

Farm Credit Administration

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INFORMATIONAL MEMORANDUM



July 18, 2013

To: Chief Executive Officer
All Farm Credit System Institutions

From: Samuel R. Coleman, Director and Chief Examiner
Office of Examination

A handwritten signature in black ink that reads 'Samuel R. Coleman'.

Subject: Final Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

The purpose of this Informational Memorandum (IM) is to provide information regarding two final rules the Consumer Financial Protection Bureau (CFPB) issued regarding mortgage servicing. The CFPB rules revise Regulation X (12 CFR Part 1024), which implements the Real Estate Settlement Procedures Act, and Regulation Z (12 CFR Part 1026), which implements the Truth in Lending Act. The rules were published in the Federal Register, on February 14, 2013, at 78 FR 10696 and 78 FR 10902, respectively. They will take effect on January 10, 2014. All Farm Credit System (System) institutions should adopt appropriate procedures to ensure compliance with the rules, as applicable.

In adopting these mortgage servicing rules, the CFPB recognized that some of FCA's borrower rights regulations, at 12 CFR Part 617, offer protections comparable to, but potentially inconsistent with, some of the requirements in its rules. FCA's borrower rights regulations provide extensive mortgage servicing and other protections for many, but not all, borrowers with loans made by System institutions. A System loan is subject to FCA borrower rights regulations if it is made to a farmer, rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and other credit needs of the borrower. This includes financing for basic processing and marketing that directly relates to the borrower's operations and those of eligible farmers, ranchers, and producers or harvesters of aquatic products. A System loan is not subject to FCA borrower rights protection if it is made to a rural homeowner under 12 CFR §613.3030 or to a farm-related service business under 12 CFR §613.3020. In addition, 12 CFR §617.7015 excludes from FCA borrower rights borrowers whose loans are designated for sale into the secondary market (as long as they are actually sold within 180

days), sold into the secondary market, or sold to a lender that is not a System institution or “other financing institution” (OFI), pursuant to the requirements for such sales. An OFI is a bank, institution, corporation, company, credit union, or association described in section 1.7(b)(1)(B) of the Farm Credit Act of 1971, as amended.

Because of the potential inconsistencies between FCA’s borrower rights regulations and the CFPB’s mortgage servicing rules, the CFPB’s rules exempt a servicer from some of the requirements with respect to any mortgage loan for which the servicer is a “qualified lender,” as that term is defined in FCA Regulation 12 CFR §617.7000. Under FCA Regulation 12 CFR §617.7000, “qualified lender” means:

- A System institution, except a bank for cooperatives, that makes loans that are subject to FCA’s borrower rights protections; and
- An OFI, but only with respect to loans discounted or pledged under section 1.7(b)(1).

Accordingly, the “qualified lender exemption” applies as follows:

- Applies to any mortgage loan (except a home equity plan) made and serviced by a System institution (except a bank for cooperatives) that is subject to FCA’s borrower rights regulations, as discussed above;
- Does not apply to any loan that is not subject to FCA’s borrower rights regulations, as discussed above;
- Does not apply to any loan that a System institution services on behalf of a non-System lender; and
- Applies to other financing institutions with respect to loans discounted or pledged under section 1.7(b)(1) of the Farm Credit Act of 1971, as amended.

The final rules cover nine major topics, as well as numerous other areas. A listing of the nine major topics, together with a notation of the qualified lender exemption’s applicability, follows:

1. **Periodic billing statements** (Regulation Z, §1026.41).
2. **Interest-rate adjustment notices for ARMs** (Regulation Z, §1026.20).
3. **Prompt payment crediting and payoff statements** (Regulation Z, §1026.36).
4. **Force-placed insurance** (Regulation X, §1024.17 and 1024.37).
5. **Error resolution and information requests** (Regulation X, §1024.35).
6. **General servicing policies, procedures, and requirements** (Regulation X, §1024.38), qualified lender exemption applies.
7. **Early intervention with delinquent borrowers** (Regulation X, §1024.39), qualified lender exemption applies.
8. **Continuity of contact with delinquent borrowers** (Regulation X, §1024.40), qualified lender exemption applies.
9. **Loss mitigation procedures** (Regulation X §1024.41), qualified lender exemption applies.

“Small servicers” are exempt from the periodic billing statement requirement under §1026.41 of Regulation Z and have different requirements with respect to force-placed insurance under §1024.17 of Regulation X. A small servicer is a servicer, including a System institution, that services 5,000 or fewer mortgage loans, for all of which the servicer is the creditor or assignee.

The language of the final rules, together with information about these rules, can be found on the CFPB’s website, at www.consumerfinance.gov. From the home page, go to the *Law and Regulation* section and click on *Mortgage Rule Implementation*. This page consolidates all of the CFPB’s mortgage rules and related implementation materials, including summaries, Compliance Guides, Quick Reference Charts, Readiness Guides, and other materials. The CFPB is constantly updating this page, and institutions should refer to this page frequently to ensure they have the latest information on compliance.

The Farm Credit Administration is providing this information as a courtesy to keep you informed of issues that may affect your institution. This information should not be seen as a replacement for management's due diligence in monitoring issues that may affect your institution.

If you have any questions about this Informational Memorandum, please contact Jennifer A. Cohn, Senior Counsel, Office of General Counsel, at (703) 883-4028, or by email at cohnj@fca.gov; and/or Dan Fennewald, Director, Examination Policy Division, Office of Examination, at (952) 259-0432, or by email at fennewaldd@fca.gov.