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October Second Half Developments

Overview

The government shutdown put a damper on the beginning of this report, but the bureaucrats went right back to work and made the last four days of the month somewhat productive for them. However, the activity did not result in any new or proposed rules of universal interest. Only borrowers and lenders on properties in flood zones should take a look at the new rules on lending in areas prone to flooding.

Continuation of National Emergency with Columbia's Narcotics Dealers

While marijuana may be becoming legal in the U.S., the President on October 16, 2013, continued our national emergency with Columbian drug lords. This started in 1995 and will continue at least for another year. See the President's Notice at: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-18/html/2013-24523.htm>

More Amendments to the Mortgage Rules

The BCFP on October 23, 2013, continued to spew more rules amending final rules that were just issued, this time with an interim final rule, which amends Regulation Z as it applies to mortgages. The amendments clarify the specific disclosures that must be provided before counseling for high-cost mortgages can occur, and proper compliance regarding servicing requirements when a consumer is in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act. The rule also makes technical corrections to provisions of other rules. The Bureau requests public comment on these changes. See the Bureau's interim final rule at: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-23/html/2013-24521.htm>

Diversity Policies of Banking Organizations

The Agencies have proposed a policy to foster greater diversity at banking organizations. The C:\Users\WFC\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\0QPXCKBY\October Second Half Developments (11-4-13).docx

establishment of standards will provide guidance to the regulated entities and the public for assessing the diversity policies and practices of regulated entities. Thus, the Agencies will not use the examination or supervision process in connection with these proposed standards. See the proposed standards at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-25/html/2013-25142.htm>

Continuation of National Emergency with Congo

On October 25, 2013, the President published notice that the national emergency with Congo would be continued for another year. See the notice at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-25/html/2013-25449.htm>

Clerical Employees at Swap Dealers

On October 28, 2013, the CFTC published a final rule to clarify certain responsibilities of a swap dealer or major swap participant regarding its employees who solicit, accept or effect swaps in a clerical or ministerial capacity. In effect it allows swap dealers to employ clerical staff without running afoul of other rules that bar employment with swap dealers unless certain registrations are obtained. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-28/html/2013-25279.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-08/html/2013-07538.htm>

Policy Statement on Developing Stress Test Scenarios

This final guidance sets forth the general processes and factors to be used by the OCC in developing and distributing the stress test scenarios for the annual stress test required. National banks and federal savings associations with total consolidated assets of more than \$10 billion (covered institutions) are required to conduct annual stress tests using a minimum of three scenarios (baseline, adverse and severely adverse) provided by the OCC. On November 15, 2012, the OCC published interim guidance explaining how the OCC would develop the stress test scenarios. The OCC is now adopting the interim guidance as final. See the final guidance at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-28/html/2013-25421.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-11-15/html/2012-27660.htm>

Policy Statement on Disclosure of Consumer Protection Information

On October 29, 2013, the BCFP published a final policy to encourage financial institutions to approve a test of a disclosure statement for a banking organization in order to facilitate financial innovation. The CFPB noted that Congress empowered the Bureau to provide a legal "safe harbor" to companies testing revised disclosures. For disclosure trials it approves, therefore, the Bureau will "deem" a participating company "to be in compliance with" or "exempt from" otherwise applicable federal disclosure requirements for a defined period. See the final policy at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-29/html/2013-25580.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-17/html/2012-30159.htm>

Loans in Flood Zones

On October 30, 2013 all the banking agencies published proposed rules to amend their regulations regarding loans in areas having special flood hazards. Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The proposal also would clarify the Agencies' flood insurance regulations with respect to other amendments made by the Act and make technical corrections. See the proposal at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-30/html/2013-24724.htm>

Credit Union Electronic Filing or Reports

On October 30, 2013 the NCUA published a final rule requiring that all filings be done electronically using the federal information management system. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-30/html/2013-25716.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-02/html/2013-18299.htm>

Credit Union Liquidity and Contingency Funding Plans

On October 30, 2013 the NCUA published a final rule requiring federally insured credit unions (FICUs) with less than \$50 million in assets to maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances. The rule requires FICUs with assets of \$50 million or more to have a contingency funding plan that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. Finally, the rule requires FICUs with assets of \$250 million or more to have access to a backup federal liquidity source for emergency situations. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-30/html/2013-25714.htm>

Proposed: <http://www.gpo.gov/fdsys/pkg/FR-2012-07-30/html/2012-18565.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.

