On July 30, 2008, the FRB exercised its authority under section 1639(l) to prohibit unfair and deceptive practices in connection with mortgage loans by expanding regulation of most loans secured by the consumer’s principal dwelling originated in all segments of the mortgage market. This rule, discussed in detail at § 9.4 [1], infra, appears in a new section of Regulation Z.285 It extends to creditors, mortgage brokers, and servicers. The rule addresses abuses related to coerced appraisals and to servicing practices involving the dilatory crediting of payments, the pyramiding of late fees, and the tardy response to requests for payoff statements. Home equity lines of credit and loans not secured by the consumer’s principal dwelling are the only types of consumer mortgage loans not covered.286 Section 226.36 (renumbered by the CFPB as section 1026.36) is effective for new transactions for which the creditor receives an application on or after October 1, 2009, except for the servicer rules, which apply to all covered loans serviced on or after October 1, 2009.

Also on July 30, 2008, the FRB released final regulations that prohibit four acts or practices in mortgage loans (including acts related to loan affordability and income verification) that carry APRs exceeding a new “higher-priced” APR trigger.287 This trigger is significantly lower than the HOEPA APR trigger and is tied to a different index. The rule covers all higher-priced loans secured by the consumer’s principal dwelling, including purchase loans. It only excludes loans to finance the initial construction of a home, a temporary or bridge loan with a term of twelve months or less, and a home equity line of credit.288 Section 226.35 (renumbered by the CFPB as section 1026.35) is effective for transactions for which the creditor receives an application on or after October 1, 2009, except for the escrow provision.

The escrow rule applies to most new transactions for which the creditor receives an application on or after April 1, 2010. However, the regulation applies to new transactions secured by manufactured housing for which the creditor receives an application on or after October 1, 2010. New protections in the Dodd-Frank Wall Street Reform and Consumer Protection Act289 expand some of the principles in the FRB’s rule, such as loan affordability and income verification, to most of the market. In 2013, the CFPB issued revisions to the rules addressing higher-priced mortgage loans that are effective January 1, 2014.290 These regulations are discussed at § 9.5 [2] infra.

In 2010, the FRB again exercised its authority under HOEPA by adopting new regulations on mortgage originator compensation and mortgage steering, applicable to all closed-end residential mortgage loans.291 The final rule prohibits payments to loan originators, which includes mortgage brokers and loan officers, based on the terms or conditions of the transaction other than the amount of credit extended, although there is an exception to allow some upfront costs to be paid through the rate. It also prohibits any person other than the consumer from paying compensation to a loan originator in a transaction where the consumer pays the loan originator directly. The rule also prohibits loan originators from steering consumers to consummate a loan not in their interest based on the fact that the loan originator will receive greater compensation for such loan. This rule, however, includes a safe harbor based solely on disclosures made to the consumer regarding available options. The rule is effective for applications received on or after April 1, 2011 but before January 1, 2014, the effective date of the CFPB’s rules on this subject. The Dodd-Frank Act provisions on these topics are similar in some respects and go further in others (particularly with regard to steering).292 In 2013, the CFPB issued revisions to the loan originator compensation rules effective January 1, 2014.293 These final regulations are discussed at § 9.3.2 [3], infra.

Footnotes


291 [291] 12 C.F.R. § 226.36(d), (e) [§ 1026.36(d), (e)]; 75 Fed. Reg. 58,509 (Sept. 24, 2010).

The FRB initially proposed to address the issue through disclosure regulations, 73 Fed. Reg. 1672 (Jan. 9, 2008), but its consumer testing showed that disclosures would not effectively address the problem and that proposal was withdrawn when the final rule on mortgages was finalized. 73 Fed. Reg. 44,522, 44,563–44,565 (July 30, 2008).


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