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February First Half Developments

Overview

The BCFP has published final rules on mortgage lending covering a range of subjects including loan servicing and loan originators. Those institutions that do not make mortgage loans can be glad that they don't have to study the hundreds of pages of new rules. These rules won't be effective for a year and this should not be enough time for the industry to make the necessary changes to respond to these new requirements.

SEC Extension of Exemptions for Security-Based Swaps

On February 4, 2013, the SEC published extensions of the exemptions that were previously provided for security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as "securities" under the Securities Act due solely to the provisions of Title VII of the Dodd-Frank Act. The expiration dates in the interim final rules will be extended to February 11, 2014. See the extension at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-04/html/2013-02191.htm>

Information on Financial Products Sold to College Students

On February 5, 2013, the BCFP requested information from the public on how current and future partnerships or other arrangements between institutions of higher education (including their affiliated entities) and financial institutions could be structured to promote positive financial decision-making among young consumers. The BCFP wants to develop a clearer picture of the financial products and services that are being offered to college students, as well as consumers' experiences using those products and services. See the request at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-05/html/2013-02428.htm>

Bonds to Support Community Development Purposes

On February 5, 2013, the Treasury issued an interim rule implementing the Community Development Financial Institutions (CDFI) Bond Guarantee Program. Treasury will provide a
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Guarantee for the repayment of the full amount of the Bond Issue, including the Verifiable Principal, Interest, and Call Premium, issued to finance Bond Loans to Certified CDFIs for Eligible Community or Economic Development Purposes for a period not to exceed 30 years. The Bonds will support CDFI lending in Investment Areas by providing a source of low-cost, long-term capital to Eligible CDFIs. See the interim rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-05/html/2013-02055.htm>

Appraisals for High-Risk Mortgages

On February 13, 2013, the BCFP issued an interagency final rule that implements a new provision requiring appraisals for "higher-risk mortgages" that was added to TILA by the Dodd-Frank Act. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the final rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. This final rule is effective on January 18, 2014. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-13/html/2013-01809.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-05/html/2012-20432.htm>

Mortgage Servicing Rules under RESPA

On February 14, 2013, the BCFP published its final rules regarding servicers' obligations to correct errors asserted by mortgage loan borrowers; to provide certain information requested by such borrowers; and to provide protections to such borrowers in connection with force-placed insurance. Additionally, this final rule addresses servicers' obligations to establish reasonable policies and procedures to achieve certain delineated objectives; to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers' applications for available loss mitigation options. This final rule revises provisions relating to mortgage servicers' obligation to provide disclosures to borrowers in connection with transfers of mortgage servicing, and mortgage servicers' obligation to manage escrow for certain borrowers with escrow accounts and requirements to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-14/html/2013-01248.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-17/html/2012-19974.htm>

Mortgage Servicing Rules under Truth in Lending

On February 14, 2013, the BCFP published its final rules regarding servicers' obligations to provide initial rate adjustment notices for adjustable-rate mortgages, periodic statements for residential mortgage loans, prompt crediting of mortgage payments, and responses to requests for payoff amounts. This final rule also amends current rules governing the scope, timing, content,

and format of disclosures to consumers regarding the interest rate adjustments of their variable-rate transactions. Please see the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-14/html/2013-01241.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-17/html/2012-19977.htm>

Treasury List of Boycotting Countries

On February 14, 2013, the Treasury published its list of countries requiring a boycott. See the list at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-14/html/2013-03339.htm>

Disclosure of Records and Information at the BCFP

On February 15, 2013, the BCFP published its final rule establishing procedures for the public to obtain information under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. This final rule also establishes the Bureau's rule regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-15/html/2013-01737.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-28/html/2011-19038.htm>

Loan Originator Compensation and Registration Requirements

On February 15, 2013, the BCFP published its final rule establishing requirements concerning loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements. At this time, the Bureau is not prohibiting payments to and receipt of payments by loan originators when a consumer pays upfront points or fees in the mortgage transaction. Instead the Bureau will first study how points and fees function in the market and the impact of this and other mortgage-related rulemakings on consumers' understanding of and choices with respect to points and fees. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-02-15/html/2013-01503.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-07/html/2012-20808.htm>

This advisory is a service of Connell & Andersen LLP for our clients and friends. It

is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.