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CFPB Observer

August 2014

The Consumer Financial Protection Bureau (CFPB), Recent Developments: August 18, 2014 – August 22, 2014

CFPB Adjusts Regulation Z Threshold Dollar Amounts

On August 15th, the CFPB issued a final rule amending several threshold dollar amounts in Regulation Z applicable to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Act. The CFPB must re-calculate the dollar amounts for these Regulation Z provisions annually based on the annual percentage change reflected in the Consumer Price Index in effect on June 1 of the preceding year. With respect to the CARD Act, the minimum interest charge disclosure thresholds will remain unchanged in 2015. However, the penalty fees safe harbor under the CARD Act, as adjusted for 2015, is $27 for a first late payment and $38 for each subsequent violation within the following six months. For HOEPA loans, effective January 1, 2015, the adjusted total loan amount threshold is $20,391 and the adjusted statutory fee trigger for HOPEA loans is $1,020. Finally, for the purpose of a creditor's determination of a consumer's ability to repay a transaction secured by a dwelling, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed the following revised thresholds:

- three percent of the total loan amount for a loan greater than or equal to $101,953;
- $3,059 for a loan amount greater than or equal to $61,172 but less than $101,953;
- five percent of the total loan amount for a loan greater than or equal to $20,391 but less than $61,172;
- $1,020 for a loan amount greater than or equal to $12,744 but less than $20,391; and
- eight percent of the total loan amount for a loan amount less than $12,744.

CFPB Issues Bulletin Addressing Mortgage Serving Transfers

On August 19th, the CFPB issued Bulletin 2014-01 addressing various risks presented by transferring mortgage loans. The Bulletin outlines the CFPB's expectations for mortgage servicers that transfer loans. It replaces CFPB Bulletin 2013-01, released in February 2013, which also addressed servicing transfers. As a part of the CFPB's new mortgage servicing rules that took effect in January 2014, mortgage servicers are required to maintain policies and procedures that facilitate the handover of information when a servicer transfers a mortgage loan. The new Bulletin provides examples of the types of issues that CFPB examiners will look for in analyzing whether a loan has been transferred properly. The CFPB is especially concerned with, and CFPB examiners will scrutinize, transfers of loans with pending loss mitigation applications or approved trial and permanent modification plans. The new Bulletin also provides examples of good loan servicing transfer practices such as flagging loans with pending loss mitigation applications and ensuring that transfers of such loans occur in a timely manner.

CFPB Enforcement Action against Auto Finance Company

On August 20th, the CFPB entered a consent order with an auto finance company that allegedly provided inaccurate information about consumers to credit reporting agencies. The company offers direct loans to consumers to finance their purchase of automobiles. The company services its own auto loans and supplies information about its consumer accounts to credit reporting agencies. It is thus a "furnisher" under the Fair Credit Reporting Act (FCRA). FCRA requires that furnishers have reasonable policies and procedures regarding the accuracy and integrity of the information they furnish.

According to the consent order, the company failed to fix known flaws with a computer program that was providing inaccurate information about consumer accounts to credit reporting agencies. For example, the software reported incorrect payment amounts and inaccurately reported delinquency periods. When the company learned that the software was providing inaccurate information, the company notified the third-party software vendor that designed and maintained the software, but did nothing more. The consent order states that the finance company continued to use the software even though it knew that the software was functioning improperly. The CFPB stated that the software's reporting of inaccurate information "potentially harmed tens of thousands of its customers."

As a part of the consent order, the company must pay a $2.75 million fine, correct the errors, and adjust its business practices to include greater consumer protections.

CFPB Announces eClosing Pilot Participants

On August 21st, the CFPB announced the participants in its mortgage electronic closings (eClosings) pilot program. In April 2014, the CFPB released the guidelines for the eClosings pilot project. The eClosing program is not part of a rulemaking process. Rather it is designed to identify best practices in the mortgage market. The CFPB identified eClosings as a possible solution to common problems faced by consumers during the closing process, such as the short timeframe, the large amount of paperwork, and the complexity of the documents. The project is a part of the CFPB's greater "Know Before You Owe" mortgage initiative. The three-month pilot will begin in late 2014. It will ultimately test how the increased use of technology during closing affects consumer understanding and engagement.

CFPB Finalizes Revisions to Remittance Transfer Rule

On August 22nd, the CFPB finalized revisions to its Remittance Transfer Rule that were originally proposed in April 2014. A revised final version of the Rule was issued in May 2013 and became effective October 28, 2013. Section 1073 of the Dodd-Frank Act amended the Electronic Fund Transfer Act (EFTA) by establishing requirements for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The original Rule implemented these requirements by amending subpart B of Regulation E, which implements the EFTA. The revisions finalized last week extend a temporary provision in section 1073 that permits insured institutions to estimate certain pricing disclosures. Without further action by the CFPB, this exception would have expired July 21, 2015. However, as finalized, the temporary exception has been extended by five years from July 21, 2015, to July 21, 2020. In addition, the finalized revisions also contain several clarifying amendments and technical corrections.

Interagency Guidance on Unfair or Deceptive Credit Practices

On August 22nd, the CFPB, along with the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, and the Office of the Comptroller of the Currency, issued a Financial Institution Letter that provides guidance regarding unfair or deceptive credit practices. The Letter states that despite the Dodd-Frank Act removing the FDIC's authority to issue credit practices rules for banks, savings associations, and federal credit unions, institutions "should not construe the repeal to indicate that the unfair or deceptive practices described in these former regulations are permissible. These practices remain subject to Section 5 of the Federal Trade Commission (FTC) Act."

The Consumer Financial Protection Bureau (CFPB), created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, implements and enforces federal consumer financial law. Greenberg Traurig monitors the CFPB's activities, including the almost daily movement on multiple industry fronts that the CFPB makes as it redefines consumer finance law. An entirely new system has been and is being created for the consumer financial services industry. Once complete, the question will be, "How does our clients' business match up?" Our GT CFPB Team regularly observes and analyzes the actions of the CFPB in order to advise clients in best practices, risk management and compliance procedures.

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