Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

Proposed rule to strengthen consumer protections for high-cost mortgage loans

DETAILED SUMMARY OF THE PROPOSAL

The Consumer Financial Protection Bureau (Bureau) invites the public to comment on a proposed rule to strengthen consumer protections for high-cost mortgage loans and to provide consumers with information about homeownership counseling. Submit your comments online at www.regulations.gov. Comments on most aspects of the Bureau's proposed rule are due on September 7, 2012. Comments on the Paperwork Reduction Act analysis, however, are not due until 60 days after the proposal is published in the Federal Register.

A. Background

The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or fees. Loans that meet HOEPA's high-cost triggers (high-cost mortgage loans) are subject to special disclosure requirements and restrictions on loan terms, and borrowers in high-cost mortgage loans have enhanced remedies for violations of the law.

In response to the recent mortgage crisis, Congress through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded HOEPA to apply to more types of mortgage transactions, including to home-purchase loans and home-equity lines of credit. Congress also amended HOEPA's existing high-cost triggers, added a prepayment penalty trigger, and expanded the protections associated with high-cost mortgage loans. The Bureau is now proposing to amend Regulation Z, which implements HOEPA and the broader Truth in Lending Act, to address which loans are subject to HOEPA and to implement HOEPA's expanded protections, including a requirement that consumers receive counseling from an approved counselor before taking out a high-cost mortgage loan.

The proposal also would implement other homeownership counseling-related requirements that Congress adopted in the Dodd-Frank Act that are not amendments to HOEPA. The proposal would generally require mortgage lenders to distribute a list of homeownership counselors or counseling organizations to consumers within a few days after applying for any mortgage loan. The proposal also would implement a requirement that first-time borrowers receive homeownership counseling before taking out a negatively amortizing loan.

B. Summary of the Proposed Rule

Scope of HOEPA coverage. The proposed rule would implement the expansion of HOEPA to cover most types of mortgage loans secured by a consumer's principal dwelling, including home-purchase mortgage loans, refinances, closed-end home-equity loans, and open-end home-equity lines of credit. Reverse mortgages would still be excluded.

Revised HOEPA thresholds. Under the Dodd-Frank Act, HOEPA protections would be triggered where:

- a loan's annual percentage rate (APR) exceeds the average prime offer rate by 6.5 percentage points for most first-lien mortgages and 8.5 percentage points for subordinate-lien mortgages;
- a loan's points and fees exceed 5 percent of the total loan amount, or a higher threshold for loans below $20,000; or
- the creditor may charge a prepayment penalty more than 36 months after loan consummation, or penalties that exceed more than 2 percent of the amount prepaid.

The proposed rule would implement the Dodd-Frank Act's amendments to HOEPA's high-cost triggers and seeks comment on whether to adopt certain adjustments to those triggers if the Bureau adopts a broader definition of "finance charge" under Regulation Z. That change, which the Bureau is proposing in connection with a separate proposal to integrate mortgage disclosures, would otherwise cause more loans to exceed the APR and points and fees triggers and be classified as high-cost mortgage loans under HOEPA.

The proposal also would implement various statutory definitions related to HOEPA's high-cost triggers and provide guidance on how to apply the triggers. For instance, for purposes of the APR trigger, the interest rate used to determine

HOEPA coverage for variable-rate loans would generally be based on the maximum margin permitted at any time during the loan or plan, added to the index rate in effect at consummation or account opening. The average prime offer rate for open-end loans would be determined based on the average prime offer rate for the most closely comparable closed-end loan. The definition of "points and fees" would conform closely to what has previously been proposed to implement requirements of the Dodd-Frank Act concerning assessment of consumers' ability to repay mortgage loans.

Restrictions on loan terms. The proposed rule also would implement new Dodd-Frank Act restrictions and requirements concerning loan terms and origination practices for high-cost mortgage loans. For example:

- Balloon payments would largely be banned, and creditors would be prohibited from charging prepayment penalties and financing points and fees.

- Late fees would be restricted to four percent of the payment that is past due, fees for generation of payoff statements would be restricted, and fees for loan modification or loan deferral would be banned.

- Creditors originating open-end credit plans would be required to assess consumers' ability to repay the loans. (Creditors originating high-cost, closed-end loans already are required to assess consumers' ability to repay.)

- Creditors and mortgage brokers would be prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage loan.

- Before making a high-cost mortgage loan, creditors would be required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the loan.

Other counseling-related requirements. In addition to the proposed changes discussed above, the Bureau's proposal would implement two Dodd-Frank Act homeownership counseling-related provisions that are not amendments to HOEPA.

- The proposed rule would amend Regulation X to implement a requirement under the Real Estate Settlement Procedures Act (RESPA) that lenders provide a list of federally certified or approved homeownership counselors or counseling organizations to consumers within three business days of applying for a mortgage loan. The Bureau expects to create a website portal to make it easy for lenders and consumers to obtain lists of homeownership counselors in their areas.

- The proposed rule would amend Regulation Z to implement a requirement under the Truth in Lending Act that creditors obtain confirmation that a first-time borrower has received homeownership counseling from a federally certified or approved homeownership counselor or counseling organization before making a negative amortization loan to the borrower. (A negative amortization loan is one in which the payment schedule can cause the loan's principal balance to increase over time.)

Effective date. The Bureau's proposal seeks comment on when a final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rule will require lenders and brokers to make systems changes and to retrain their staff. In addition, industry will at approximately the same time be implementing a number of other changes relating to other Dodd-Frank Act provisions, some of which will take effect within one year after issuance of final implementing rules. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes.