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September Second Half Developments

Overview

When pundits speak of the regulatory burdens imposed by the Dodd-Frank Act on the banking industry, it can seem very abstract and hard to pin down. One of the Dodd-Frank requirements affected the mortgage origination industry. It seems clear that there were some serious abuses conducted by mortgage brokers and private mortgage origination companies that helped compound the financial crisis. In response, Dodd-Frank created a new registration scheme for these brokers, required training and registration and of course more disclosure. The law required these same items for the in-house mortgage originators as well, i.e. the people who were already working at highly regulated banks. As noted below, the FDIC has listed all the items that the banks and the brokers have to do to comply with these regulations, the procedures that need to be put into place and followed. It is a daunting list of requirements and the expense for meeting these requirements of course increases the cost of obtaining a mortgage in the US. See the third item below for the details. The Bureau of Consumer Financial Protection has published a two proposed rules affecting mortgages. These new rules focus on the mortgage servicing area and try to address one of the most pernicious practices of banks, that is forced-placed insurance.

Mortgage Disclosures and Servicing

On September 17, 2012, the BCFP published its proposed rules regarding RESPA and to address seven servicer obligations: To correct errors asserted by mortgage loan borrowers; to provide information requested by mortgage loan borrowers; to ensure that a reasonable basis exists to obtain force-placed insurance; to establish reasonable information management policies and procedures; to provide information about mortgage loss mitigation options to delinquent borrowers; to provide delinquent borrowers access to servicer personnel with continuity of contact about the borrower's mortgage loan account; and to evaluate borrowers' applications for available loss mitigation options. The proposal would revise provisions relating to a mortgage servicer's obligation to provide disclosures to borrowers in connection with a transfer of mortgage servicing, and a mortgage servicer's obligation to manage escrow accounts, including the obligation to advance funds to an escrow account to maintain insurance coverage and to return amounts in an escrow account to a borrower upon payment in full of a mortgage loan. See C:\Users\WFC\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\0QPXCKBY\September Second Half Developments (9-28-12).docx

the proposed rule at:

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

Mortgage Disclosures and Servicing

On September 17, 2012, the BCFP published the companion to the rule discussed above regarding Truth in Lending and addressing initial rate adjustment notices for adjustable-rate mortgages (ARMs), periodic statements for residential mortgage loans, and prompt crediting of mortgage payments and response to requests for payoff amounts. The proposed revisions also amend current rules governing the scope, timing, content, and format of current disclosures to consumers occasioned by the interest rate adjustments of their variable-rate transactions. See the proposed rule at:

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

FDIC Retains Filing Requirements for Mortgage Originators

Under the Dodd-Frank Act Mortgage Originators, even those who worked at FDIC insured banks were required to register and report on a regular basis. The FDIC just published how much work that law creates for institutions and the Mortgage Originators themselves. The 4000 or so banks have to prepare policies to ensure employee compliance with the mortgage laws, adopt procedures to track compliance with the mortgage laws, adopt procedures for collecting criminal histories on employees in the mortgage field, adopt procedures for disclosing the bank's unique identifier, annually report to the registry of unique identifiers, adopt procedures for collecting fingerprints of mortgage loan originator employees. In the usual woeful under estimating of how much time this will take the banks, the FDIC estimates in will take the industry 530,000 hours. Of course in addition to preparing all these policies and procedures, the banks actually have to administer them. The 60000 individuals in this business have their own burdens and must prepare and file an annual registration, update this regularly if anything changes and then disclose to consumers their own unique identifiers. The FDIC actually thinks a person can fill out and file the registration form in 15 minutes. See the procedures at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23652.htm>

Credit Union Rural Districts

On September 26, 2012, the NCUA published its proposed rule to permit a geographic area to qualify as a rural district if, among other criteria, it has a total population that does not exceed the greater of 200,000 people or three percent of the population of the state in which the majority of the district is located. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23643.htm>

Credit Union Investments in TIPS

On September 26, 2012, the NCUA published its proposed rule to permit federal credit unions (FCUs) to purchase Treasury Inflation Protected Securities (TIPS). This proposed amendment adds TIPS to the list of permissible investments for FCUs. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23644.htm>

Relief from Net Worth Requirements for small Credit Unions

On September 26, 2012, the NCUA published its proposed rule to grant relief from risk-based net worth and interest rate risk requirements. The amended IRPS would result in more robust consideration of regulatory relief for more small credit unions in future rulemakings and would grant immediate and prospective relief from regulatory burden to a larger group of small credit unions. See the proposed rule at:

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

Extension of Temporary Registration for Municipal Advisers

On September 26, 2012, the SEC published its final rule, which provides for the temporary registration of municipal advisors under the Securities Exchange Act of 1934 to September 30, 2013. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/html/2012-23688.htm>

Credit Union Payday-Alternative Loans

On September 26, 2012, the NCUA published its proposed rule to encourage more federal credit unions (FCUs) to offer PAL loans and believes it may be necessary to amend the regulation. The Board seeks comment on how best to approach this. Although the Board identifies specific issues for discussion below, it encourages commenters to discuss any issue related to improving the regulation. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-09-27/html/2012-23718.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.