CFPB video guidance to the 2013 Mortgage Servicing Rules

Transcript

Richard Cordray:
Thank you so much for joining us for our presentations on the new mortgage rules. I am Richard Cordray, the Director of the Consumer Financial Protection Bureau. These videos are part of a broader effort on our part to help you comply with the Dodd-Frank Act's mortgage reforms and with our rules.

We intend to work with you by offering guidance and assistance to help you understand and implement the rules. In addition to these video overviews, we are publishing small entity compliance guides for the mortgage rules. These guides seek to present the rules and their requirements in plain language formats to assist banks and non-banks alike. But they will be especially helpful to smaller institutions where implementation challenges may weigh more heavily on fewer employees. We are trying to make our rules more understandable and more user-friendly, setting out as clearly as we can what you need to know and what you need to do in order to comply with the rules.

We are currently taking feedback on the guides so please let us know what you think. You can find contact information for how to give us feedback within the guides. We hope to use your suggestions to improve them.

It is important to remember why we've issued these rules. In the Dodd-Frank Act, Congress gave the Bureau the responsibility to adopt specific mortgage rules to help ensure that the irresponsible practices that precipitated our nation's recent financial calamity are not repeated. A summary of each rule we've adopted and the rules themselves are available on the Bureau's website at consumerfinance.gov/regulations.

We understand that adjusting to the law Congress has passed and the rules we've written to implement that law may not be easy. We want to help you understand how to comply with the mortgage rules. If you have questions, please submit them at CFPB_reginquiries@CFPB.gov. Or call us at (202)435-7700. (202)435-7700.

The team that will present more detail about the rules is working diligently to respond to your interpretive questions and I know they will continue to do so. You can watch this single overview of all of the rules, which will last just over an hour, or you can watch each individual overview of individual rules separately. You can find those videos on the individual rules on our mortgage rule webpages.

Now I'm going to turn it over to our experts who will walk you through the mortgage rules.

Kelly Cochran:
Hello. My name is Kelly Cochran and I'm the Assistant Director for Regulations at the CFPB. I am going to be giving an overview of the ability to repay and Qualified Mortgage Final Rule.

The Bureau issued this rule in January of 2013 to implement provisions under the Dodd-Frank Act. The rule will take effect on January 10th of 2014. This is staff guidance and not any official interpretation of the Bureau or any legal advice. Please refer to our website for copies of the rule and other summary materials.

When the rule takes effect it will replace existing regulations that already require creditors to consider a consumer's ability to repay a mortgage loan where those loans are higher-priced mortgage loans. Under the new Dodd-Frank Act rules, the coverage of the ability to repay requirement will be much broader. It applies broadly to closed end transactions secured by a dwelling. There are certain exclusions from the rules for home equity lines of credit, timeshares, reverse mortgages, temporary or bridge loans and construction phases of a construction to permanent loan. But the rule is not limited to loans that are secured by a principal dwelling or to first lien loans so the coverage is much broader than the existing regulations, which only cover higher-priced mortgage loans. The core of the ability to repay requirement is that creditors make a reasonable good faith determination at or before consummation that the consumer will be able to repay the loan. We will talk more about the specific provisions in the rule to implement this requirement.

The second major element of the regulation concerns what are called qualified mortgages. The Dodd-Frank Act provides that qualified mortgages will receive a presumption of compliance with the ability to repay requirements, basically, where a creditor is willing to meet certain restrictions in order to have the loan become a qualified mortgage. In return, their risk of liability for failing to satisfy the ability to repay requirements is reduced. Under the regulations, there is a safe harbor for loans below the higher-priced mortgage loan threshold. For loans above that threshold, there is a rebuttable presumption in which consumers can challenge compliance, but only on certain grounds. We will discuss this in more depth later in the presentation.

The regulation also establishes the requirements for certain qualified mortgages. Under the Dodd-Frank Act, qualified mortgages receive a presumption of compliance with the ability to repay requirements. Basically, where creditors are willing to meet the requirements for a qualified mortgage, their risk of challenge for failing to satisfy the ability to repay rules is reduced. Specifically, qualified mortgages must meet certain restrictions on loan features, a cap on points and fees, and certain underwriting requirements. In return, loans that are below the threshold for higher-priced mortgage loans will be subject to a safe harbor under the ability to repay rules. Loans above the threshold for higher-priced mortgage loans are subject to a rebuttable presumption. That means that the consumer can challenge whether the creditor did in fact satisfy the ability to repay requirement, but only on certain specified grounds under the rules. We will talk further about all of these requirements later in the presentation.

As I mentioned, the creditor must make a reasonable and good faith determination that the consumer will have a reasonable ability to repay the loan according to its terms. The rule sets out specific procedures that creditors must follow in verifying information, certain elements that must be considered and rules for calculating the mortgage payment from the loan for the purpose of determining a consumer's ability to repay. At the same time, the rule is intended to permit flexibility in underwriting for creditors. It does not intend to replace reasonable underwriting with specific universal underwriting policies and procedures. So the reasonable and good faith determination is the overall requirement.

Let's start with the first element, to consider and verify certain consumer specific information. The rule sets forth eight categories of consumer information that must be considered. These are things like income or assets, the mortgage payment on the loan that is being originated, current debt obligations, alimony, child support, and other factors. The rule requires that these factors be considered as part of the underwriting process and also that the information that the consumer provides about the factors be verified using reasonably reliable third-party records. The rule set forth a number of different examples of the kinds of reasonably reliable third-party records that can be used to verify different types of information such as income.

The second major requirement in the rule is rules regarding the calculation of the monthly mortgage payment for the purposes of assessing the consumer's ability to repay. Generally, creditors must use the greater or the fully indexed or introductory rate. And must assume monthly substantially equal payments that amortize the loan amount over the loan term. There are special rules for loans with negative amortization, interest only, or balloon payments. It is worth noting that under the ability to repay requirements, there are no specific limitations on loan features or points and fees. So as long as the loan is originated using the procedures specified in the rule and the creditor makes a determination that the consumer has the ability to repay the loan, it is permissible for an ability to repay a loan to have features such as interest only or negative amortization periods and there is no specific limit on the points and fees so long as the creditor makes the overall determination that the consumer can pay the loan. When we turn to the qualified mortgage side, you will see that there are specific requirements with regard to features and points and fees for those mortgages.

Turning to the qualified mortgage part of the rule, the regulation sets out three different types of qualified mortgages. I will talk through the requirements for each of those types and then talk overall about the broader distinction across all types of qualified mortgages between those that receive a safe harbor and those that receive a rebuttable presumption.

The general definition for qualified mortgage, the broadest category of qualified mortgage, has three main components. First, there are certain limits on the loan feature. Second, there is a cap on points and fees. And third, there are certain underwriting requirements with regard to this category of qualified mortgage.

Turning first to the limits on loan features, under Dodd-Frank this category of qualified mortgage cannot have negative amortization or interest only periods. Also, balloon payments are not permitted for the general definition of qualified mortgage. There is a separate category that applies to certain small creditors that operate predominantly in rural or underserved areas. And we will talk about that category of qualified mortgage a little later. Finally, the loan term may not exceed 30 years.

The second element of the requirements for the general qualified mortgage definition is the points and fees cap. Generally, these loans cannot have points and fees above 3% of the total loan amount. However, there are higher caps for loans that are under $100,000. Those caps go up to as much as 8% under certain circumstances. The Dodd-Frank Act also sets out a specific definition of points and fees for purposes of the qualified mortgage cap. For this purpose, it includes origination and other charges that are paid to the creditor or to an affiliate. It also includes compensation paid to loan originators and the definition of loan originator includes both brokers and individual loan officer employees that are employed either by a broker or by a retail creditor. Certain upfront private mortgage insurance premiums are also included in the definition of points and fees. At the same time, there are also some exclusions from the definition of points and fees. So up to two additional bona fide discount points are allowed, depending on the rate of the loan. Bona fide charges paid to third parties and certain mortgage insurance and guarantee fees for government programs are also excluded from the points and fees cap.

The third category of requirements for the qualified mortgage concern underwriting requirements. For the general definition, it's required that the creditor use the maximum rate in the first five years after the first payment to calculate the mortgage payment for purposes of determining if the consumer can pay the loan. It's also required to have full amortization. Secondly, creditors are required to consider and verify income or assets and current debt obligations, alimony, and child support. Finally, the rule requires that the consumer’s monthly debt to income ratio not exceed 43%. Appendix Q. of the rule defines debt and income for this purpose. It is based on FHA guidelines so it will be familiar to many creditors.

In addition to the general requirements for qualified mortgage that I just described, there is a second category of qualified mortgages. This is a temporary category that will go away over time. I will first explain what the requirements are for this category and then talk about how it will expire. Compared to the general definition we just went over, the limits on loan features and the points and fees cap are the same for the temporary alternative qualified mortgage. The difference concerns the underwriting requirements. In lieu of the underwriting requirements that we just discussed, this temporary category of qualified mortgage must be eligible for purchase, guarantee, or insurance either by the government-sponsored entities, Fannie Mae and Freddie Mac, or by HUD, the Department of Veterans Affairs, the Department of Agriculture, or the Rural Housing Service. So in lieu of the 43% DTI cap, and the other underwriting requirements, the simple requirement is that they be eligible for purchase guarantee or insurance by these entities. It is not required that they actually be purchased or guaranteed or insured by these entities.

As I mentioned, this category of qualified mortgage will expire over time so that new loans will not be eligible under this definition. First, the federal agencies that I just mentioned have their own rule writing authority under the Dodd-Frank Act to define which of their loans are qualified mortgages for themselves so this temporary provision will apply only until they issue their own rules and those rules take effect or seven years, whichever happens first.

Secondly, with regard to the GSEs, the provision will sunset or expire once their government conservatorship ends or seven years, whichever comes first, so that after that time this definition will no longer be available. But loans that were originated under the definition before it expired will continue to maintain their qualified mortgage status going forward.

The third category of qualified mortgage concerns balloon payment qualified mortgages that I mentioned at the top. This is a very limited category of qualified mortgage. It is created by the Dodd-Frank Act. Generally, the Dodd-Frank Act prohibited qualified mortgages from containing balloon payment features. But it did make an exception for small creditors that operate predominantly in rural or underserved areas under certain conditions. The requirements for this category of qualified mortgage are similar to what we have already talked about with regard to the limits on loan features. They are the same as the general definition of qualified mortgage except for the fact that balloon feature is permitted under certain circumstances. The points and fees cap also applies, just as it does in the other categories of qualified mortgage.

With regard to the underwriting requirements for the balloon payment qualified mortgage, there are several unique provisions. First, the loan term must be at least five years in length. Secondly, the creditor must use an amortization schedule that is no longer than 30 years. The rules require that creditors consider and verify debts, income, and either a debt to income ratio or residual income but there is no flat 43% DTI requirement.

Finally, there are a series of requirements concerning the creditor and the nature of their operations. First, the creditor must make at least 50% of its first lien mortgages in rural or underserved counties. The Bureau will publish a list on an annual basis of which counties receive this designation to make it easier for creditors to determine their eligibility. Secondly, the creditor's assets must be under $2 billion. Third, including originations by affiliates, the creditor must make no more than five hundred first lien mortgages per year. And finally, the balloon payment qualified mortgages must generally be held in portfolio for at least three years although there are certain provisions in the rules who allow earlier sales if for instance, one eligible creditor was transferring a balloon payment loan to another eligible creditor or there were mergers or other unusual circumstances. Finally, there is a requirement that the balloon payment qualified mortgages must generally be held in portfolio for at least three years. Specifically the rules require that the balloon payment qualified mortgages not be subject to a forward commitment at the time they are consummated. In addition, there are limits on transferring or assigning those qualified mortgage within the first three years after consummation. However, there are exceptions to allow transfers. For instance, in a situation where one eligible creditor is selling a loan to another creditor that itself is eligible to make balloon payment qualified mortgages. There are also exceptions for merger situations and situations where there is an agreement with a prudential regulator requiring the creditor to sell off loans for instance, for safety and soundness reasons. So those are the three types of qualified mortgages permitted under the rule.

Let's return to talk a bit more about the presumption of compliance that is afforded to these qualified mortgages. As I mentioned in the beginning, the Bureau defined the presumption of compliance that applies to a qualified mortgage but the statute did not explain how strong that presumption should be. The Bureau rule calibrates the level of protection afforded the creditor based on whether the loan is higher priced. The threshold is set out on this slide. So for loans that satisfy the qualified mortgage where the APR is less than the Average Prime Offer Rate plus 1.5 percentage points for a first lien or the Average Prime Offer Rate plus 3.5 percentage points for second liens, the loan receives a safe harbor. That means that a consumer cannot later show that the creditor did not comply with the ability to repay requirements when it originated the loan. For loans that satisfy the qualified mortgage criteria but equal or exceed these price thresholds, there is a rebuttable presumption that the creditor satisfied the ability to repay requirements. That means a consumer could bring a challenge for failure to comply but the challenge would be limited because the consumer would have to show that they were left with insufficient residual income to cover basic living expenses.

Before we turn to the last slide, I wanted to mention two other elements of the ability to repay rules. First, the rule set forth special provisions to cover situations in which a creditor is refinancing what is called a nonstandard mortgage under the rule into a standard mortgage. These provisions create an exception from the basic ability to repay requirements to facilitate the refinancing process. Under this, a nonstandard loan or a nonstandard mortgage is defined as an adjustable rate mortgage with an introductory fixed interest rate for a period of at least one year, an interest only loan, or a negative amortization loan. Standard mortgages are ones that do not have negative amortization, interest only payments or balloon payments. They are also certain limits on loan terms, and points and fees. The interest rate must be fixed for their first five years and there are limits of the loan on the use of loan proceeds. Finally, the monthly payment must be materially lower than the current payment, generally that would be 10% or more.

The other element of the ability to repay rules that I wanted to mention was prepayment penalty restrictions. The Dodd-Frank Act strictly limits the use of prepayment penalties on mortgages. Once the rules take effect, prepayment penalties will not be permitted except for certain qualified mortgages. The mortgages must either be fixed or step rate and not higher-priced mortgage loans. There are certain caps on the prepayment penalties that are permitted even for those loans and the creditor must offer an alternative loan with no prepayment penalty to the borrower.

I briefly wanted to describe the proposal that the Bureau issued in January to revise and supplement certain parts of the final rule. The comment period on this proposal closed February 25th and we are now in the process of going through the comments and hope it to issue a further final rule as quickly as possible. We want to issue it well before the implementation date so that people have sufficient time to adjust their planning for implementation accordingly.

The proposal had three main elements. The first is to exempt certain types of lending programs from the general ability to repay requirements. These include community development lending programs such as Community Development Financial Institutions and certain nonprofits and also government stabilization and refinancing programs. The second element of the proposal concerns possible fourth category of qualified mortgage. This category is somewhat similar to the balloon payment qualified mortgage in that it is focused on small creditors who hold their loans in portfolio. But it does not cover balloon payment loans and it is not restricted to creditors who operate predominantly in rural or underserved areas. Specifically this new fourth category of qualified mortgage would have the same limits on loan features as the general permanent definition of qualified mortgage. So this would not permit negative amortization, interest only periods or balloon payments. It would also be subject to the same points and fees cap that applies to the other categories of qualified mortgage. But similar to the balloon payment qualified mortgage, it would have more flexible underwriting standards. The payment calculations would have to be calculated using the maximum interest rate in the first five years of the loan. The creditor would have to consider and verify debts, income and either debt to income ratio or residual income. But there would be no specific 43% debt to income ratio required. Finally, there would be certain requirements based on the nature of the creditor. Specifically, the creditor would have to the assets of less than $2 billion with its affiliates. It would have to originate 500 or fewer first lien mortgages per year. And it would generally have to hold the qualified mortgages in portfolio for at least three years subject to the same exceptions I discussed earlier for the balloon payment qualified mortgage. However, there is no requirement that the creditor operate in any particular counties to be eligible for the proposed category of qualified mortgage.

The final set of issues addressed in the proposal concern the calculation of points and fees for purposes of the qualified mortgage definition. Specifically we were seeking comment on the treatment of the loan originator compensation. As you may remember, loan originator compensation is counted towards the points and fees cap but there are number of technical issues that arise in calculating that. In particular, we were seeking comment on situations where payments are passed from one party to another. For instance, from a consumer to a creditor and from the creditor to a broker, or to its own loan employees, and how those various payments should be calculated.

We also sought comment on definitions and whether any further guidance or harmonization would be required with other rules that the Bureau is issuing in January concerning loan originator compensation. We hope to tie this off as quickly as possible. We know that people are very concerned and want to understand how the further final rule will affect their implementation process.

Mitchell Hochberg:
My name is Mitchell Hochberg, Senior Counsel in the Office of Regulations at the Consumer Financial Protection Bureau. And this is the Bureau's Mortgage Servicing Final rule.
The mortgage servicing Final rule amends Regulation Z, which implements the Truth in Lending Act and Regulation X, which implements the Real Estate Settlement Procedures Act. Both the Truth in Lending Act and the Real Estate Settlement Procedures Act currently impose certain requirements on mortgage servicers. Sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act empowered the Bureau to address numerous problems relating to mortgage servicing by imposing certain requirements on mortgage servicers. To implement these requirements, the Bureau amended Regulation Z and Regulation X to add additional requirements for mortgage servicers with respect to the servicing of mortgage loans.

Regulation Z includes three new requirements relating to mortgage servicing. The first is a requirement for servicers to provide a periodic statement for certain mortgage loans. Second is for servicers to make certain adjustments to the disclosure requirements for adjustable rate mortgage loans and the third is requirements relating to prompt crediting of mortgage borrower payments and providing borrowers with payoff statements.

The Bureau's rules under Regulation X include five new requirements. These are requirements relating to error resolution and information requests, requirements relating to force-placed insurance for borrowers for which the servicer lacks a reasonable basis to believe the borrower has maintained hazard insurance, general servicing policies, procedures and requirements relating to the servicing operations, early intervention and continuity of contact for borrowers that have become delinquent, and loss mitigation procedures for handling applications for loss mitigation options submitted by borrowers. The loss mitigation procedures also include protections relating to dual tracking.

The mortgage servicing rules include requirements for servicing of borrower accounts that are current as well as additional requirements for borrowers that become delinquent. The servicing requirements that are applicable for all borrowers including borrowers that are current on their accounts include the periodic statement requirements, the ARM interest rate adjustment notices, the error resolution and information request requirements, the general servicing policies and procedures, and certain requirements relating to force-placed insurance.

The periodic billing statement requirement provides that creditors, assignees and servicers must provide a periodic statement for each billing cycle containing certain content. That content includes information on payments currently due and previously made, fees imposed on the account, transaction activity, application of past payments, contact information for the servicer and housing counselors, and where applicable, information regarding delinquencies.

The periodic statement requirement is subject to certain exceptions. First, a periodic statement is not required for fixed-rate mortgage loans if a coupon book is provided. Second, certain types of mortgage loans are not subject to the periodic statement requirement. These include reverse mortgage transactions and in addition, timeshare plans are not required to receive a periodic statement. The periodic statement requirement under the Bureau's rules only applies to closed end mortgage loans and does not apply to open end mortgage loans. Open-end mortgage loans are subject to requirements set forth elsewhere in the Truth in Lending Act and Regulation Z.

The periodic statements must meet the timing, form and content requirements provided in the rule. The rule includes sample forms that servicers may use to assist in compliance with these requirements.

The periodic statement requirement is also subject to a small servicer exemption. Small servicers, that is servicers that service together with any affiliates 5,000 or fewer mortgage loans and only service mortgage loans for which the servicer and affiliate was the creditor assignee (essentially these are mortgage loans that the servicer owns or originated), are not subject to periodic statement requirement.

In addition to the periodic statement requirement, servicers must provide certain notices to borrowers regarding the adjustment of the interest rate for adjustable rate mortgage transactions. The ARM interest rate adjustment notices include two requirements. The first is a New One-Time Initial ARM Notice. This is called the 20(d) notice and is implemented through section 1026.20(d) of Regulation Z. The New One-Time Initial ARM Notice must be provided 210 to 240 days prior to the first payment due after mortgage loan interest rate first adjusts. The notice may contain an estimate of the new rate and the new payment. And the mortgage servicing rules contain model and sample forms that servicers may use to assist in compliance with this requirement.

The servicers must also provide a new revised 20(c) ARM Notice. The interest rate adjustment notice requirements also include a revised 20(c) ARM Notice. The current 20(c) ARM Notice referred to as the 20(c) notice because it implements 1026.20(c) of Regulation Z requires that a notice be provided 25 to 120 days before an interest rate adjusts. The new ARM Notice requires that it must be provided 60 to 120 days prior to the first payment due after the rate adjusts if payment will change. Notably the amendments to the 20(c) notice move back the timing from 25 to 120 days to 60 to 120 day so that borrowers receive the revised 20(c) ARM Notice earlier in time before an interest-rate adjustment causes a payment change.

Further the amendments to the 20(c) notice provide that notice is only required if the rate adjustment causes a payment change. A notice is no longer required when a rate adjustment does not result in a payment change. And the rule contains a model and sample forms that servicers may use to comply with these requirements.

The servicing rules also include protections with respect to error resolution and information request notices received from borrowers. These rules require that servicers acknowledged written error notices or information requests generally within five days and in general, responses to such notices are required within 30 days. The rule requires servicers to comply with the error resolution procedures for certain listed errors as well as any error relating to the servicing of the mortgage loan. The procedures require that within 30 days in response to a notice of error a servicer must correct the error asserted or conduct an investigation and provide a notice in writing to the borrower that the servicer has determined that no error occurred.

For information requests, the servicer must within 30 days provide the information requested by the borrower or explain in writing why such information is not available. The mortgage servicing rules also include provisions relating to general servicing policies, procedures and requirements. Servicers are required to establish policies and procedures reasonably designed to achieve objectives specified in the rule. The rule sets forth objectives in a number of categories including providing accurate information to borrowers, investors and courts and categories addressing servicing transfers and loss mitigation applications amongst others.

Examples of the areas in which servicers must achieve objectives pursuant to the rules include the following bullets set forth. These are providing accurate and timely disclosures in response to borrowers request for information, investigating borrowers' complaints, providing mortgage owners accurate information about their loans, submitting accurate documents during foreclosure, and transferring information properly during servicing transfers.

The policies and procedures also set forth a number of requirements relating to loss mitigation. These include consulting with investors to identify available loss mitigation options up front in the servicing relationship. Providing borrowers accurate information about those options and evaluating borrowers' applications for loss mitigation options pursuant to requirements established by owners or investors of mortgage loans.

The general servicing policies, procedures and requirements also include requirements relating to document retention and the storage of mortgage servicing account information including a requirement that certain account information must be compilable into a servicing file within the set period of time.

Servicers are also subject to requirements with respect to obtaining force-placed insurance. A servicer may not impose a charge on a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance required by the loan contract and the servicer has provided certain notices required by the mortgage servicing rules to the borrower before a charge may be imposed. These notices include an initial notice, at least 45 days before charges may be imposed and a reminder notice at least 30 days after the first notice and at least 15 days before charges are imposed. These two notices create the 45-day notice cycle before a borrower may be subject to charge for force-placed insurance.

Charges for force-placed insurance must be for services that are actually performed and bear a reasonable relationship to the servicers' cost of providing those services. Notably, charges subject to state regulation as the business of insurance, for example insurance premiums, were authorized by federal law for flood insurance are not subject to restrictions for charges relating to force-placed insurance. The rule contains model forms that servicers may use to assist in complying with these requirements.

The rules also impose additional obligations with respect to the servicing of borrower accounts where borrowers have escrowed for hazard insurance. A servicer may not obtain force-placed insurance if a servicer is able to maintain the delinquent borrowers existing coverage for hazard insurance. Essentially if a borrower becomes delinquent on a mortgage loan, the current rule, prior to the Bureau's amendments, provided that a servicer is not required to advance or disperse from an escrow account in the event that a borrower is more than 30 days overdue on the mortgage loan obligation. The amendments in the Bureau's mortgage servicing rules provide that notwithstanding the delinquency of the borrower, including for borrowers that are more than 30 days overdue, a servicer may not obtain hazard insurance if the servicer is capable of maintaining the borrowers existing coverage by advancing funds to an escrow account or dispersing those funds from an escrow account.

The servicer is considered unable to maintain the borrowers hazard insurance if the property is vacant or if the insurance has been canceled for reasons other than non-payment. The specific requirements relating to obtaining force-placed insurance for borrowers that have escrowed for hazard insurance contained an exemption for small servicers as defined for purposes of the periodic statement exemption in Regulation Z.

The rules relating to force-placed insurance for borrowers that have escrowed for hazard insurance contain an exemption for small servicers. Small servicers as defined in Regulation Z, in connection with the periodic statement requirement, are exempt from the force-placed insurance rules for escrowed borrowers so long as any force-placed insurance obtained by such small servicer is less costly than the amount the servicer would be required to advance to maintain the borrower's hazard insurance.

The mortgage servicing rules also impose obligations on servicers with respect to the servicing of accounts for borrowers that have become delinquent. These requirements are set forth in the early intervention, continuity of contact and loss mitigation procedure provisions.

The early intervention requirement provides that by the 36th day of a borrower's delinquency, a servicer must make good-faith efforts to engage in live contact with borrowers. And further, by the 45th day of a borrower's delinquency, a servicer must provide written information to borrowers about loss mitigation options that may be available. This is intended to engage in contact with borrowers early in the delinquency process so as to inform borrowers of the availability of loss mitigation options that may be available to them.

Servicers must also provide for continuity of contact with delinquent borrowers. The continuity of contact requirement provides that servicers must have policies and procedures to assign support personnel to assist delinquent borrowers with the process of applying for loss mitigation options. Those policies and procedures must ensure that such personnel can access borrower information and provide such information to decision-makers with respect to the evaluation of a loss mitigation application. Both the early intervention and continuity of contact requirements provide an exemption for small servicers.

In addition to the early intervention and continuity of contact requirements, the mortgage servicing rules also include obligations with respect to the evaluation of loss mitigation applications. A loss mitigation application is an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.

For any loss mitigation application received 45 days or more before a foreclosure sale, a servicer is required to review the application, determine if the application is complete or incomplete, and provide a written notice within 5 days stating the servicer's determination of completeness and, if an application is incomplete, the information required to complete the application and a date by which such information should be provided.

A servicer is required to exercise reasonable diligence in obtaining documents and information to complete the application. Upon review of the loss mitigation application, the servicer must provide a written decision to the borrower regarding whether the servicer will offer the borrower a loss mitigation option.

A servicer that denies a borrower for any loan modification option must provide in their written notice a statement of the basis for the servicer's denial. A servicer may not simply state that an investor requirement was the basis for the denial but must provide specific information regarding why a borrower is denied for a loan modification option. The rule includes additional information regarding how a servicer presents information relating to a denial based upon a net present value test, the use of decisioning waterfall, or other investor requirements.

If a complete loss mitigation application was received 90 or more days before a foreclosure sale, a borrower is also entitled to an appeal of the denial of any loan modification option. Such appeal must be reviewed within 30 days by independent servicer personnel. The loss mitigation procedures also include restrictions on the process of dual tracking.

Dual tracking is the simultaneous evaluation of a borrower for a loss mitigation option while the borrower's foreclosure process proceeds. The Bureau has implemented a restriction on dual tracking when a borrower submits a complete loss mitigation application.

A servicer may not begin the foreclosure process when a borrower has submitted a complete loss mitigation application unless one of the following events has occurred. The servicer denies the application, and the time for any appeal has expired. The borrower declines or fails to accept the loss mitigation option or the borrower fails to comply with the loss mitigation agreement. In order to implement this protection on beginning the foreclosure process when the borrower has submitted a complete loss mitigation application, the Bureau has also established a 120-day prohibition on beginning the foreclosure process. A servicer may not make the first notice or filing required for foreclosure for a borrower unless the borrower is more than 120 days delinquent. A servicer may not make the first notice or filing required for foreclosure for a borrower that is 120 days or less delinquent. This prohibition provides the borrower time to submit a complete loss mitigation application and receive an evaluation for a loss mitigation option.

Once the foreclosure process has started, the loss mitigation procedures provide restrictions on dual tracking with respect to the completion of the foreclosure process. After a foreclosure starts, if a borrower submits a complete application for a loss mitigation option more than 37 days before a scheduled foreclosure sale, a servicer may not complete the foreclosure until the servicer has evaluated the application for all available loss mitigation options, notified the borrower of the result and one of the above-mentioned steps has occurred. These are specifically that the servicer denies the application and any time for an appeal has expired, the borrower declines or fails to accept the loss mitigation option, or the borrower fails to comply with the loss mitigation agreement. A servicer is under an obligation to notify foreclosure counsel that a complete application has been received so as to effectuate the restrictions on dual tracking.

The loss mitigation procedures, like the early intervention and continuity of contact requirements, are subject to an exemption for small servicers. As a reminder, those three requirements, as well as the periodic statement requirements set forth under Regulation Z, and the provisions relating to obtaining force-placed insurance for borrowers that have escrowed for hazard insurance, also include an exemption for small servicers.

A small servicer services, together with any affiliates, 5,000 or fewer mortgage loans, all of which are owned by or were originated by the servicer or its affiliates. Small servicer determinations are made each January 1st for the remainder of the year based on the number of loans serviced by the servicer and its affiliates.

There are two points to keep in mind with respect to the small servicer exemption. First, the small servicer exemption includes any housing finance agency regardless of the size of the servicing portfolio of any such agency. And second, for any loan, a master and any sub-servicer must each also be a small servicer. Thus if a servicer that is otherwise small hires a sub-servicer for a mortgage loan and the sub-servicer does not meet the requirements for a small servicer, the master servicer and the small servicer must comply with the requirements of the rule and do not gain the benefit of the small servicer exemption for that mortgage loan.

In addition to the small servicer exemption, other exemptions apply to the requirements set forth under Regulation X. Reverse mortgage transactions and mortgage loans for which a lender is a qualified lender pursuant to the Farm Credit Act of 1971 are exempt from the general servicing policies, procedures and requirements, the early intervention provisions, the continuity of contact provisions and the loss mitigation procedures. Further, reverse mortgage transactions are exempt from the periodic statement requirement. Finally, ARMs with terms of one year or less and certain unique transactions are exempt from the ARM disclosure requirements.

The effective date for the mortgage servicing rules is January 10th, 2014.

Paul Mondor:
Hello, my name is Paul Mondor. I'm Managing Counsel in the CFPB's Office of Regulations and I'm going to take you through the Bureau's new Loan Originator Compensation and Qualification Rule. This is staff guidance and not any official interpretation of the Bureau or legal advice. This is the master slide or roadmap. Following slides will elaborate on each of these major points.

By way of background, this is a series of requirements designed to address concerns that loan officers, mortgage brokers, and others have incentives to steer borrowers to potentially harmful loans. Federal Reserve Board rulemaking regarding compensation preceded Dodd-Frank and then Dodd-Frank essentially codified most of the Board rules requirements but with some differences that led to the need for an additional rulemaking. That was this new final rule just issued in January. It builds on the Federal Reserve Board's rule but clarifies certain aspects and it picks up the additional tweaks and twists that Dodd-Frank added.

There are two primary provisions to the rule and they correspond the first two bullets on this slide. The prohibition on compensation based on terms and prohibition on what we call dual compensation. The rule also clarifies the application of the existing rule concerning pricing concessions and profit sharing plans as it expands the recordkeeping requirement by applying it to non-creditor loan originators and extending it from two years to three years for compensation records. In addition, the rule has provisions concerning qualification of loan originators. It builds on the Safe Act requirements but adds TILA liability for failing to comply. And also requires that loan originator organizations ensure that the loan originators who work for them comply with the Safe Act and other state laws on licensing and registration. And for those institutions that have loan originators not subject to the Safe Act, they must perform background checks on their employees that are similar to the Safe Act requirements.

Another requirement is the identifier disclosure. Loan originators must disclose their nationwide mortgage licensing system and registry or NMLSR ID number on loan documents. Mandatory arbitration clauses mean that clauses requiring the consumer to submit disputes to binding arbitration or the application or interpretation of agreements so as to bar a consumer from bringing in a claim in court in connection with any alleged violation of federal law. As for single premium credit insurance, the rule prohibits a creditors financing of any premiums or fees for credit insurance such as credit life.

One last thing not on this slide is the statutory prohibition on upfront points and fees when loan originator compensation is paid by anyone other than the consumer. This rule does not implement that requirement. The Dodd-Frank Act gave us authority to waive it if doing so is in the interest of consumers and the public interest. The Bureau believes that a total ban would be not consistent with those interests but that we need to study it in light of new requirements, all of the new mortgage rules that are taking effect over the next year. So we exercised the waiver authority to delay rulemaking on this issue. The next step will be to research consumer interaction with all of the new protections and to review the effects of the regulations in the market.

We'll talk about the definition of loan originator. It is a very broad definition, which we believe, is in line with the definition of "mortgage originator" in the Dodd-Frank Act. And also with the rather broad loan originator definition already in the existing Federal Reserve rule. It includes direct or indirect compensation or monetary gain. Some examples of load originator include persons who fill out an application for a consumer, persons who advise on terms, persons who refer a consumer to another loan originator or a creditor. And by the way, a person includes not only natural persons but virtually all business forms such as trusts, LLCs, corporations, etc. There are, however, certain exclusions from the meaning of loan originator and these are largely statutory from the Dodd-Frank Act. Some of those include manufactured home employees who do not take a credit application or advise a consumer on loan terms. Servicers including their employees, contractors, or agents, if they are not replacing and satisfying an existing obligation, that is not doing a refinancing, real-estate brokers who do not also act as mortgage brokers in the transaction, managers who do not originate loans, or administrative and clerical staff who process loans on behalf of creditors and loan originators without offering or negotiating transaction terms.

This is the start of a couple of slides that will drill down more on the first of the two principal prohibitions. That is compensation that is based on a term of a transaction. Compensation is defined very broadly to include any incentive. Terms of a transaction include the rights and obligations in the note or other credit contract and in the security instrument as well as any document incorporated in those by reference. Any loan originator or creditor fees or charges imposed on the consumer for the credit or for any product or service connected to the credit, any fees or charges for any product or service required to be obtained as a condition of the credit. But all of this is limited to fees or charges required to be disclosed in the RESPA disclosures, the good faith estimate and the HUD-1. Some examples of terms then include the interest rate, the annual percentage rate, the type of collateral such as a condominium, cooperative, detached home, and the existence of a prepayment penalty or lack thereof.

There is a new clarification in this rule of an existing provision in the original loan originator compensation rule having to do with proxies. The rule also prohibits compensation based not only on a transaction term but on any factor that is a proxy for a transaction term. Originally, the rule basically provided only that much. This final rule expands and clarifies by defining what constitutes a proxy. And it is essentially a two-part test that you can see at the bottom of the slide. If the factor consistently varies with a term or terms of the transaction over a significant number of transactions and the loan originator has the ability directly or indirectly to add, drop, or change that factor when originating the transaction then that factor is a proxy for one of more terms.

Still on the first principal prohibition of compensation based on terms, two major clarifications under the existing rule were included in the new final rule as I alluded to earlier. Pricing concessions and profit sharing plans. So first, on the pricing concessions, the first main block on this slide we have the baseline rule. Although creditors may grant pricing concessions to consumers, they may not require a loan originator to bear the cost of that concession through reduced compensation. This rule introduces a new exception to that. When the RESPA estimates are exceeded for unforeseen reasons, not only beyond tolerance but any charge that is in excess of the estimate, a consumer may be granted a concession to defray the cost of that increase and the creditor may require the loan originator to bear the cost through reduced compensation.

The second and third blocks of this slide describe the additional clarification on profit sharing plans. The middle block is about specific designated tax advantaged plans. Designated means any defined benefit plan or defined contribution plan that meets any of several internal revenue code definitions. And you see them listed there. A qualified plan, employee annuity plans, simple retirement accounts, simple employee pensions and annuity contracts, or eligible deferred compensation plans. Designated defined benefit plans are expressly permitted without further inquiry while designated defined contribution plans are permitted as long as the contribution isn’t directly or indirectly based on the terms of that individual loan originator’s transactions.

The other block gets a little more complicated. It is for non-designated plans. The baseline rule here is that no loan originator may receive or be paid compensation in an amount that is based on a term of a transaction, the terms of multiple transactions by that loan originator, or the terms of multiple transactions by multiple individual loan originators. The commentary clarifies that loan originator compensation based on mortgage related business profits amounts to compensation that is based on terms of transactions of multiple loan originators. But the rule also creates a couple of new exceptions. First, non-deferred profits based compensation is permissible if it equals 10% or less of that loan originator's total compensation. Second, it is permissible if the loan originator has de minimis originations, which is defined as 10 or fewer transactions in a year. But there is a general caveat to all of this, which is that distributions or payments to a loan originator under these non-designated plans still may not be based on the terms of the transactions originated by that loan originator.

We go now to the second principal prohibition, dual compensation. The baseline rule here is that a mortgage broker may not receive compensation from both a consumer and the creditor in the same transaction. Because the rule provides that no loan originator may receive compensation from other than the consumer, if a consumer pays a brokerage that brokerage may not pay its individual loan officer or the individual broker any commission on the same transaction. This final rule provides an exception. It permits the brokerage to pay the individual broker that originated the transaction a commission even though the consumer has paid a commission to the brokerage. Again, however, such payments are subject to the basic rule against compensation based on terms so the individual loan originator's commission may not be based on the terms of the transaction.

We come to the loan originator qualification and identifier requirements. Qualification requirements are essentially not new. They amount to complying with the Safe Act for the most part. So this means that individual loan originators must comply with the, in the case of depository employees, state registration requirements or applicable registration requirements under the Safe Act. And for non-depository employees, the state licensing created under the Safe Act. But there is some element of leveling of the field here. For employers who have loan originator employees not required to be licensed under the Safe Act or other applicable law, those employers must ensure that their employees meet character fitness and criminal background standards similar to existing Safe Act licensing standards. They also must provide training to loan originator employees that is appropriate and consistent with those loan originators' origination activities.

The unique identifier requirement. The rule provides clarification on the statutory requirement that the unique identifier appear on all loan documents. Obviously, the statutory provision that it be disclosed on all loan documents leaves open the question of what is and is not a loan document. The rule clarifies that loan documents means the credit application, the note or other loan contract, and the security instrument.

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 10th, 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.

Paul Mondor:
Hi, this is Paul Mondor, Managing Counsel in the Office of Regulations at the CFPB. I'm here to talk you through the Bureau's new escrows rule adopted in January 2013. At the outset, I should note that this is staff guidance and not any official interpretation of the Bureau or any legal advice. This is a fairly small rule and there is only the one slide that you see for talking through it.

By way of background, the Federal Reserve Board adopted a final rule in 2008 that imposed an escrow requirement to last at least one year for higher priced mortgage loans. As defined by the Bureau's new rule, higher priced mortgage loans are those with an APR that exceeds certain thresholds. And those thresholds are for first lien mortgages Average Prime Offer Rate plus 1.5. For first lien jumbo's that exceed the maximum purchase balance for Freddy Mac, the threshold is Average Prime Offer Rate plus 2.5. And for subordinate liens, the threshold is Average Prime Offer Rate plus 3.5. But about to be noted, the escrow's requirement applies only to first liens so it's only those first two of the three thresholds that matter for this rule.

The Dodd-Frank Act substantially codified the existing requirements but with several differences. It extends the one-year requirement to five years. It creates an exemption for creditors that operate predominantly in rural or underserved areas. And it created or required certain escrow disclosures, one before consummation and one post-consummation when an escrow account is terminated. Like the Ability-to-Repay and Qualified Mortgage Rule, the Federal Reserve Board proposed an implementing rule before the authority for rulemaking transferred from the Board to the Bureau.

So to drill down a little on the main aspect of this rule, the rural or underserved exemption. The rule creates several criteria for a transaction to be exempt from the escrow requirement. If it is a higher priced mortgage loan it must be made by a small creditor. There are two aspects to being a small creditor, assets and originations. So to meet the small creditor prerequisites, the creditor making the higher priced mortgage loan in question must have assets less than two billion dollars. That is at the outset of this rule's effectiveness. It will be adjusted annually for inflation in the future. And the other prerequisite for a small creditor is annual covered transactions. It must have 500 or fewer first lien covered transactions per year. That is including any affiliates.

The second aspect to this exemption is that the creditor operates predominantly in rural or underserved areas. This is implemented by the rule in the form of more than half of all the creditors covered transactions have to be made in counties that meet the definition of rural or underserved. The definition of rural is structured by using the USDA's urban influence codes. Specifically, a county with the urban influence code 4 or any of 6-12 is considered rural. Underserved is defined by using HMDA data. And based on those data the county has to have two or fewer creditors making five or more covered transactions in a year in that county.

So these tests are a little complicated. And to help with compliance, the Bureau also committed, in the regulation, to publish lists on its website of counties that meet the definition of either rural or underserved and to update those lists annually. Creditors can rely on this list as a safe harbor.

Another prerequisite for the exemption is that the creditor and its affiliates do not escrow for extensions of consumer credit secured by real property or a dwelling that they service. This also includes affiliates. The Bureau created this element of the test. It is not statutory, but it was included in the Board's proposal. The rationale is that any creditor currently servicing does not need the exemption. There are a couple of exemptions, however, where the exemption is not lost even though the creditor may be escrowing or its affiliate may be escrowing. And that is where escrows were established to comply with the existing rule or an escrow is established post-consummation as an accommodation to a distressed consumer. These two exceptions were created in response to comments received on the proposal.

Finally, there was one other statutory pre-requisite for the exemption that the loans be held in portfolio by the creditor. This was not implemented directly by the rule but the rule does effectively implement it in an indirect manner through an additional requirement that at consummation the loan not be subject to a forward commitment for purchase by another entity after the loan is closed if that entity itself is not eligible for the exemption.

I also mentioned the disclosure requirements that the statute created. The final rule does not implement those disclosures but deferred them to be done along with the TILA/RESPA integrated disclosure package and the other Title XIV disclosure requirements, all of which will be handled in a rule-making later in 2013.

The final point on this rule has to do with the effective date. Unlike most of the Title XIV rules adopted in January, this rule goes into effect sooner than most of those, which take effect in January of 2014. This rule takes effect June 1st, 2013. And that is because the Bureau sized up this rule and recognized that the bulk of it is burden relief and that implementation would be not only easy to accomplish on a shorter timeframe but even a welcome thing to small creditors that would like to take advantage of the exemption. That is everything on this rule.

Ben Olson:
Hello, I'm Ben Olson and I'm the Deputy Assistant Director for Regulations at the Consumer Financial Protection Bureau. And now we'll be talking about two final rules issued by the Bureau in January in 2013 on appraisals.

Both of these rules are effective on January 18th, 2014. This is staff guidance and not any official interpretation of the Bureau or any legal advice.

So the Bureau issued actually two final rules on appraisals in January. The first was an interagency rule amending the Truth in Lending Act and Regulation Z. This rule imposed new appraisal requirements for certain higher priced mortgage loans and this is implementing provisions of the Dodd-Frank Act.

What is required now for these types of loans is a physical interior appraisal by a certified or licensed appraiser who produces a written report, a copy of which must be provided to the consumer free of charge. In addition, for properties that have been flipped or resold at an increase in value in the prior 180 days there is a requirement that a second such appraisal be obtained.

The second appraisals rule was issued by the Bureau alone and it amends Regulation B, which implements the Equal Credit Opportunity Act. This implements a Dodd-Frank Act amendment that requires that consumers receive a free copy of an appraisal or valuation. And this rule, unlike the interagency TILA rule, which applies only to certain higher priced mortgage loans, applies to all first lien loans. And in addition, it applies not just to appraisals but to other valuations such as automated valuations or broker price opinions.

Should you have any questions about this presentation or any of the Bureau's other presentations or rules, please submit them to CFPB_reginquiries@cfpb.gov or call us at (202)435-7700. Thank you.