



CONFERENCE OF STATE BANK SUPERVISORS

June 05, 2014

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW.
Washington, DC 20006

Docket Number: CFPB-2014-0009
RIN: 3170-AA34

To Whom It May Concern,

The Conference of State Bank Supervisors (“CSBS” or “state regulators”) appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed *Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (Regulation Z)* (RIN: 3170-AA34). State banking regulators support measures that would increase access to credit for consumers who are at the margins of the points and fees limits. However, there is concern that the proposed “cure” mechanism for inadvertent points and fee miscalculations could disguise or promote the misuse of discount points by unscrupulous lenders seeking to inappropriately gain Qualified Mortgage (“QM”) safe harbor status. CSBS is submitting the comments below in consideration of the Bureau’s 30-day comment deadline for this proposal. However, state regulators feel that the proposed “cure” is a significant issue that deserves additional time to consider the benefits and risks posed to consumers.

PROPOSED CURE AND TREATMENT OF NON BONA FIDE DISCOUNT POINTS

The Bureau has recognized that where points and fees have been financed as part of the loan amount and an overage associated with a non bona fide discount point is refunded to the consumer after consummation, the consumer will continue to pay interest on a loan amount that includes the overage. In situations where non bona fide discount points have been financed into the loan, the proposed cure will only refund the borrower enough to bring the loan within the 3 percent limit. The borrower is likely to have paid more than the cure amount to receive the discount point, without the benefit of an adequately reduced interest rate. Therefore, in situations where non bona fide discount points have been financed into a loan, the proposed cure mechanism would provide more benefit to the lender than the borrower. For this reason, the proposed cure should be allowed only for discount

points that are determined to be bona fide.

Although state regulators do not typically identify discount point problems with community banks, discount points can be one of the more error or abuse prone areas of points and fees calculations. Under the proposed cure provisions, state regulators are concerned of unintentional consequences for consumers posed by non bona fide discount points. State regulators have identified cases, especially during the lead up to the financial crisis, in which lenders have systematically charged non bona fide discount points that did not buy the rate down for consumers as expected. For example, in 2006, multiple states took action against a non-depository mortgage company, Ameriquist Mortgage, for inadequate disclosures and fraudulent practices relating to discount points and “payment reduction fees.” Under the proposed amendment, lenders who pursue these deceptive practices may receive a safe harbor for these transactions.

The Bureau wrote in the proposed rule that they are aware of some creditors who seek to originate qualified mortgage loans by establishing buffers set at a level below the points and fees limits to avoid exceeding those limits. As part of its second annual CSBS/Federal Reserve System Community Bank Research Conference, CSBS is in the process of conducting a national survey of community bankers that seeks to identify, among other things, how the implementation of the 2013 mortgage rules are affecting community bank plans, operations, and the originations of mortgage loans. The initial data have confirmed that many small institutions hold mortgage loans in portfolio that would not have qualified under the QM standard as of year-end 2013. However, only a very small percentage of respondents indicated that the loans in question would not have met the standard due to exceeding the limit on points and fees, and there is no evidence in the survey to suggest that community banks are creating buffers to avoid exceeding the points and fees limit as may be occurring in other segments of the market. Data from the survey will be made publicly available prior to the research conference.

Thorough underwriting practices are central to community banks’ relationship lending business model, and they are therefore less likely than their large bank and non-bank counterparts to make errors during the origination process that would require them to use the proposed “cure” mechanism. In cases where inadvertent errors are made in the calculation of points and fees, CSBS is supportive of the proposed “cure” mechanism provided that it does not unintentionally provide a safe harbor for deceptive or fraudulent transactions.

Both the industry and examiners would benefit from written guidance on discount points, which should include benchmarks that establish a normal or average range for discount point pricing. The lack of guidance in this area makes it difficult for consumers, regulators, and lenders to determine whether discount points are bona fide. Given the history of misuse, the Bureau should give careful consideration to how to adequately “cure” an overage when non bona fide discount points are the

type of charge at issue. State regulators are unable to see the fairness of a cure that leaves the borrower less than whole when the transaction may have been intentionally deceptive from the start.

GOOD FAITH PROVISION OF CURE AMENDMENT

The requirement that the QM loan in question was made in “good faith” needs to be strengthened to ensure that the Bureau is not creating disincentives for creditors to exercise due diligence in carrying out their statutory obligations. In the proposed rule, the Bureau states that “maintaining and following policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit may be evidence that the creditor originated the loan in good faith as a QM.” The proposed rule also states that the loan would be considered to have been originated in good faith if its pricing is consistent with pricing on QM’s originated during the same period by the same lender. CSBS requests that the Bureau clarify the good faith requirement by adding that any transaction that included non bona fide points will not be considered to have been originated in good faith.

CONCLUSION

State regulators appreciate that the Bureau has continued to address concerns related to the implementation of the 2013 Mortgage Rules. If implemented, the proposed amendments have the potential to increase access to credit for consumers in rural and underserved areas as well as for those consumers who are at the margins of the points and fees limits. As the CFPB continues to implement its mortgage rules, CSBS stands ready to assist in the process as it relates to state and local areas.

Thank you for your consideration.

Sincerely,



John W. Ryan
President & CEO
Conference of State Bank Supervisors