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B-324475

March 4, 2013

The Honorable Tim Johnson  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau), entitled “Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)” (RIN: 3170-AA17). We received the rule on February 15, 2013. It was published in the *Federal Register* as a final rule; official interpretations on January 30, 2013. 78 Fed. Reg. 6408. It has a stated effective date of January 10, 2014.

The final rule implements sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which generally require creditors to make a reasonable, good faith determination of a consumer’s ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan) and establishes certain protections from liability under this requirement for “qualified mortgages”.<sup>1</sup> The final rule also implements section 1414 of the Dodd-Frank Act,

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<sup>1</sup> Pub. L. No. 111-203, § 1411, 1412, 124 Stat. 1376, 2142–2148 (2010).

which limits prepayment penalties.<sup>2</sup> Finally, the final rule requires creditors to retain evidence of compliance with the rule for 3 years after a covered loan is consummated.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Bureau complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Lea Mosena  
Attorney, Legal Division  
Consumer Financial Protection Bureau

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<sup>2</sup> Pub. L. No. 111-203, § 1414, 124 Stat. 1376, 2149–2153 (2010).

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
BUREAU OF CONSUMER FINANCIAL PROTECTION  
ENTITLED  
"ABILITY-TO-REPAY AND QUALIFIED MORTGAGE STANDARDS  
UNDER THE TRUTH IN LENDING ACT (REGULATION Z)"  
(RIN: 3170-AA17)

(i) Cost-benefit analysis

The Bureau performed a cost-benefit analysis as required by section 1022(b)(2)(A) of the Dodd-Frank Act, which calls for the Bureau to consider the potential costs, benefits, and impacts of its regulations. Specifically, the law requires the Bureau to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rules on insured depository institutions and insured credit unions with less than \$10 billion in total assets; and the impact on consumers in rural areas.

The Bureau determined that the benefits of the ability-to-repay requirements come from further limiting and deterring unaffordable lending, above and beyond the current ability-to-pay requirements for higher-priced mortgage loans, and thereby reducing the ensuing private and social costs of excess delinquency and default. Additionally, the Bureau determined that the primary ongoing costs of the requirements of the final rule rest in the underwriting costs, including costs at origination to verify information on which the lender relies in the underwriting decision and the increased liability on lenders and assignees. The Bureau also discussed liability costs.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Bureau performed a Final Regulatory Flexibility Analysis under the Act which included (1) a statement of the need for and objectives of the rule; (2) a summary of significant issues raised by comments in response to the Initial Regulatory Flexibility Analysis and the Bureau's response on those issues; (3) a response to a formal comment letter submitted by the Small Business Administration (SBA) Chief Counsel for Advocacy; (4) a description of and an estimate of the number of small entities to which the rule will apply; and (5) projected reporting, recordkeeping, and other compliance requirements.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 11, 2011, the Federal Reserve Board (the Board) published a proposed rule. 76 Fed. Reg. 27,390. The Board received approximately 1,800 letters from commenters, including Members of Congress, creditors, consumer groups, trade associations, mortgage and real estate market participants, and individual consumers. As of July 21, 2011, the Bureau asserts that the Dodd-Frank Act generally transferred the Board's rulemaking authority for these consumer financial protections to the Bureau. All comment letters on the proposed rule were transferred to the Bureau. In May 2012, the Bureau reopened the comment period in order to solicit further comment on the data and new information. The Bureau received approximately 160 comments from a variety of commenters, including creditors, consumer groups, trade associations, mortgage and real estate market participants, individuals, small entities, the SBA's Office of Advocacy, and Federal Housing Administration. The Bureau stated that it considered these comments in adopting this final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Bureau determined that this final rule contains information collection requirements. These requirements have not yet been approved by the Office of Management and Budget (OMB) and are not effective until such approval. The information collection requirements identified by the Bureau are (1) the Ability-to-Repay Verification and Documentation Requirements and (2) the Record Retention Requirement. For the two collections, the Bureau estimates a one-time burden of approximately 1,570 hours.

Statutory authorization for the rule

The Bureau promulgated this final rule under the authority of sections 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, and 5581 of title 12 and sections 1601 et seq. of title 15, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Executive Order does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Bureau of Consumer Financial Protection.