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May 2013 Banking and Mortgage Regulatory Update

For monthly updates on compliance issues email mortgage@mccathernlaw.com with your request.

This monthly update will focus on the recent amendments to the Ability-to-Repay and Qualified Mortgage loan originator compensation requirements and amendments to the escrow account requirements so that members of your compliance team can more fully research and gain an understanding of what will be required in January 2014.

Loan Originator Compensation – Points and Fees

Upon issuing a final rule on the Ability-to-Repay Rule and Qualified Mortgages in January 2013, the CFPB also issued a proposed rule and sought public comments on proposed exemptions, modifications and clarifications to the Ability-to-Repay requirements. The proposed rule was issued to address implementation issues and logistical challenges associated with the points and fees requirements of the Dodd-Frank Act.

The final rule that was issued in May 2013 excludes from the points and fees calculation loan originator compensation paid by a consumer to a mortgage broker when the payment has already been included in the points and fees calculation as a part of the finance charge under §1026.32(b)(1)(i). Further excluded is compensation paid to mortgage broker employees because those payments are already included as loan originator compensation paid to the mortgage broker. Payments to loan officers by a creditor are also excluded. An "additive" approach is retained in the final rule for loan originator compensation paid by a creditor. This approach requires the creditor to include in the points and fees calculation the compensation paid by the creditor to a mortgage broker, in addition to up-front charges paid by the consumer to the creditor that are included in the points and fees under §1026.32(b)(1)(i).

Exemptions From The Ability-to-Repay Rule

Certain types of creditors designated by the Department of Treasury as Community Development Financial Institutions and creditors designated by HUD as either Community Housing Development Organization or a Downpayment Assistance Provider of Secondary Financing are exempt from the ability-to-repay requirements under certain conditions. Nonprofits are also generally exempt if they extend credit less than 200 times annually, provide such credit only to low-to-moderate income consumers and follow self-defined procedures that determine whether their borrowers have a reasonable ability to repay their loans. Further, credit extended pursuant to an Emergency Economic Stabilization Act program is exempt from the ability-to-repay requirements.

Small Creditors and Balloon Payment Qualified Mortgages

In addition to the original categories of qualified mortgages for small creditors, the CFPB has adopted a fourth category for certain loans originated and held in portfolio for at least three years by small creditors, *even if they do not operate predominately in rural or underserved areas.* These loans must meet typical Qualified Mortgage restrictions, except that the loans are not subject to a specific debt-to-income ratio.

The CFPB has also raised the "safe-harbor" threshold for loans made by small creditors under the balloon loan or small creditor portfolio categories of qualified mortgages. The safe-harbor threshold is raised from 1.5 percentage points above APOR on first-lien loans to 3.5 percentage points above APOR.

Finally, CFPB has provided a two-year period during which small creditors that do not operate predominately in rural or underserved areas can offer balloon payment qualified mortgages if they hold the loans in portfolio. These amended rules will take effect on January 10, 2014.

Amendments to Escrow Account Requirements

The amendments to this rule affect creditors that operate in predominately rural or underserved areas. These amendments include how to determine whether a county is considered "rural" or "underserved" for the escrow requirements under Dodd-Frank. The CFPB has also published a final list of rural and underserved counties for use from now until December 31, 2013. The 2014 list will be posted when relevant data becomes available.

While there were many public comments as to how to better define "rural" or "underserved," the CFPB has determined that a county's status as "rural" will be by reference to the Urban Influence Codes established by the Department of Agriculture's Economic Research Service, and a county will be deemed "underserved" based on Home Mortgage Disclosure Act data. A "rural" county is one in which during a calendar year it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area. An "underserved" county is one in which during a calendar year no more than two creditors reported having five or more first-lien covered transactions.

This update is not to be considered an offering of legal advice and does not constitute an attorney-client relationship. If you are interested in a more specific and tailored analysis of the compliance-related issues associated with the Dodd-Frank Act, and how it affects your business, please contact Arnold Shokouhi at 214.741.2662.