

From: Cullen and Dykman LLP, Joseph D. Simon
Subject: Truth in Lending

Comments:

This email is submitted in response to the interim final rule and request for comment issued by the Federal Reserve Board (the "Board") implementing Section 131(g) of the Truth in Lending Act ("TILA"). Section 131(g) establishes a new requirement for notifying consumers of the sale or transfer of their mortgage loan. By way of background, I am a banking attorney with the law firm of Cullen and Dykman LLP in Garden City, NY, and I represent several banks and credit unions subject to TILA.

As discussed more fully below, the purpose of these comments is to seek an exception from the requirements of Section 131(g) for the assignment of a mortgage loan initiated by a consumer in connection with a refinance of the loan with a new lender.

New York State imposes a mortgage recording tax in connection with the recording of mortgages in the public records. This tax is imposed on the borrower, although for certain mortgages the lender pays a portion of the tax. In order to avoid all or some of the mortgage recording tax on a refinance transaction, it has become common in New York State for a borrower seeking to refinance a mortgage loan to contact his or her existing lender and to arrange an assignment of the mortgage loan to the new lender. If the mortgage is assigned, the borrower does not have to pay any new mortgage recording tax on the amount of the original mortgage. (However, if the new loan amount is in excess of the amount of the existing mortgage, the borrower will have to pay the mortgage recording tax on the amount of the new money being lent.) Generally the new lender will take the existing mortgage by assignment, and then enter into a consolidation, extension and modification agreement ("CEMA") with the borrower whereby the existing mortgage is consolidated with any new mortgage and governed by the terms of the CEMA.

Sections 105(a) and 105(f) of TILA authorize the Board to adopt certain exceptions and exemptions from TILA's requirements if there is no meaningful benefit to consumers in light of specific factors. These factors are set forth in footnote 3 to the Board's interim final rule and request for comment. An assignment of a mortgage loan initiated by a consumer in connection with a refinance of the loan with a new lender as described above meets the requirements for an exception to the requirements of Section 131(g).

The assignment of the mortgage loan in the scenario described above is initiated by the consumer, and the consumer obviously knows that the mortgage loan is being transferred to a new lender. In addition to initiating the transfer, the consumer will be at a closing with the new lender and will receive all new loan documents and disclosures from the new lender. There is absolutely no meaningful benefit to the consumer to receiving the disclosure required by Section 131(g) in this situation. In fact, there is the potential for confusion by the consumer if he or she receives this notice. The consumer will have already closed on the refinance (which the consumer initiated) and if he or she then receives a notice of that mortgage transfer within 30 days after the closing, the consumer might think that the mortgage was in fact transferred again to a different lender.

In addition to not being meaningful and possibly causing the consumer confusion, the requirement to send a notice under Section 131(g) in this scenario will impose an unnecessary cost and burden on the new lender.

For the reasons set forth in this email, I respectfully request that the Board grant an exception to the notice requirement under Section 131(g) for the assignment of a mortgage loan initiated by a consumer in connection with a refinance of the loan with a new lender.

I appreciate the opportunity to comment on the interim final rule. If you have any questions, please feel free to contact me.

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