

Final Rule Summary

Prepared by NASCUS Regulatory Affairs Department
November, 2014

Consumer Financial Protection Bureau

Amendments to the 2013 Mortgage Rules Under TILA

The Consumer Financial Protection Bureau (CFPB) has issued a final rule to amend certain provisions of the ability-to-repay/qualified mortgage (ATR/QM) requirements and mortgage servicing rules. The final rule makes 3 key changes:

- creates a limited, post-consummation cure mechanism for loans that exceed the points and fees limit for QMs, but that meet all other QM requirements at consummation.
- amends the definition of a “small servicer” to include certain nonprofit entities that service loans on behalf of other non-profit chapters of the same organization, for a fee;
- provides that certain non-interest bearing, contingent subordinate liens originated by nonprofit creditors will not be counted toward the credit extension limit for the nonprofit exemption from ATR requirements; and

The final rule is effective November 3, 2014 and is available [here](#).

Amendments for Non-Profits

Regulation Z requires mortgage servicers to provide a periodic statement to consumers for residential mortgage loans each billing cycle.¹ Mortgage servicers that meet the regulatory “small servicer” definition are exempt from this and certain other mortgage servicing requirements under Regulation X. Previously, the regulation defined a small servicer as a servicer that either:

- ✓ Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or
- ✓ Is a Housing Finance Agency, as defined in 24 CFR 266.5.²

The final rule adds a third definition of small servicer:

- ✓ Is a *nonprofit entity* that services 5,000 or fewer mortgage loans, including any mortgages serviced on behalf of *associated* non-profit entities, for all of which the servicer or an associated nonprofit entity is the *creditor*. (*emphasis added*)

In order to qualify for this exemption the nonprofit entity and its associated entities must not service any loans for which they are not the creditor/originator. The nonprofit may not be merely the assignee to the loan, as is permitted under the first exemption. The final rule defines “associated nonprofit entities” to mean “nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.”³

¹ 12 CFR 1026.41(a).

² 12 CFR 1026.41(e)(4).

³ 79 FR 65303 (Nov. 3, 2014).

Credit unions do not qualify for this new exemption. It only applies to entities that have a tax exemption ruling or determination letter from the IRS under section 501(c)(3).⁴ The CFPB explicitly declined to extend the exemption to credit unions because, according to the Bureau, credit unions and their affiliates are more likely to have greater capacity to comply with the full mortgage servicing rules than those nonprofit entities that are targeted in the new definition. The Bureau noted that a broad exemption for all credit unions was outside the scope of this rulemaking and was not considered.

Regulation X cross references this Regulation Z definition of a small servicer for the purpose of exempting small servicers from certain mortgage servicing requirements including certain requirements relating to obtaining force-placed insurance, general servicing policies and procedures, and requirements and restrictions relating to communications with a borrower concerning loss mitigation options.⁵ The final rule also excludes certain subordinate lien transactions from the 200-credit extension limit under the nonprofit small creditor exemption to the ATR rule.⁶

QM Cure Mechanism

In order to receive QM status, the upfront points and fees charged in connection with the mortgage generally must not exceed 3% of the total loan amount.⁷ The process for calculating the applicable points and fees ratio is complex and susceptible to varying interpretations among industry participants. Previously, inadvertent points and fees overages discovered after consummation could not be corrected. Creditors, who face heightened legal, liquidity, and repurchase risk if a miscalculation of fees results in denial of QM status, began establishing “buffer zones” below the 3% upfront points and fees limitation in order to avoid inadvertently exceeding those limits.

In response to the potential restrictions on access to credit created by the buffer system, the Bureau adopted this final rule establishing a mechanism for curing overages of the 3% points and fees limitation for QMs. Under the final rule, creditors now have 210 days after consummation to cure a fee overage by refunding the excess fees to the consumer, with interest from the time of consummation to the time of cure. However, the cure period is automatically terminated if:

- The consumer institutes an action in connection with the loan;
- The creditor, assignee, or servicer receives the consumer’s written notice that the transaction’s total points and fees exceed the applicable limit; or
- The consumer becomes 60 days past due on the legal obligation.

The cut-off events listed above are designed to protect consumers by preserving their legal rights to challenge ATR at any time, which in turn motivates the creditor or assignee to detect and make cure payments as quickly as possible. The final rule also requires the creditor to maintain policies and procedures for post-consummation review of points and fees and for making cure payments to consumers. A creditor is not, however, required to review every loan or make cure payments for any loan that is found to exceed the points and fees limit.

⁴ Federal and state-chartered credit unions are exempt under sections 501(c)(1) and 501(c)(14) respectively.

⁵ 12 CFR 1024.38 – 1024.41 (except as otherwise provided in 1024.41(j)).

⁶ 12 CFR 1026.43(a)(3)(v)(D).

⁷ 12 CFR 1026.43(e)(3). Higher thresholds apply for loans below \$100,000.

In order to secure QM status, a cure payment must equal at least the dollar amount by which the points and fees exceeded the applicable threshold, plus interest on that dollar amount (at the contract interest rate) from consummation until the date the cure payment is made. Payments exceeding that minimum calculation will also satisfy the cure requirements. A loan restructuring is not necessary to effectuate a cure.

The ability to cure points and fees overages will sunset on January 10, 2021.⁸ The CFPB believes the need to cure will subside as the marketplace becomes more comfortable with the points and fees calculation, and as the risks associated with non-QM loans become clearer.

In the proposed rule, the Bureau also solicited comments on a possible cure mechanism for the 43% debt-to-income ratio limit that applies to General QMs, and amendments to the credit extension limit that applies to small creditor exemptions. The Bureau did not address those issues in the final rule but noted that they are still considering whether to address those issues in a future rulemaking.

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⁸ This is the same date that the Temporary QM definition sunsets.