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January Second Half Developments

Overview

The FFIEC has taken notice that banks are using social media to offer banking services and has issued proposed guidance on the consumer disclosures and protections that should apply to those services. The BCFP has issued the longest rule ever devised by a banking agency to govern how lenders need to review the ability of a consumer to repay a loan. This may have older bankers scratching their heads to understand why a government agency has to devote hundreds of pages to this subject, which should be Banking 101, but the scars of the financial crisis and the horrendous abuses in mortgage lending have led to this embarrassing requirement for lenders. The BCFP is also extending the application of the remittance rules indefinitely until they can adopt some final embellishments on what is a convoluted and confusing mess. The BCFP devoted dozens of pages of new rules and commentary on making sure consumers receive free copies of any appraisals done on their homes as part of a credit transaction.

Consumer Compliance & Banking Use of Social Media

On January 23, 2013, the FFIEC published its proposed guidance on the consumer compliance aspects of using social media i.e. Facebook, to provide banking services. Banks will be expected to use the guidance in their efforts to ensure that their policies and procedures provide oversight and controls commensurate with the risks posed by their social media activities. See the proposed guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-23/html/2013-01255.htm>

Comments on Protections for Customer Funds at FCMs

The CFTC has proposed to amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants. They will now accept comments until February 15, 2013. See the notice of extension at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-00820.htm>

## Money Market Mutual Fund Reform

The FSOC published proposed reforms for MMFs and is now extending the comment period until February 15, 2013. See the extension at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-01037.htm>

## Credit Union Designation of Troubled Condition

On January 18, 2013, the NCUA published final rules amending the definition of "troubled condition" as that term is used to trigger the statutory requirement to give the Board notice and an opportunity to disapprove a change of credit union officials. Generally, the current definition allows only a state supervisory authority (SSA) to declare a federally insured, state-chartered credit union (FISCU) to be in "troubled condition." See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-00863.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-07-31/html/2012-18560.htm>

## Credit Union Designation of Low-Income Status

On January 18, 2013, the NCUA published final rules amending its low-income credit unions regulation by extending the time period in which a federal credit union (FCU) may accept a low-income designation. Under the current rule, an FCU that receives notice from NCUA of its eligibility for a low-income designation has 30 days to notify NCUA in writing that it wishes to accept the designation. The final rule extends an FCU's response time from 30 days to 90 days to make certain an FCU has adequate time to respond. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-00859.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-10-25/html/2012-26129.htm>

## Credit Union Net Worth and Interest Rate Requirements

On January 18, 2013, the NCUA published a final rule that increases the asset threshold that identifies credit unions to which NCUA will give more robust consideration of regulatory relief in future rulemakings. The amended regulations similarly include increased asset thresholds (generally \$50 million in assets), granting immediate and prospective relief from existing regulatory burden to a larger group of small credit unions. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-00864.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23662.htm>

## Credit Union Insurance on Treasury, Tax and Loan Accounts

On January 18, 2013, the NCUA published technical amendments to NCUA's regulation regarding share insurance on various kinds of treasury accounts to reflect that insurance has increased to \$250,000 per account. See the final technical amendments at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-18/html/2013-00861.htm>

### Escrow Requirements for Mortgages

On January 22, 2013, the BCFP published its final rule to amend Regulation Z. Regulation Z currently requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a principal dwelling. The rule implements statutory changes made by the Dodd-Frank Act that lengthens the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. The rule also exempts certain transactions from the statute's escrow requirement. The primary exemption applies to mortgage transactions extended by creditors that operate predominantly in rural or underserved areas, originate a limited number of first-lien covered transactions, have assets below a certain threshold, and do not maintain escrow accounts on mortgage obligations they currently service. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/html/2013-00734.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2011-4385.htm>

### Recordkeeping by the FDIC of information on Failed Banks

On January 22, 2013, the FDIC published a proposed rule on what records it should maintain regarding failed banks and for what period of time. Under the FDI Act, the FDIC after the end of the six-year period beginning on the date of its appointment as receiver, may destroy any records of a failed insured depository institution that the FDIC in its discretion determines to be unnecessary. This is important because the FDIC is maintaining the equivalent of 60 billion pages of records of failed banks. In the rule, the FDIC is defining what records it will keep and for how long. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/html/2013-01080.htm>

### Nominations to Join the FinCEN BSA Advisory Group

FinCEN is inviting the public to nominate financial institutions and trade groups for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms. See the request for nominations at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/html/2013-01174.htm>

### Extension of Time to Comment on Proposed Capital, Margin Rules for Brokers

On January 22, 2013, the SEC published notice that it was extending the time to comment on the proposed rule to establish capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants. Comments will be accepted until February 22, 2013. See the extension notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/html/2013-01053.htm>

### Lost Security Holders and Payees

On January 23, 2013, the SEC published its final rules for Transfer Agents and brokers to search for lost security holders; the rules add a requirement that ``paying agents" notify ``unresponsive payees" that a paying agent has sent a security holder a check that has not yet been negotiated; and add certain other provisions. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-23/html/2013-01269.htm>

Proposed: <http://edocket.access.gpo.gov/2011/2011-6940.htm>

### Delay in Effective Date of Remittance Rules

On January 29, 2013, the BCFP published that it was extending the effective date of the Regulation E remittance rules indefinitely. These rules would have been effective on February 7, 2013. The Bureau will publish a document in the Federal Register announcing the new effective date. See the extension announcement at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-29/html/2013-01595.htm>

### Country Exposure Reports

The banking agencies have announced that they are updating and will continue to use the Country Exposure Reports promulgated by the FFIEC. In broad terms, the proposed revisions to the FFIEC 009 report would increase the number of counterparty categories, add additional information on the type of claim being reported, provide details on a limited number of risk mitigants to help provide perspective to currently reported gross exposure numbers, add more detailed reporting of credit derivatives, and add the United States as a country row to allow reconciliation. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks, savings associations, and bank holding companies that file the FFIEC 009 report. See the request for comments at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-29/html/2013-01816.htm>

### New Mortgage Rules on Ability to Repay Certain Mortgages

On January 30, 2013, the BCFP published its final rules regarding the requirements that lenders review a borrower's ability to repay a loan. The final rule implements sections 1411 and 1412 of the 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." The final rule also implements section 1414 of the Dodd-Frank Act, which limits

prepayment penalties. Finally, the final rule requires creditors to retain evidence of compliance with the rule for three years after a covered loan is consummated. The final rule is hundreds of pages long and may be seen at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/html/2013-00736.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/html/2011-9766.htm>

### Proposed Rules on Ability to Repay Certain Mortgages

On the same day, January 30, 2013, that the BCFP published its whopper final rule on mortgages, the BCFP requested comments on exemptions that it planned to offer in connection with the new rules. The Bureau is proposing certain amendments to the final rule implementing these requirements, 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 Bureau is also seeking feedback on whether additional clarification is needed regarding the inclusion of loan originator compensation in the points and fees calculation. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/html/2013-00739.htm>

### Counseling for High Cost Mortgages

On January 31, 2013, the BCFP published its final rules on protections for consumers who seek high cost mortgages. The final rule amends Regulation Z (Truth in Lending) by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act of 1994 (HOEPA), revising and expanding the tests for coverage under HOEPA, and imposing additional restrictions on mortgages that are covered by HOEPA, including a pre-loan counseling requirement. The final rule also amends Regulation Z and Regulation X (Real Estate Settlement Procedures Act) by imposing certain other requirements related to homeownership counseling, including a requirement that consumers receive information about homeownership counseling providers. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-31/html/2013-00740.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/html/2012-17059.htm>

### Disclosure and Delivery of Appraisals for Mortgage Loans

On January 31, 2013, the BCFP published its final rules on appraisals availability under Regulation B. The final rule revises Regulation B to implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In general, the revisions to Regulation B require creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly. The rule would prohibit creditors from charging for the copy of appraisals and other written valuations, but permit creditors to charge applicants reasonable

fees for the cost of the appraisals. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-31/html/2013-01384.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/html/2012-20422.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.*