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TitleTRACK

New year, new CFPB mortgage rules

While most of us are just getting back into the swing of things after all the New Year's Eve festivities or getting used to writing 2014 instead of 2013 on our documents, new Consumer Financial Protection Bureau rules for mortgage Lending went live on Jan. 10.

In cooperation with Congress, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) established the CFPB to protect consumers by carrying out federal consumer financial laws. Among other things, they:

- Write rules, supervise companies, and enforce federal consumer financial protection laws;
- Restrict unfair, deceptive, or abusive acts or practices;
- Take consumer complaints;
- Promote financial education;
- Research consumer behavior;
- Monitor financial markets for new risks to consumers; and
- Enforce laws that outlaw discrimination and other unfair treatment in consumer finance.

By WILLIAM M. BUTLER
Daily Record Columnist

The CFPB final rules document is over 800 pages long, so in the interest of time, I will point out three of the important changes you need to know:

1. New loan applicant(s) should have the Ability to Repay (ATR) the loan. Lenders must document and verify employment, income, assets, current debt obligations and credit. Most lenders have already been doing this, but the rules have standardized how this is to be done, and what documentation is required to provide due diligence.

2. Qualified Mortgage (QM) products need to be available to the borrower. A QM assumes that the lender has already verified all factors in the ATR and is providing a loan that has rate, points and fees that are fair and have no predatory or disadvantageous terms.

3. The QM guidelines include The 3 percent rule — finance charges, points (excluding bona fide discount points) and fees cannot exceed 3 percent of the loan amount (based on a loan amount equal to or greater than $ 100,000). Also, compensation paid by a creditor to a mortgage broker must be included in points and fees, in addition to any origination charges paid by a consumer to a creditor. This is an excerpt from CFPB final rule (at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf) that verifies what fees can be used in the 3 percent calculation:

Real estate-related fees (§ 1026.32(b)(1)(iii))

The following categories of charges are excluded from points and fees only if:

1. The charge is reasonable;
2. The creditor receives no direct or indirect compensation in connection with the charge; and
3. The charge is not paid to an affiliate of the creditor.

If one or more of those three conditions is not satisfied, you must include these charges in points and fees even if they would be excluded from the finance charge:

- Fees for title examination, abstract of title, title insurance, property survey and similar purposes;
- Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
- Notary and credit-report fees;
- Property appraisal fees or inspection fees to assess the value or condition of the property if the service is performed prior to consummation, including fees related to pest-infestation or flood-hazard determinations; and
- Amounts paid into escrow or trustee accounts that are not otherwise included in the finance charge (except amounts held for future payment of taxes).

Why do lenders want to comply with the CFPB rules with regards to QM? They are not required to originate qualified mortgage products, but a non-QM or high cost loan will not be protected by safe harbor rules and deemed unsalable with investors like Freddie Mac and Fannie Mae. If a lender wants to originate non-QM products, they may have to keep them in their own portfolio, and be under additional scrutiny by the CFPB. I would

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agree that there would be an underserved market need for non-QM products, but it would be the exception rather than the rule in today's tighter mortgage lending industry.

Ultimately, the CFPB was designed to help people buy and keep houses they can afford to live in and create stability in the housing market. I believe that by promoting full transparency in the entire real estate and lending industry this will be accomplished. Anything that creates an unfair and unnecessary expense to a borrower, and creates additional profit for those involved should be unveiled, disclosed, and allow the borrower to make the appropriate decisions. These rules will effectively create a level playing field for borrowers to receive fair treatment by lenders and service providers and creates a process for consumer complaints. For more information on this or other Consumer Financial Protection Bureau information — you can go to the CFPB website at www.ConsumerFinance.gov or call 1 (855) 411-2372.

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