THE NEW ENGLAND COUNCIL

Committee Update

January 14, 2013

Last Thursday, the Consumer Financial Protection Bureau (CFPB) issued the final "ability to repay" rule, implementing sections 1411, 1412, and 1414 of the Dodd-Frank Act. Among other things, the Dodd-Frank Act requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling and establishes certain protections from liability under this requirement for "qualified mortgages."

At a minimum, creditors generally must consider eight underwriting factors: (1) current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the covered transaction; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations, alimony, and child support; (7) the monthly debt-to-income ratio or residual income; and (8) credit history. Creditors must generally use reasonably reliable third-party records to verify the information they use to evaluate the factors. The new rule also provides guidance on the application of these factors under the statute.

The Dodd-Frank Act provides that "qualified mortgages" are entitled to a presumption that the creditor making the loan satisfied the ability-to-repay requirements. However, the Act did not specify whether the presumption of compliance is conclusive or is rebuttable. The rule sets out the product-feature prerequisites and underwriting standards for qualified mortgages. In general, loans with negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years cannot be considered qualified mortgages. In terms of general underwriting criteria, the general rule for qualified mortgages requires that monthly payments be calculated based on the highest payment that will apply in the first five years of the loan and that the consumer have a total (or "back-end") debt-to-income ratio that is less than or equal to 43 percent.

At the same time, the CFPB issued the final rule, it also proposed a set of amendments to the rule, including exemptions for certain nonprofit creditors and certain homeownership stabilization programs and an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors. The CFPB is seeking feedback on the proposed amendments, with comments due by February 25, 2013.