

Interagency Consumer Compliance Examination Procedures for Mortgage Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

The FDIC's Division of Depositor and Consumer Protection (DCP) has released revised interagency consumer compliance examination procedures applicable to the mortgage rules issued pursuant to the Dodd-Frank Act. The procedures were developed in coordination with member agencies of the Federal Financial Institutions Examination Council. The interagency procedures can be accessed at <http://www.fdic.gov/regulations/compliance/manual/index.html>

The release of these examination procedures is part of the FDIC's ongoing efforts to inform supervised institutions of important bank regulatory developments and promote transparency in the FDIC's supervisory program. The examination procedures should be helpful to financial institutions seeking to better understand the areas the FDIC will focus on as part of the examination process. For more information on the FDIC's efforts to enhance communication and make the FDIC supervisory process more efficient, consistent, and transparent, see the following:

- FDIC Community Banking Initiatives – <http://www.fdic.gov/regulations/resources/cbi>.
- Resources Regarding Mortgage-Related Rulemakings – <http://www.fdic.gov/news/news/financial/2013/fil13011.html>.
- FDIC Technical Assistance Videos – <http://www.fdic.gov/news/news/press/2013/pr13110.html>.
- Banker Teleconference Series – <http://www.fdic.gov/news/news/financial/2013/fil13057.html>.

The Consumer Financial Protection Bureau's (CFPB) Web site also provides resources on the mortgage-related rulemakings. Information can be obtained at <http://www.consumerfinance.gov/regulatory-implementation/>.

Background and Summary

In 2013, the CFPB issued several mortgage-related final rules to implement various provisions of the Dodd-Frank Act. In addition, the FDIC, pursuant to the Dodd-Frank Act and jointly with the other federal regulatory agencies, issued regulations on appraisals for higher-priced mortgage loans (HPMLs). Most of the rules issued in 2013 became effective in January 2014.¹

The following is a brief summary of the mortgage rules covered in the interagency examination procedures. FDIC examiners will use the procedures to review institutions for compliance with the mortgage-related regulations.

Ability-to-Repay/Qualified Mortgage Rule (ATR Rule) – promulgated under Regulation Z, implements the requirement in the Dodd-Frank Act that creditors make a reasonable and good faith determination that the consumer has a reasonable ability to repay a mortgage loan according to its terms. The ATR Rule applies to all closed-end residential mortgages, regardless of the price of the loan, with some specified exemptions. The rule establishes the requirements by which creditors can demonstrate compliance with the ATR Rule. Additionally, the rule defines

several categories of "qualified mortgages" (QMs). QM status entitles a loan to a presumption of compliance with the ATR rule. This ATR rule supersedes the ability-to-repay rules previously applicable only to higher-priced mortgage loans and to high-cost mortgage loans subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA).

In addition, the ATR Rule implements Dodd-Frank Act provisions that (1) prohibit prepayment penalties on many closed-end residential mortgages, and restrict the duration and amount of prepayment penalties where they are permitted, and (2) prohibit evasion of the ATR and prepayment penalty requirements by attempting to structure a closed-end loan as an open-end loan.

Loan Originator Compensation Rule (LO Compensation Rule) – promulgated under Regulation Z, implements requirements and limits required by the Dodd-Frank Act concerning (1) loan originator compensation restrictions (including restrictions on compensation based on profits and other proxies for loan terms), dual compensation, and steering; (2) loan originator compensation policies and procedures for depository institutions; (3) loan originator qualifications, training, registration or licensing, and identification requirements; and (4) the prohibition on mandatory arbitration clauses and financing of credit insurance.

The LO Compensation Rule's loan originator identification requirements and prohibition on financing credit insurance took effect January 10, 2014; all other provisions took effect January 1, 2014. The rule's prohibition on mandatory arbitration clauses and waivers of consumer rights became effective on June 1, 2013.

Mortgage Servicing Rules – promulgated under Regulations X (RESPA's implementing regulation) and Z (TILA's implementing regulation), implement provisions of the Dodd-Frank Act regarding mortgage loan servicing. The Servicing Rules provide an exemption from certain provisions for qualifying "small servicers."

Regulation X Servicing Rule – The Regulation X final Servicing Rule implements provisions of the Dodd-Frank Act addressing servicers' obligations to:

- correct errors asserted by mortgage loan borrowers.
- provide certain information requested by such borrowers.
- provide protections to such borrowers in connection with force-placed insurance.
- establish reasonable policies and procedures designed to achieve certain delineated objectives.
- provide information about loss mitigation options to delinquent mortgage loan borrowers.
- establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions.
- evaluate borrower applications for available loss mitigation options.

The Regulation X Servicing Rule also modifies and streamlines certain existing servicing-related provisions of Regulation X.

Regulation Z Servicing Rule – The Regulation Z final Servicing Rule implements provisions of the Dodd-Frank Act addressing:

- initial interest-rate adjustment notices for adjustable-rate mortgages.
- periodic statements for residential mortgage loans.
- prompt crediting of mortgage payments.
- responses to requests for payoff amounts.

The Regulation Z Servicing Rule also amends existing rules to provide notice to adjustable-rate mortgage borrowers of interest-rate adjustments resulting in corresponding payment changes.

High-Cost Mortgage (HOEPA) and Homeownership Counseling Amendments Rule – partially promulgated under Regulation Z, implements Dodd-Frank Act provisions amending consumer protections for high-cost mortgages under HOEPA. In addition, the rule includes requirements for homeownership counseling for borrowers under both Regulation Z and Regulation X.

Generally, the rule amends Regulation Z to (1) expand the types of mortgage loans that are subject to the HOEPA provisions of TILA when they meet specified triggers; (2) revise the coverage tests, or "triggers," that are used to determine what loans are subject to HOEPA's requirements; and (3) revise the ability-to-repay requirements and impose additional restrictions on mortgages that are covered by HOEPA, including a requirement that consumers receive homeownership counseling before obtaining a high-cost mortgage.

The rule also amends Regulation Z and Regulation X to impose other homeownership counseling requirements unrelated to HOEPA. Specifically, creditors must obtain certification that first-time borrowers receive homeownership counseling prior to obtaining a loan that negatively amortizes, and creditors must provide all applicants for mortgages with a written list of homeownership counseling organizations within three business days of submitting the application.

HPML Escrow Rule – promulgated under Regulation Z and took effect June 1, 2013. The rule:

- Provides a new exemption for creditors that (1) operate predominantly in rural or underserved areas, (2) originate (together with affiliates) a limited number of first-lien covered transactions, (3) have assets below a certain threshold, and (4) neither maintain nor have affiliates that maintain escrow accounts generally for mortgage obligations that the creditor or affiliates currently service.
- lengthens the time for which a mandatory escrow account must be maintained for HPMLs from a minimum of one year to a minimum of five years.
- continues to exempt various transactions from the escrow requirements including transactions secured by shares in a cooperative, initial construction financing, temporary or bridge loans, and reverse mortgages.
- extends the existing insurance premium exemption for loans secured by condominium units to dwellings in planned unit developments and other common interest communities

that require homeowner participation in a governing association that is obligated to maintain a master insurance policy.

HPML Appraisal Rule – promulgated under Regulation Z, issued jointly by the FDIC, CFPB, the FRB, the FHFA, the National NCUA, and the OCC, implements a new Dodd-Frank Act provision amending TILA and requiring appraisals for HPMLs. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the final HPML Appraisal Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.

The final HPML Appraisal Rule contains the following exemptions from the entire rule:

- qualified mortgages (as that term is defined in the separate rulemaking by the CFPB).
- reverse mortgage loans (subject to existing TILA provisions on reverse mortgages).
- initial construction loans.
- temporary or bridge loans made in connection with the acquisition of what is intended to become the consumer's principal dwelling.
- transactions secured by mobile homes, boats, or trailers.
- "streamlined" refinancings.
- "small dollar" residential mortgage loans (\$25,000 or less as of January 2014, but indexed annually for inflation).
- all loans secured in whole or in part by manufactured housing (new or existing) until July 18, 2015, after which (a) loans secured by new manufactured housing and land require an appraisal, but the appraiser does not have to conduct a physical visit to the interior of the property, (b) loans secured by manufactured housing but not land (new or existing) will be exempt if the creditor provides the consumer with the manufacturer's invoice, a third-party cost service, or a valuation conducted by a trained, independent individual, and (c) transactions secured by existing manufactured housing and land will no longer be exempt.

The final HPML Appraisal Rule also requires creditors to obtain an additional appraisal that meets specified requirements in certain circumstances. However, an additional appraisal is not required if the consumer acquires the property from (1) a local, state, or federal government agency; (2) a person who acquired title (from the holder of a defaulted mortgage on the property) through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure through exercise of their rights as holder of the defaulted loan; (3) a nonprofit entity as part of a local, state, or federal government program that permits nonprofits to acquire title to single-family properties for resale from a seller who itself acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure; (4) a person who inherited the property or acquired it through a court-ordered dissolution of marriage, civil union, or domestic partnership, or through the partition of the seller's joint or marital assets; (5) an employer or relocation agency in connection with an employee relocation; or (6) a servicemember who received a deployment or permanent change of station order after

purchasing the property. An additional appraisal is also not required if the property is located in a presidentially declared disaster area, or if the property is located in a rural county.

ECOA Appraisal Rule – promulgated under Regulation B, requires creditors to give a copy of an appraisal or other property valuation as a matter of course, rather than providing copies only upon an applicant's request.

In addition, the rule:

- Requires creditors to notify applicants within three business days of receiving an application of their right to receive a copy of the appraisal.
- Requires creditors to provide applicants a copy of each appraisal and other written valuation promptly upon its completion or within three business days before consummation (for closed-end loans) or account opening (for open-end credit), whichever is earlier.
- Permits applicants to waive the timing requirement for providing a copy. However, even if the applicant waives the timing requirement, a copy of the appraisal must be given no later than consummation or account opening. For transactions that are not consummated, a copy of the appraisal must be given no later than 30 days after the creditor determines that the transaction will not be consummated.
- Prohibits creditors from charging for copies of appraisals and other written valuations. This requirement does not prohibit the creditor from charging an applicant for the cost of obtaining the appraisal itself, but rather creditors cannot charge for making a copy of the appraisal (or other written valuations) and delivering it to an applicant.

On September 13, 2013, the CFPB amended the official interpretations of Regulation B to clarify that when the rule refers to appraisals or other valuation models, it does not include speculative opinions not based on an appraisal or other valuation model. The rule became effective January 18, 2014.

FDIC Examinations

In their initial examinations for compliance with the new regulations, FDIC examiners will expect banks to be familiar with the mortgage rule requirements. In addition, they will expect banks to be operating under a plan with clear timeframes and benchmarks to implement necessary changes to their compliance management program and relevant systems.

If mortgages are part of the scope of an examination, FDIC examiners will consider the overall compliance efforts of an institution, including the specific steps taken to comply with the regulations in light of the institution's particular circumstances. For example, examiners may ask about an institution's compliance plan and actions taken by the institution to train its staff and adjust its systems, processes, policies, and procedures to ensure compliance with the mortgage rules. As examiners make conclusions at the end of an examination, they will take into account progress the institution has made in implementing its plan to ensure its compliance management system appropriately addresses the new mortgage rule requirements.