CFPB Interpretive Rule Application of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest
July 2014

The CFPB issued a final interpretive rule in July 2014 clarifying when Ability-to-Repay (ATR) requirements attach to new successor-in-interest obligors. The rule defines a successor-in-interest as "a person who receives legal interest in a property, typically by a transfer from a family member, by operation of law upon another's death, or under a divorce decree or separation agreement." The CFPB noted that if a creditor was required to determine a successor's ability to repay before formally adding the successor as an obligor, fewer transfers would take place, with potentially significant consequences for successors trying to retain a family home.

The final rule states that the addition or substitution of a successor-in-interest as an obligor on an existing mortgage is generally not an "assumption" under Regulation X section 1026.20(b), and is therefore not subject to ATR requirements. Whether a transaction is an "assumption" if the creditor agrees in writing to accept a subsequent consumer as a primary obligor on an existing "residential mortgage transaction." However, a "residential mortgage transaction" is defined as a transaction in which a consumer finances the acquisition or initial construction of the consumer's principal dwelling. According to the final rule, a residential mortgage transaction does not arise where a successor takes on the debt obligation that is secured by property the successor previously acquired a legal interest in.

Creditors may rely on the interpretation in the final rule as a safe harbor under section 130(f) of the Truth in Lending Act.

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