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The CFPB's 2013 Mortgage Rules: What We Need to Make the Housing Market Work Better for Families and Communities

This month will see important new mortgage regulations issued by the Consumer Financial Protection Bureau. The Bureau's rules, primarily implementing legal requirements under the Dodd-Frank Act, will set the stage for mortgage lending and servicing for years to come.

These rules must take care to prevent abuses like those that led to the financial crisis, to promote sustainable lending, and to align servicing industry practices with the interests of homeowners, communities and investors, in addition to ensuring access to fair and affordable credit. Given the history of targeting abusive practices to borrowers in communities of color and other underserved borrowers lacking access to sustainable mortgages, the Bureau needs to craft rules that help end the dual mortgage market and ensure equitable access to sustainable loans for all creditworthy borrowers.

The following is a list of key consumer protections that we believe need to be a part of the Bureau's January 2013 final mortgage rules in order to accomplish these goals.

Mortgage Lending

The Dodd-Frank "Ability to Repay" (Qualified Mortgage) rule should create incentives for lenders and investors to make affordable loans.

- The "Qualified Mortgage" definition should encompass the majority of the mortgage market, so that most borrowers have access to affordable, sustainable loans.

- The "Qualified Mortgage" definition should reflect the 'rebuttable presumption' language in the statute, which balances the clarity creditors want in order to confidently make mortgage loans, with the protection of borrowers rights needed to prevent abuses and promote compliance with the letter and the spirit of the statutory requirement that lenders should not sell unaffordable loans. A 'safe harbor' does not provide the necessary protection for borrowers Congress required, and allows lenders to return to the practice of making dangerous and unsustainable loans. The rebuttable presumption is particularly important for borrowers who may not have access to prime loans, since they will have the greatest exposure to risky lending practices.

- In order for the rebuttable presumption to be meaningful, the rule must make it feasible for homeowners who receive unaffordable loans to bring claims. Lenders cannot be able to escape from liability by selling a loan to an investor, or by having borrowers sign boilerplate forms as part of the sea of paperwork connected with a mortgage loan. Rules and procedures for raising a claim must be clear and fair, allowing the homeowner to raise a claim if the loan was unaffordable.

The Dodd-Frank rules restricting loan originator compensation should ensure that payments to brokers and loan officers cannot be used to disadvantage homeowners, and all the rules should ensure that all types of lender and mortgage broker fees are included in the statutory limits on fees.

Updates to high-cost mortgage protections should reflect the need to protect all homeowners with high-cost loans, no matter which type of mortgage loan they receive. Homeowners who receive home equity lines of credit should be able to avail themselves of the same protections as borrowers who received installment loans.

Mortgage Servicing

Loss mitigation rules should end the dual track of pursuing foreclosures during loan modification reviews – a practice that leads to unnecessary and preventable foreclosures. After years in which servicers failed to provide sustainable loan modifications even when they would have been in the best interests of both homeowners and investors, the rules should require the servicers to actually follow the rules, as they have in many cases repeatedly sworn to do in agreements and contracts, and make loss mitigation mandatory.

- If a loss mitigation application has been received prior to the start of a foreclosure, the servicer should be required to complete its 30-day review before initiating foreclosure.

- If a foreclosure is already underway when a completed loss mitigation application is submitted, the servicer should not take any additional steps to advance the foreclosure until the 30-day review is completed.

- Servicers should be required to accept loss mitigation applications until shortly before the sale, and should be encouraged to review loan modification applications until the sale date.

- Where an affordable loan modification to a qualified homeowner facing hardship produces more income for the investor than a foreclosure, a servicer should be required to give the homeowner the loan modification.

Requirements that servicers correct errors should reflect current legal protections combined with Dodd-Frank's additional legal rights for homeowners.

> Servicers should be required to address any error associated with a servicing duty, not only those contained in a select list. Homeowners wrongfully denied a loan modification should have the right not only to have their application reviewed again, but also the right to actually receive a modification if they qualify.