In 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, creating a handful of exceptions to Dodd-Frank’s TILA protections for mortgage borrowers. The TILA-related provisions are discussed below, followed by an analysis of the applicable effective dates.

Section 101 of Pub. L. No. 115-174 expands the presumption of compliance (known as the “qualified mortgage”) with TILA’s requirement that a creditor make a reasonable and good faith determination that the consumer has a reasonable ability to repay the mortgage loan, including taxes and insurance. The provision codifies aspects of the existing regulation while increasing the asset threshold for eligible institutions to those with assets below $10 billion. To qualify for the exclusion, the creditor must avoid using certain loan terms and must comply with verification standards regarding the consumer’s ability to repay. Finally, restrictions on the subsequent sale of that mortgage loan apply. These changes are discussed in § 9.3.3 [1], infra.

Section 102 amended the compensation rules under the appraisal independence standards added by the Dodd-Frank Act to clarify that where a fee appraiser voluntarily donates appraisal services to an organization eligible to receive tax-deductible charitable contributions, the donation shall be considered customary and reasonable for the purposes of the fee rule. This change is addressed in § 9.4.2 [2], infra.

Section 107 amended TILA by excluding most manufactured home dealers from TILA’s definition of a “mortgage originator.” As a result, these dealers need not comply with the Act’s loan originator compensation provisions, including a prohibition on receiving compensation based on the terms of a loan (other than the loan’s size). To be excluded from the definition of a mortgage originator, the manufactured home dealer must limit its receipt of direct compensation and disclose its affiliation with a lender, and not directly negotiate loan terms. This change is addressed in § 9.3.2 [3], infra.

Section 108 creates new exemptions from the current TILA’s escrow provisions for higher-priced mortgage loans. The new Act requires the CFPB to exempt by regulation any insured depository institutions or credit union with assets of $10 billion or less, that makes only a few first mortgages on a principal residence, and that meets three additional requirements. This change is addressed in § 9.5.4.5 [4], infra.

Section 109 limited TILA’s timing requirement for early high-cost mortgage disclosures. The provision states that where a creditor makes a second offer of a mortgage loan, there is no longer a requirement that there be a three-day waiting period after the additional high-cost mortgage disclosures for the second offer if the second offer has a lower APR than the first offer. This change is addressed in § 9.6.6 [5], infra.

Section 307 amended TILA to require the CFPB to issue regulations to apply the existing TILA ability-to-repay standards found in 15 U.S.C. § 1639c(a) to Property Assessed Clean Energy (PACE) loans, and to require that any violations of the regulations be privately enforceable under the TILA remedy provision. This amendment is described in § 9.3.3 [1], infra. PACE loans and their coverage by TILA are addressed in § 2.4.9.3 [6], supra, and throughout this treatise where relevant.

Footnotes


134 [134] The disclosures for high-cost mortgages are discussed at § 9.6.6 [5], infra.

135 [135] The specifics of the TILA ability-to-repay requirement are delineated in § 9.3.3 [1], infra.