 120 days delinquent. A servicer is also prohibited from making such a notice or filing while a borrower's complete loss mitigation application is being evaluated.

The comment would provide that the first notice or filing required by applicable law will be determined based on State law. A document that would be used as evidence of compliance with foreclosure practices required under State law is considered the first notice or filing, and a servicer is therefore prohibited from filing such a document during the pre-foreclosure review period. However, servicers would not be prohibited from attempting to collect the debt, sending periodic statements, sending breach letters or any other activity during the pre-foreclosure review period, as long as such documents would not be used as evidence of complying with requirements under State law in

connection with a foreclosure process and are not banned by other applicable law, such as the Fair Debt Collection Practices Act or bankruptcy law.

Pre-foreclosure Review Period

Section 1024.41(f)(1) requires a 120-day pre-foreclosure review period; a servicer may not make the first notice of filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. The CFPB is proposing to amend the prohibition on referral to foreclosure until after the 120th day of delinquency by limiting the foreclosure ban in two scenarios: when the foreclosure is based on a borrower's violation of a due-on-sale clause, and when the servicer is joining the foreclosure action of a subordinate lienholder.

CUNA plans to urge the CFPB to allow more flexibility regarding this provision to allow foreclosure in a reasonable amount of time but sooner than 120 days after delinquency. Credit unions work with their members to avoid foreclosure but sometimes there is no choice. If a credit union has reasonable evidence that it has been trying to work with its member on a reasonable basis to prevent foreclosure, but foreclosure is nonetheless necessary, the credit union should be able to initiate proceedings sooner than 120 days in order to contain costs for the rest of the credit unions' members.

Regulation Z

Points and Fees Revisions

The CFPB is proposing clarifications and revisions to the definition of points and fees for purposes of the qualified mortgage points and fees cap and the high-cost mortgage points and fees threshold contained within the Ability-to-Repay and HOEPA final rules, respectively. Specifically, the CFPB is proposing to add new commentary to clarify when charges paid by parties other than the consumer, including third parties, are included in points and fees.

The proposed comment states that charges paid by third parties that fall within the definition of points and fees set forth in section 1026.32(b)(1)(i) through (vi) are included in points and fees, and provides examples of third party payments that are included and excluded. The proposed comment also states that seller's points are excluded from the finance charge, and this are not included in points and fees under section 1026.32(b)(1)(i), but also notes that charges paid by the seller may be included in points and fees if the charges are for items in section 1026.32(b)(1)(ii) through (vi). Finally, the comment states that charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under section 1026.32(b)(1)(ii) are excluded from points and fees.

Manufactured Home Issues

The CFPB is proposing guidance providing that the sales price of a manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and that the sales price therefore does not include loan originator compensation that must be included in points and fees under section 1026.32(b)(1)(ii). Additionally the Bureau is proposing to add new section 1026.32(b)(1)(ii)(D) which would exclude from points and fees all compensation paid by manufactured home retailers to their employees. This exclusion would also apply for open-end credit plans, in calculating the points and fees for purposes of the high-cost mortgage points and fees threshold.

Prepayment Penalties for Points & Fees Purposes

The CFPB is also proposing to insert in section 1026.32(b)(2)(vi) a reference to section 1026.32(b)(6)(i), the definition of prepayment penalties for closed-end credit transactions, to clarify that this definition applies in calculating the prepayment penalties included where a consumer refinances a closed-end mortgage loan with a HELOC with the creditor holding the closed-end mortgage loan (i.e., the closed-end mortgage loan's prepayment penalties are included in calculating points and fees for the HELOC).

“Rural” and “Underserved” Exceptions

As mentioned under the “effective dates” section and discussion above, the CFPB is proposing to revise two exceptions under the final mortgage rules to small creditors operating in predominantly “rural” or “underserved” areas while the CFPB reexamines these definitions over the next two years. First the CFPB is proposing to extend an exception to allow all small creditors, regardless of whether they operate predominantly in rural or underserved areas, to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under sections 1026.43(e)(6) or 1026.43(f). Additionally, the CFPB is proposing to amend an exemption from the requirement to establish escrow accounts for HPMLs under section 1026.35(b)(2)(iii)(A) for small creditors that extend more than 50% of their covered transactions secured by a first lien in “rural” or “underserved” counties during the preceding calendar year.

Additional Loan Originator Compensation Rule Revisions

In addition to the amendments discussed under the “effective dates” discussion above, the CFPB is proposing to amend the definition of “loan originator” in the regulatory text and commentary, such as provisions addressing when employees (or contractors or agents) of a creditor or loan originator in certain administrative or clerical roles (e.g., tellers or greeters) may become “loan originators” and thus be subject to the rule, upon providing contact information or credit applications for loan originators or creditors to

consumers. It also proposes a number of clarifications to the commentary on prohibited payments to loan originators under section 1026.36(d)(1).

Reference to Credit Terms

The definition of “loan originator” excludes persons who do not offer or negotiate “credit terms available from a creditor” under the final rule. The CFPB is proposing to revise section 1026.36(a)(1)(i)(A) and (B) and comments 36(a)-1 and -45 to address several inconsistencies regarding the meaning of “credit terms” to clarify that any such activity must relate to “particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer’s financial characteristics,” not credit terms generally.

Application-Related Administrative & Clerical Tasks

The CFPB is proposing to amend comment 36(a)-4.i to provide that the definition of loan originator also excludes a person who, acting in his or her capacity as an employee (or agent or contractor), provides a credit application form from the entity for whom the person works to the consumer for the consumer to complete.

Responding to Consumer Inquiries & Providing General Information

Comment 36(a)-4.ii.B provides that the definition of loan originator does not include persons who, acting as employees of a creditor or loan originator, provide loan originator or creditor contact information to a consumer in response to the consumer’s request, provided that the employee does not discuss particular credit terms available from a creditor and does not direct the consumer, based on the employee’s assessment of the consumer’s financial characteristics, to a particular loan originator or creditor seeking to originate particular credit transactions to consumers with those financial characteristics.

The CFPB is proposing to clarify that this comment applies to loan originator or creditor agents and contractors as well as employees. Additionally, the CFPB is proposing to remove the words “in response to the consumer’s request” for the exclusion to apply.

Scope

The CFPB is proposing to revise section 1026.36(b) and comment 36(b)-1 to state that the payment processing and pyramiding of late fees requirements of Reg Z (sections 1026.36(c)(1) and (c)(2), respectively) apply to consumer credit transactions secured by a consumer’s principal dwelling. The proposed revisions would also provide that the new payoff statement requirements of Reg Z would apply more broadly to a consumer credit transaction secured by a dwelling (even if it is not the consumer’s principal dwelling).

Prohibited Payments to Loan Originators

The CFPB is proposing several revisions to commentary under section 1026.36(d)(1) to improve the consistency of the wording across regulatory text and commentary, provide further interpretation as to the meaning of the regulatory text in section 1026.36(d)(1)(iv), and ensure that the examples included in the commentary accurately reflect the interpretations of the regulatory text contained elsewhere in the commentary.

Specifically, these revisions provide additional clarification of the following: payment of compensation under a non-deferred profits-based compensation plan to an individual loan originator even if the compensation is directly or indirectly based on the terms of multiple transactions by multiple loan originators, clarification surrounding the 10% limit in permitting such compensation if it does not exceed 10% of the individual loan originator's total compensation corresponding to the time period for which the compensation under a non-deferred profits-based compensation plan is paid.

Requests to Consider Regarding the Proposal

1. Do you agree that the effective dates of the affected provisions of the loan originator compensation rule should be changed to January 1, 2014 rather than the current January 10, 2014 date? Please explain in detail.

2. Do you support the proposed changes to the loss mitigation requirements surrounding the evaluation of a borrower's application and the associated notice, disclosure and timeline requirements relating to the loss mitigation sections of the proposal? Please explain in detail.

3. Do you support the proposed revisions to the definition of points and fees under the proposal? Please explain.

4. Do you support the revisions to the loan originator compensation rule relating to the proposed clarifications on the definition of loan originator and/or the prohibited payments to loan originators? Please explain and provide examples, if possible.

5. Please share any comments or concerns you have relating to the proposed revisions on the credit insurance financing prohibition requirements under section 1026.36(i). Please be as detailed as possible.

6. Do you have other general comments regarding any section of the proposed rule that you can share with CUNA? Please be as detailed as possible.
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