

Farm Credit Administration

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INFORMATIONAL MEMORANDUM



May 28, 2013

To: Chief Executive Officer
All Farm Credit System Institutions

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

Subject: High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)

The purpose of this Informational Memorandum is to provide information regarding a final rule the Consumer Financial Protection Bureau (CFPB) issued that revises subpart E of Regulation Z, implementing the Truth in Lending Act (TILA), at 12 CFR part 1026, and Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA), at 12 CFR part 1024. The rule was published in the Federal Register at 78 FR 6855 (January 31, 2013), applies only to loans that are subject to TILA and RESPA, and takes effect on January 10, 2014. All institutions should adopt appropriate procedures to ensure compliance with the rule.

HOEPA AMENDMENTS

Many of the Regulation Z amendments in this final rule are to implement revisions to the Home Ownership and Equity Protection Act (HOEPA), which is a part of the TILA. The final rule expands the universe of loans potentially covered by HOEPA, retains the existing exemption from HOEPA coverage for reverse mortgages, and adds exemptions for three other types of loans.

Revised HOEPA Coverage Tests

Under the final rule, a transaction is a high-cost mortgage if any one of the following coverage tests is met: the APR exceeds the applicable average prime offer rate by a specified amount; the points and fees exceed a specified percentage of the total transaction amount; or the credit transaction documents permit the creditor to charge or collect a prepayment penalty more than 36 months after transaction closing or permit such fees or penalties to exceed a specified percentage of the amount prepaid.

Restrictions on Loan Terms

The final rule also implements new restrictions and requirements concerning loan terms and origination practices for mortgages that fall within HOEPA's coverage test. For example, the rule:

- Prohibits prepayment penalties, restricts fees, and prohibits the financing of points and fees;
- Prohibits creditors and mortgage brokers from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage;
- Permits balloon payments only in limited situations (these situations may apply to some loans made by System institutions);
- Requires a creditor, before making a high-cost mortgage, to obtain confirmation that the consumer has received counseling on the advisability of the mortgage from a certified or approved homeownership counselor, and
- Requires creditors originating home equity lines of credit to assess consumers' ability to repay. Creditors originating high-cost, closed-end credit transactions are already required to assess consumers' ability to repay under the CFPB's Ability-to-Repay final rule, issued on January 30, 2013. We provided information about this rule by Informational Memorandum titled Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), dated March 8, 2013.

OTHER COUNSELING-RELATED AMENDMENTS

The final rule also adds two additional homeownership counseling-related provisions that are not part of the HOEPA and do not relate to high-cost mortgages. It revises Regulation X to require lenders to provide a list of homeownership counseling organizations to consumers within three business days after they apply for most mortgage loans. And it revises Regulation Z to require creditors to obtain confirmation that a first-time borrower has received homeownership counseling from a federally certified or approved homeownership counselor or counseling organization before making a loan that provides for or permits negative amortization to the borrower.

The language of the final rule, together with a detailed summary of the rule, a summary of the rule for consumers, and other information about the rule, can be found on the CFPB's website, at www.consumerfinance.gov. From the home page, hover over Law and Regulation and then click on Regulations. There you will find a list of all CFPB rules issued. When you click on the link to any rule, you will find a page that links to the text of that rule, along with a summary and other information about the rule.

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.