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May First Half Developments

Overview

This is an unusual report in that the only developments over the last two weeks have come from the BCFP. So if you have no consumer business you can stop reading now. The BCFP continues to propose new additions to rules it just promulgated. It is proposing to amend rules just finalized in January with new additions to both the RESPA regulations in Regulation X and in Regulation Z. This has to be due to either haste in promulgating the original rules and thus overlooking certain elements or oversights in the original rules that require amendments. In any event, it is an additional burden on the industry to have to adapt to new rules just six months apart. The credit card industry had to submit over 300 letters and enlist the support of mothers who don't work but want to obtain credit independently to get the BCFP to change a rule that the Fed had adopted in 2010 that went beyond what was permitted in the law.

Mortgage Rules on Servicing and Qualified Mortgages

On May 2, 2013, the BCFP published proposed rules to amend some of the final mortgage rules issued by the Bureau of Consumer Financial Protection (Bureau) in January of 2013. These amendments clarify or correct provisions on the relation to State law of Regulation X's servicing provisions; the small servicer exemption from certain servicing rules; the use of government-sponsored enterprise and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status; and the determination of debt and income for purposes of originating qualified mortgages. See the proposed rules at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-02/html/2013-09750.htm>

Credit Cards and the Ability to Repay

On May 3, 2013, the BCFP published its final rule amending Regulation Z to remove the requirement that a card issuer make a determination whether a consumer that is over the age of 21 has the ability to repay balances incurred on the card. The Truth in Lending Act expressly requires consideration of an independent ability to pay only for applicants who are under the age of 21. The card industry objected to the requirement as being not permitted by law and the BCFP agreed. See the final rule at:

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<http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/html/2013-10429.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-07/html/2012-26008.htm>

### Consumer Financial Civil Penalty Fund

On May 7, 2013, the BCFP published its final rule regarding a Fund into which the Bureau must deposit any civil penalty it obtains against any person in any judicial or administrative action under Federal consumer financial laws. This is required under the Dodd-Frank Act. The Bureau may use funds in the Civil Penalty Fund for the purpose of consumer education and financial literacy programs. Funds in the Civil Penalty Fund may be used for payments to the victims of activities for which civil penalties have been imposed under Federal consumer financial laws. There was no proposed rule; see the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-07/html/2013-10320.htm>

### Consumer Financial Civil Penalty Fund

On May 7, 2013, the BCFP published a proposed rule on the Civil Penalty Fund to seek comments on possible changes or refinements in defining victims of consumer fraud; defining how much victims may receive in payments from the fund; defining how the Fund may be used to advance consumer education. See the BCFP's proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-07/html/2013-10318.htm>

### Delay in Effective Date of Rules on Financing Credit Insurance Premiums

On May 10, 2013, the BCFP published to temporarily delay the June 1, 2013, effective date of a prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. This delay will allow the Bureau to consider its applicability to other transactions. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-10/html/2013-11223.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.*