FDIC

Division of
Depositor and Consumer Protection

National Banker Call Focusing on the Consumer Financial Protection Bureau's Significant Mortgage-Related Proposals

Thursday, September 27, 2012

Presenters

- ***Luke Brown***, Associate Director, DCP Supervisory Policy
- ***Surge Sen***, Section Chief, DCP Supervisory Policy
- ***Glenn Gimble***, Senior Policy Analyst, DCP Supervisory Policy
- ***Cassandra Duhaney***, Policy Analyst, DCP Supervisory Policy

Introduction

- Most proposed rules being discussed were issued by the Consumer Financial Protection Bureau (CFPB).
- Because these are proposals and not final rules, portions of them could change.
- If you have specific comments on any open proposed rulemaking, please submit them by following the instructions included in the proposal.

Agenda

- Mortgage Origination Standards
- Appraisals for Higher-Risk Mortgages
- New Appraisal Requirements under the Equal Credit Opportunity Act
- Mortgage Loan Servicing
- Questions and Answers

Mortgage Origination Standards
(Mortgage Originator Rule)

Mortgage Origination Standards

***Background*:**

- **Federal Reserve Board Final Rule** ("The MLO Rule")**:**
  - **Issuance date:** September 24, 2010
  - **Effective:** April 5, 2011
  - **Purpose:** Implements Truth in Lending Act (TILA)

- **CFPB Proposed Rule** ("The Proposed Rule")**:**
  - **Issuance date:** August 17, 2012
  - **Comments by:** October 16, 2012
  - **CFBP must issue final rules by:** January 21, 2013
  - **Purpose:** Implements Dodd-Frank Act / Regulation Z Amendments

Mortgage Origination Standards

Restrictions on Upfront Points and Fees

- **Includes**: Discount points and origination points and fees

- **General Dodd Frank Act Requirement:**

  Only the consumer can compensate the Mortgage Loan Originator (MLO), and compensation cannot be based upon the loan's terms or a proxy for a loan's terms. For example, if a creditor pays a loan broker 1% of the principal balance of the loan, neither the creditor nor the loan broker can charge the consumer anything for originating the loan.

- **Dodd Frank Act Exemption:**

  A creditor or brokerage firm may compensate a mortgage originator if the consumer does not compensate the mortgage originator, and the consumer is not charged discount points, origination points, or fees by the creditor, the mortgage originator, or an affiliate of either other than bona fide third party fees.

Mortgage Origination Standards

Exemption Authority

- The CFPB has the authority to waive or create exemptions from TILA and the Dodd-Frank discount points and origination points and fees prohibition where doing so is in "the interest of consumers and in the public interest."

- The CFPB proposes to use this authority in the proposed rules.

Mortgage Origination Standards

Proposed Points and Fees Rule Exemption

- Lender could charge discount points and fees where it is paying compensation to the MLO if:
  - It makes available to the consumer “a comparable, alternative loan with no upfront discount points, origination points, or fees that are retained by the creditor [or] broker”—a “zero-zero alternative loan.”
  - Unless, the consumer is “unlikely to qualify” for the zero-zero loan.

For example: A creditor can pay a loan broker 1% of the principal loan balance and still charge the consumer discount points to lower the interest rate and origination fees, as long as the creditor offers the consumer a comparable zero-zero alternative loan.

Mortgage Origination Standards

Dual Compensation

- If an MLO receives compensation from the consumer the MLO may not receive compensation from another person in connection with the transaction; and
- No person who knows or has reason to know of consumer-paid compensation to the MLO (other than the consumer) may pay any compensation to an MLO in connection with the transaction.
- Includes: Dual compensation from multiple parties.

Mortgage Origination Standards

Additional Guidance on Dual Compensation

- **On a Borrower's Behalf --** Compensation paid on the borrower's behalf by a person other than a creditor or its affiliates, such as a non-creditor seller, home builder, home improvement contractor or real estate broker or agent, is considered compensation received directly from a consumer.

- **Loan Originator Organization --** If a loan originator organization, such as a mortgage broker company, receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation to its individual loan originators and the individual loan originators may receive compensation from the loan originator organization.

Mortgage Origination Standards

Proxies

- **General Rule**: MLOs cannot be compensation based on the terms of a loan or a proxy for the terms of a loan. The only exception is loan amount.

- **Proxy Test:**
  1. The factor substantially correlates with the term(s) of the mortgage loan, and
  2. The MLO can directly or indirectly add, drop, or change the factor when originating the mortgage loan.

FDIC Division of Depositor and Consumer Protection

Mortgage Origination Standards

- ***Proxy Example 1:***

  5-Year vs. 30-Year Loan: Loans originated to be kept in portfolio are 5 year, 6% balloon loans and earn the MLO 2% commission. Loans originated to be sold into the secondary market are 30 year, 5% amortizing loans and earn the MLO 1% commission.

- ***Proxy Test Met (assuming borrower qualifies for both loans):***
  1. Length and other features of the loans (5 year balloon versus 30 year amortizing) are factors that substantially correlate with the loan's interest rate (a term of the loan); and
  2. MLO has the discretion to steer the borrower way from the lesser expensive 30 year loan and into the more costly (and, perhaps, riskier) 5 year balloon loan in order to earn greater compensation.

Mortgage Origination Standards

- ***Proxy Example 2:***

  A refinance in State A costs 6% and pays 2% in commission. A refinance in State B costs 5% and pays 1% in commission.

- ***Proxy Test Not Met:***
  1. Location of the collateral substantially correlates with the loan's interest rate; but
  2. The MLO cannot change a property's location, thus property location cannot be a proxy for a transaction's terms.

Arguably, a loan originator could indirectly change the property location by steering a consumer to choose a property in State A; however, as the CFPB states in the preamble to the proposed rule, "the ability for loan originators to steer a borrower to a particular property location with such frequency to serve as an incentive for steering consumers is minimal." The loan originator has minimal ability to sway the outcome and, thus, this factor fails the proxy test.

Mortgage Origination Standards

Profit Sharing Plan and Retirement Plan Contributions

- **Qualified Plans**

  Compensations based on profits in the form of a contribution to a defined contribution plan or defined benefit plan that is a "qualified plan" under the IRS Code, as long as the contribution is not based on the terms of the individual's transactions.

- **Non-Qualified Plans / De minimis Profit-sharing Exceptions**
  1. MLO originated five or fewer transactions during the 12-month period preceding the date of the decision to make the payment or contribution, or
  2. Not more than a certain percentage of the applicable revenues for purposes of the payment or contribution is derived from mortgage business. The CFPB proposes two alternative percentage caps—25 percent and 50 percent.

Mortgage Origination Standards

Other Compensation Considerations

- **Pricing Concessions -** MLOs may make certain pricing concessions to cover unanticipated increases in non-affiliated third-party closing costs imposed by applicable law.

- **Point Banks** - Point banks are considered "compensation" and are not permitted.

FDIC
Division of
Depositor and Consumer Protection

Mortgage Origination Standards

Mortgage Loan Originator Qualification Requirements

- **Meet S.A.F.E. Act or Equivalent Requirements**
- **Receive Training**
- **Put Nationwide Mortgage Licensing System and Registry (NMLSR) identification number on loan documents.**
    1. The credit application,
    2. The Good Faith Estimate and Settlement Statement,
    3. The early and final TILA disclosure statements,
    4. The note or loan contract, and
    5. The security instrument.

FDIC Division of Depositor and Consumer Protection

Mortgage Origination Standards

Other Mortgage Origination Standards

- **No mandatory arbitration clauses**
- **No financing single-premium credit insurance**

NOTE: In the proposed rule, the CFPB has not proposed any changes to the current steering rules. The CFPB stated it may do this in a subsequent rulemaking.

FDIC Division of Depositor and Consumer Protection

Mortgage Origination Standards

Recordkeeping

- **Records** - Creditors would be required to maintain records "sufficient to evidence that the creditor has made available to the consumer the comparable, alternative loan that does not include discount points and originator points or fees, or if such a loan is not available evidence of "a good faith determination that the consumer is unlikely to qualify for such a loan."

- **Time Period** - Record retention time period requirements would be extended from 2 to 3 years and the coverage of the record retention provisions would apply to all loan originators and not simply creditors.

- The CFPB is seeking comment on whether the record retention period should be extended to 5 years rather than 3 years.

Appraisals for Higher-Risk Mortgages

Appraisals for Higher-Risk Mortgages

***Background*:**

- The Dodd-Frank Act added a new section to TILA requiring appraisals for **higher-risk mortgages** (HRMs).

- **HRM definition:** A residential mortgage loan (that is not a qualified mortgage) secured by a principal dwelling with an APR that exceeds the Average Prime Offer Rate (APOR) by:
    - 1.5% for first-lien non-jumbo loans;
    - 2.5% for first-lien jumbo loans; or
    - 3.5% for a subordinate-lien loan.

Appraisals for Higher-Risk Mortgages

Before making a higher-risk mortgage, a creditor must:

- Obtain a written appraisal;
- by a certified or licensed appraiser;
- who conducts a physical visit of the interior of the property.

Appraisals for Higher-Risk Mortgages

- A creditor must obtain a **second written appraisal** from a different certified or licensed appraiser if the property was previously purchased within 180 days of the current mortgage transaction at a price lower than the current sale price of the property.

- The FRB, CFPB, FDIC, FHFA, NCUA and OCC have joint authority to implement the HRM provision.

Appraisals for Higher-Risk Mortgages

Proposed Rule (Joint issuance among Federal banking agencies, CFPB, and FHFA)

- **Issuance date:** August 15, 2012

- **Comment by:** October 15, 2012 (except comments on the Paperwork Reduction Act analysis, which must be received by November 5, 2012).

- **Purpose:** Would amend Regulation Z to implement higher-risk mortgage provisions added to TILA by the Dodd-Frank Act.

Appraisals for Higher-Risk Mortgages

Proposed Rule *(continued)*

- The proposal requests comment on possible exemptions to the higher-risk mortgage appraisal requirements. The loans that are proposed to be exempted from the rule generally include:
    1. Open-end credit plans (for example, HELOCs);
    2. Loans covering personal property (manufactured housing);
    3. Reverse mortgages that are not qualified mortgages; and
    4. Construction/Bridge loans.
- In addition, higher-risk mortgage loans that fall between the Transaction Coverage Rate (TCR) threshold and the APR threshold are proposed to be exempted from the HRM appraisal requirements.

Appraisals for Higher-Risk Mortgages

Proposed Rule *(continued)*

- Loans that are proposed to be exempt from the 2nd appraisal requirement <u>only</u> include:
    1. *Non-purchase acquisitions (divorce, inheritance, gift, etc.);*
    2. *Higher-risk mortgage loans made in rural areas; and*
    3. *Loans with small price increases.*

- Under the proposal, a creditor would also be required to use reasonable diligence to determine whether a second appraisal must be performed.

- It also proposes a safe harbor for creditors that review an appraisal report for certain minimum information when prepared in connection with a higher-risk mortgage loan transaction.

- It would also require creditors to disclose to applicants information about the purpose of the appraisal and provide consumers with a free copy of any appraisal report.

New Appraisal Requirements under the Equal Credit Opportunity Act

- The Dodd-Frank Act amended ECOA to require that creditors provide copies of appraisals and valuations to loan applicants at no additional cost and **<u>without requiring applicants to affirmatively request such copies</u>.**

- A creditor must provide copies of all appraisals or valuations to an applicant promptly, in no case later than 3 business days before closing, though the applicant may waive this requirement.

- The creditor may charge a fee for an appraisal, but must provide a copy to an applicant for free.

New Appraisal Requirements under the Equal Credit Opportunity Act

CFPB Proposed Rule

- **Issuance date:** August 14, 2012
- **Comment by:** October 15, 2012 (except comments on the Paperwork Reduction Act analysis, which must be received by October 22, 2012)
- **Purpose:** Would amend Regulation B to implement amendments to ECOA made by the Dodd-Frank Act requiring creditors to:
  - Provide free copies of written appraisals in connection with an application for loans to be secured by a first lien on a dwelling; and
  - Notify applicants in writing of the right to receive a copy of each written appraisal at no additional cost.

Mortgage Loan Servicing

Mortgage Loan Servicing

CFPB Proposed Rule:

- **Issuance Date:** August 10, 2012
- **Comment by:** October 9, 2012. The CFPB seeks comments on particular questions specifically from small servicers.
- **Purpose:** To implement the Dodd-Frank Act, which requires new specific disclosures and rules for servicers, and to require additional procedures for consumer protection under TILA or the Real Estate Settlement Procedures Act (RESPA).
- **Scope:** Servicer rules would apply to banks and nonbanks and primarily to closed-end residential mortgage loans.

Mortgage Loan Servicing

Periodic Billing Statements (timing, form, and content requirements)

- Disclosures (model and sample forms).
- Servicer to provide required information each billing cycle for closed-end mortgage loans (unless coupon books provide certain information).
- Small servicer exemption: Services 1,000 or fewer mortgage loans and only services originated or owned loans (by servicer or affiliate).

Mortgage Loan Servicing

Adjustable-Rate Mortgage (ARM) Interest-rate Adjustment Notices (model and sample forms)

- 60-120 days before adjustment causing payment change.
- 210-240 days prior to first rate adjustment (can use estimate of rate and payment change).
- Other than initial notice, no annual notice required if rate adjustment does not increase monthly payment.

Mortgage Loan Servicing

Prompt Payment Crediting and Payoff Payments

- Servicer to promptly credit full contractual payments generally on the day of receipt.
  - Suspense account may hold payment if less than full amount. When enough for full installment (principal, interest, and any escrow), apply funds to the oldest outstanding payment owed by borrower.
- Servicer to send an accurate payoff balance to a consumer no later than seven (7) business days after receipt of borrower's written request.

Mortgage Loan Servicing

Force-placed insurance (FPI) (model notices)

- Servicer to have a reasonable basis to believe borrower failed to maintain hazard insurance, and provide first notice to borrower at least 45 days prior to charging and second notice at least 30 days after first notice.
- If a borrower provides proof of coverage, then cancel FPI policy and refund premiums.
- If a borrower has an escrow account, then continue (and advance) payments for hazard insurance rather than using FPI.
- Charges for FPI must be bona fide (relate to a service actually performed) and reasonable (bear a reasonable relationship to servicer's cost to provide).
- Not covered: Federally required flood insurance or hazard insurance renewed by servicer.

Mortgage Loan Servicing

Error Resolution and Information Requests

- Procedures for consumers to provide notice of error or information request orally or in writing. A Qualified Written Request (QWR) is considered a type of notice or request.
- Requirements for error notices/information requests are similar to QWR requirements. Dodd-Frank Act shortened QWR response time to 5 days (from 20) to acknowledge and 30 days (from 60) to respond. No charging of fees for response.

Mortgage Loan Servicing

Error Resolution and Information Requests *(continued)*

Nine (9) types of covered errors:

- Failure to properly accept, apply, or timely credit a payment, or failure to pay or refund properly from escrow account.
- Failure to provide accurate payoff balance, information for loss mitigation options and foreclosure, or timely information transferred to another servicer.
- Imposition of a fee or charge without reasonable basis.
- Failure to suspend a scheduled foreclosure sale in the circumstances described in Section 1024.41(g) (discussed later under loss mitigation procedures).

Mortgage Loan Servicing

Information Management Policies and Procedures

- Servicer to establish reasonable policies and procedures for information management taking into account a servicer's size, scope, and nature of operations.
- Policies and procedures would be considered to satisfy the rule if a servicer regularly achieves:
  - *Standards for (1) document retention (one year after mortgage discharge or servicing transfer); and (2) servicing files (creation of file for each loan containing specific documents and information).*
  - *Objectives specified in the rule such as providing accurate and timely information to borrowers and the courts.*

Mortgage Loan Servicing

Early Intervention with Delinquent Borrowers (model notice language)

- Good faith efforts to notify of loss mitigation options.
- If borrower is 30 days late, servicer to provide notice orally.
- If borrower is 40 days late, servicer to provide written notice, including available examples and how to obtain more information about options and information about the foreclosure process.

Mortgage Loan Servicing

Continuity of Contact with Delinquent Borrowers (model notice language)

- Servicer to provide access to personnel to assist with loss mitigation options where applicable. Assign dedicated contact no later than five (5) days after providing the early intervention notice.
- Servicer to establish policies and procedures to ensure personnel perform specified functions that include providing the borrower with accurate information and having access to the borrower's records and documents.

Mortgage Loan Servicing

Loss Mitigation Procedures

- Procedures for a borrower to apply to a servicer for a loss mitigation option, and for a servicer to review and respond to a loss mitigation application.
- Applicable to any servicer that makes loss mitigation options available to borrowers in the ordinary course of business.
- Upon receipt of an incomplete loss mitigation application, a servicer would be required to exercise reasonable diligence in obtaining information from a borrower to make the application complete.

Mortgage Loan Servicing

Loss Mitigation Procedures (continued)

- Loss mitigation application deadline: a servicer is to establish a deadline for a borrower to provide a complete application, which may be no earlier than 90 days before a scheduled foreclosure sale.
- Servicer review: 30 days for a servicer to review and decide on a complete application.
- Borrower response: 14 days to accept or reject an offer for a loss mitigation option (may be concurrent with timing for appeal below).
- Appeal for a loan modification denial: 14 days for borrower to request an appeal of a denial of a loss mitigation application for any trial or permanent loan modification program offered by the servicer.
- Appeal determination: 30 days for different personnel to decide on the appeal, 14 days for a borrower to accept or reject an offer of a loss mitigation option, and no further appeal.

Mortgage Loan Servicing

Loss Mitigation Procedures (continued)

- A servicer shall not conduct a foreclosure sale if a borrower has provided a complete loss mitigation application within the servicer's deadline unless:
  - The servicer has provided notice to borrower of ineligibility, and the appeal process is not applicable, the borrower has not requested an appeal, or the time for requesting an appeal has expired.
  - The servicer denies the borrower's appeal, as applicable.
  - The borrower rejects the servicer's offer of a loss mitigation option.
  - The borrower fails to perform under an agreement on a loss mitigation option.

Questions and Answers

Thank You

The information contained in this presentation is for informational purposes only and is provided as a public service and in an effort to enhance understanding of the statutes and regulations administered by the FDIC. It expresses the views and opinions of FDIC staff and is not binding on the FDIC, its Board of Directors, or any board member, and any representation to the contrary is expressly disclaimed.