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August 16, 2013

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Releases Second Update of Exam Procedures for Mortgage Rules

On August 15, 2013, the Consumer Financial Protection Bureau (CFPB) released a second update to its exam procedures in connection with the new mortgage regulations issued in January 2013, most of which go into effect in January 2014.

The update covers Ability-to-Repay/Qualified Mortgages, high-cost mortgages, and appraisals for higher-priced mortgage loans, as well as new amendments related to the escrows rule. The update also covers recent changes to credit card rules. The exam procedures now cover the mortgage origination rules issued through May 29, 2013, and mortgage servicing rules issued through July 10, 2013.

As stated in the August 15, 2013 release, the applicable sections of the exam procedure manuals for the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) are updated, as follows:

“•Require lenders to evaluate a borrower’s ability to pay back the loan: Under the Ability-to-Repay rule, lenders must look at a consumer’s financial information and verify its accuracy. Lenders then must evaluate the information and conclude that the borrower can repay the loan. Lenders may not base their evaluation of a consumer’s ability to repay on teaser rates. They must determine the consumer’s ability to repay both the principal and the interest over the long term – not just during an introductory period when the rate may be lower.

“•Ban or limit certain points, fees, and risky features: Both the rule on Ability-to-Repay and the rule on high-cost mortgages ban or limit certain points, fees, and risky features. Under the Ability-to-Repay rule, a Qualified Mortgage is subject to limitations on points and fees and cannot have loan features such as terms that exceed 30 years or interest-only payments. Under the high-cost mortgages rule, balloon payments and fees for modifying loans are generally banned.

“•Require servicers to provide monthly statements and disclosures: Mortgage servicers must provide regular statements which include: the amount and due date of the next payment; a breakdown of payments by principal, interest, fees, and escrow; and recent transaction activity. For most adjustable-rate mortgages, they must also provide disclosures before the first interest rate adjustment, and before interest rate adjustments alter the payment amount.

“•Restrict dual-tracking: Under the Bureau’s rule on mortgage servicing, dual-tracking – when the servicer moves forward with foreclosure while simultaneously working with the borrower to avoid foreclosure – is restricted. Servicers cannot start a foreclosure proceeding if a borrower has already submitted a complete application for a loan modification or other alternative to foreclosure and that application is still pending review.

“**Require access to servicing personnel and a fair review process:** Mortgage servicers must have policies and procedures in place to provide delinquent borrowers with direct, easy, ongoing access to employees responsible for helping them. If a foreclosure seems likely, the servicer must consider all alternatives available from the mortgage owners or investors to help the borrower retain the home.

“**Require creditors use a licensed or certified appraiser:** The interagency rule from January 2013 on appraisal requirements for higher-priced mortgage loans requires that creditors use a licensed or certified appraiser to prepare a written appraisal report based on a physical inspection of the interior of the property. The rule also requires creditors to disclose to applicants information about the purpose of the appraisal and provide consumers with a free copy of any appraisal report.”

A copy of the RESPA exam procedures released by the CFPB on August 15, 2013, can be found at: http://files.consumerfinance.gov/f/201308_cfpb_respa_narrative-exam-procedures.pdf.

A copy of the TILA exam procedures released by the CFPB on August 15, 2013, can be found at: http://files.consumerfinance.gov/f/201308_cfpb_tila-narrative-exam-procedures.pdf.

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