

## The Consumer Financial Protection Bureau (CFPB), Recent Developments: June 30, 2014 – July 11, 2014

### CFPB Issues Guidance Regarding the “Mini-Correspondent” Lender Model

On July 11<sup>th</sup>, the CFPB issued non-binding advisory guidance regarding mortgage brokers transitioning to a “mini-correspondent” lender model.<sup>1</sup> Under that model, a mini-correspondent lender performs functions similar to a traditional broker, such as processing applications and providing legally required disclosures. However, in addition the mini-correspondent lender will also: (i) frequently underwrite the loans; (ii) make the final credit approval decision; (iii) fund the loans using a warehouse line of credit; and (iv) sell the loans to investors.

The CFPB issued the guidance because of concerns that some mortgage brokers may be improperly using the mini-correspondent model in order to gain exemption from certain restrictions under the CFPB’s new rules affecting mortgage broker compensation. In contrast to traditional mortgage brokers, mini-correspondent lenders are not subject to a number of requirements and prohibitions under Regulations X and Z, including: (i) disclosure of mortgage broker compensation; (ii) inclusion of mortgage broker compensation in the points and fees calculation under Regulation Z; and (iii) prohibition on steering to increase mortgage broker compensation. The guidance establishes how the CFPB will evaluate mortgage transactions in order to determine whether purported mini-correspondent lenders are actually acting as such and are not in fact acting as mortgage brokers under the various applicable laws. The guidance effectively establishes a “substance over form” analysis for determining whether an entity is actually a mini-correspondent lender or is in fact a mortgage broker.

The guidance sets forth some of the questions that the CFPB may consider in evaluating mortgage transactions involving purported mini-correspondent lenders. The guidance provides that no single question determines how the CFPB will exercise its supervisory and enforcement authorities. Such determinations will be made on a case-by-case basis and will turn on the particular facts and circumstances of each mortgage transaction at issue. The evaluation involves examining the structure and operation of the purported mini-correspondent lender. For example, the CFPB will look at: (i) whether it is continuing to broker loans; (ii) its sources of funding; (iii) whether it funds its loans through a bona fide warehouse line of credit; (iv) its relationship with its investors; and (v) its involvement in mortgage origination activities, such as loan processing, underwriting, and making the final credit approval decision.

### CFBP Enters Consent Order with National Payday Lender

On July 10<sup>th</sup>, the CFPB entered a consent order with a large national payday lender to settle allegations regarding its debt collection practices.<sup>2</sup> The CFPB alleged that when collecting debt from delinquent borrowers, the payday lender engaged in unfair, deceptive, and abusive acts and practices in violation of

<sup>1</sup> See the guidance [here](#).

<sup>2</sup> See the consent order [here](#).

section 1036(a)(1)(B) of the Dodd-Frank Act. Under the terms of the consent order, the payday lender will provide \$5 million in refunds to consumers and pay a \$5 million civil money penalty for the alleged violations.

The CFPB alleged that the payday lender engaged in numerous unfair, deceptive, and abusive debt collection practices, both when using third-party debt collectors and when collecting the delinquent debt itself. The CFPB described the following acts and practices, among others, as unfair, deceptive, or abusive:

- Falsely threatening a lawsuit or criminal prosecution. The CFPB alleges that the payday lender led delinquent borrowers to believe that they would be sued or subject to criminal prosecution if they did not make payments even though the payday lender did not actually sue delinquent borrowers.
- Falsely threatening extra fees and credit bureau referrals. The CFPB alleges that the payday lender had a policy of not charging extra fees and of not referring delinquent borrowers to credit reporting agencies. Despite this, the payday lender described these as possible outcomes if the borrower failed to make payments.
- Harassing collection calls: The CFPB alleges that the payday lender and its third-party collectors abused and harassed delinquent borrowers by making an excessive number of collection calls. This conduct allegedly included multiple calls to the borrowers' employers and family members.

As part of the enforcement action, the CFPB also made the allegation that the payday lender utilized the debt collection tactics described above "to create a false sense of urgency to lure overdue borrowers into payday debt traps." The CFPB alleged that the payday lender used the debt collection tactics as a threat in order to convince delinquent borrowers to take out new loans from the lender to pay off their original debt obligations.

#### **CFPB Issues Guidance on Applicability of ATR Rule on Certain Successors-in-Interest**

On July 8<sup>th</sup>, the CFPB issued an interpretive rule to clarify that when a mortgage loan borrower dies, the name of the borrower's successor-in-interest may generally be added to the mortgage note without triggering obligations under the CFPB's Ability-to-Repay (ATR) rule. The CFPB's ATR rule, Reg. Z § 1026.43, generally requires mortgage lenders to make a reasonable, good-faith determination that mortgage borrowers have the ability to repay their loans. This interpretive rule will ensure that successors who acquire title to property are also able to assume the decedent's mortgage, and to be considered for a loan workout, if necessary, to keep the property.<sup>3</sup> More specifically, the rule provides that where a successor-in-interest who has previously acquired title to a dwelling agrees to be added as an obligor or substituted for the existing obligor on a consumer credit transaction secured by that dwelling, the creditor's written acknowledgement of the successor as obligor is not subject to the ATR rule because such a transaction does not constitute an assumption as defined by Reg. Z § 1026.20(b).

#### **CFPB Issues Report on Remittance Transfers and Credit Scores**

On July 3<sup>rd</sup>, the CFPB issued a report on the potential for remittance information to enhance consumer credit scores.<sup>4</sup> Section 1073(e) of the Dodd-Frank Act required the CFPB to conduct a feasibility study

<sup>3</sup> See the interpretive rule [here](#).

<sup>4</sup> See the report [here](#).

regarding the use of remittance transfer information in credit scoring. The CFPB initially issued a report satisfying that requirement in July 2011. The initial report noted a number of business and legal issues impeding the use of remittance history in credit files, namely: (i) whether remittance transfer providers would furnish the necessary data to credit reporting bureaus; and (ii) whether credit reporting bureaus actually incorporate remittance transfer information into credit files. In the July 2011 report, the CFPB indicated that it planned to conduct additional research to better determine whether the use of remittance transfer information could enhance consumer credit scores.

According to the CFPB's most recent report, remittance histories "add very little to the predictiveness of a credit scoring model" for consumers who have unscorable credit records (i.e., consumers with so little credit information available that credit reporting bureaus will not assign a credit score). The report also found that for consumers with scorable credit records, remittance transfer information was positively associated with delinquency. Thus, using remittance transfer information in a credit scoring model would likely decrease rather than increase the credit scores of consumers who send remittance transfers.

The CFPB ultimately concluded that "remittance transfers offer little potential to either allow scores to be generated for consumers with unscorable credit records or to improve the scores of consumers with scorable credit records."

#### **CFPB Issues Guidance for Same-Sex Married Couples**

On July 8<sup>th</sup>, the CFPB made public an internal memorandum on ensuring equal treatment of same-sex married couples.<sup>5</sup> The memo was written on June 25, 2014 in response to the decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), in which the U.S. Supreme Court struck down as unconstitutional Section 3 of the Defense of Marriage Act. As stated in the memo, "[i]t is the Bureau's policy, to the extent federal law permits and consistent with the legal position announced by the U.S. Department of Justice in interpreting relevant statutes, regulations and policies, to recognize all marriages valid at the time of the marriage in the jurisdiction where the marriage was celebrated." However, the CFPB "will not regard a person to be married by virtue of being in a domestic partnership, civil union, or other relationship denominated by law as a marriage."

The policy applies to all of the laws, regulations, and policies administered by the CFPB, including the Equal Credit Opportunity Act, Fair Debt Collection Practices Act, Truth in Lending Act, and Real Estate Settlement Procedures Act. Thus the CFPB will interpret and use terms like "spouse," "marriage," "married," "husband," "wife," and any other similar terms related to family or marital status to include lawful same-sex marriages and lawfully married same-sex spouses.

#### **CFPB Holding Field Hearing on Consumer Complaints**

The CFPB will hold a field hearing on consumer complaints on Thursday, July 17<sup>th</sup> at 10:30 AM ET in El Paso, Texas. According to the CFPB's announcement, the hearing will feature remarks from CFPB Director Richard Cordray, as well as testimony from consumer groups, industry representatives, and members of the public. In the past, the CFPB has used its field hearings as a forum to announce new initiatives.

#### **CFPB Providing Financial Education Resources to Local Libraries**

As a part of the CFPB's ongoing effort to partner with local libraries and transform them into "neighborhood centers of financial education," the CFPB is building a collection of financial education

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<sup>5</sup> See the CFPB's guidance [here](#).

materials for use by partner libraries. The CFPB first announced this initiative in April 2013 as a part of its education mandate and has partnered with nearly 50 library systems up to this point. The resources available include the CFPB's first set of program ideas, various online resources, and other free government publications that libraries may order.

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