

# CFPB video guidance to the 2013 Mortgage Servicing Rules

## Transcript

### **Ben Olson:**

Hello, I'm Ben Olson, and I'm the Deputy Assistant Director for Regulations at the Consumer Financial Protection Bureau. I'm here to talk to you today about the Bureau's January 2013 final rule under the Homeownership and Equity Protection Act which is frequently called HOEPA or to some, HOEPA. At the outset, I want to make clear that this is staff guidance and not any official interpretation of the Bureau or any legal advice.

As an initial point, this rule is effective on January 10<sup>th</sup>, 2014. So compliance will be mandatory for affected entities on that date. This rule, the high cost mortgage rule, actually amends two different regulations. It amends Regulation Z by implementing Dodd-Frank Act changes to HOEPA, specifically, where HOEPA previously applied only to closed-end refinancings and second lien mortgages. Coverage is now expanded to now also include open-end home equity lines of credit and purchase money mortgages. In addition, the coverage thresholds under HOEPA have been revised that more loans are covered and there is a new prepayment threshold added for coverage. And we'll discuss specifics of that in just a moment. We'll also discuss new protections for high cost mortgages including counseling as well as a new counseling requirement for negative amortization loans. And as I will discuss in a minute, that applies to all such loans, not just loans that are subject to HOEPA. In addition, this final rule amends Regulation X, which implements the Real-Estate Settlement Procedures Act and it implements a Dodd-Frank Act requirement to provide counseling lists to borrowers in most mortgage transactions.

A transaction subject to HOEPA coverage is a high cost mortgage if the APR is greater than, and there are different thresholds for different types of transactions. For a first lien transaction, it is when the APR is more than 6.5 points over the Average Prime Offer Rate or APOR. This should hopefully be a familiar concept to folks who are complying with existing regs and rules. For a first lien transaction for less than \$50,000 that is secured by personal property it is APOR over 8.5%. This would include a manufactured home that is titled as personal property. And for a junior lien transaction it is also APOR plus 8.5%. So these new coverage thresholds are significantly more expensive than the thresholds under the current law. So these Dodd-Frank Act changes will significantly expand the number of loans that are subject to HOEPA coverage.

In addition, a loan is a high cost mortgage if the points and fees are greater than: for transactions \$20,000 or more, 5% of the total loan amount, and for transactions of less than \$20,000, the lesser of \$1,000 or 8% of the total loan amount. The Dodd-Frank Act amendments and this final rule also add a new covered threshold based on the prepayment penalty. A loan is a high cost mortgage under this rule if a prepayment penalty is authorized that either could be charged more than 36 months after consummation or account opening or that exceeds 2% of the amount prepaid. Note that prepayment penalties, as we'll discuss on the next slide, are prohibited for high cost mortgages. So this threshold serves as an effective

cap. In other words, if a prepayment penalty triggers this cap then the loan is a high cost mortgage and it is a prohibited prepayment penalty. So essentially, a lender cannot make a loan with a prepayment penalty that either exceeds the 36-month threshold or the 2% of amount prepaid.

The requirements for high cost mortgages have been revised in several respects. The disclosures have been revised, there is a new ability to repay analysis, which for closed-end loans is coordinated with the ATR standards under the qualified mortgage ability to repay final rule. That rule is discussed in a separate presentation.

And there is also the pre-loan counseling requirement which I'll discuss on the next slide. Balloon payments are generally banned. There are narrow exceptions which include an exception in rural and underserved areas that is, again, consistent with the treatment of balloon payments in the qualified mortgage ability to repay rulemaking. Prepayment penalties are banned for high cost mortgages. The financing of points and fees is banned, loan modification fees are banned, and there are a number of new restrictions on late fees and fees for pay-off statements.

The rule imposes requirements that consumers receive pre-loan counseling for high cost mortgages and for most kinds of closed-end loans as well as a negative amortization loan to a first time borrower. This is not an amendment to HOEPA. This applies to non-HOEPA loans as well that are negative amortization loans made to a first time borrower. A creditor is responsible for obtaining confirmation from the homeowner of the counseling prior to consummating the transaction. There is also a requirement under Regulation X implementing the RESPA amendment that requires creditors and lenders to provide counseling lists to borrowers in most mortgage transactions. This is a list of counselors who provide services in the customer's area. The list will be made available by the Bureau through its website. That website is still under development but will be ready well in advance of the final rule taking effect in January 2014 so that the creditor can come to our website and obtain the information they need to provide to the borrower.