

CFPB Observer: Recent Developments from Jan. 26-30, 2015

CFPB Issues Proposed Rule Amending Small Creditor Provisions of Mortgage Rules

On Jan. 29, the CFPB issued a [proposed rule](#) that would amend various provisions of its Title XIV mortgage rules relating to small creditors. The purpose of the proposed changes is to “increase the number of financial institutions able to offer certain types of mortgages in rural and underserved areas.” Several of the CFPB’s mortgage rules that became effective in January 2014 have exceptions for lenders that qualify as small creditors. For example, small creditors that operate predominantly in rural or underserved counties may originate Qualified Mortgages with balloon payment features even though balloon payments are otherwise not a permitted for Qualified Mortgage status. Similarly, small creditors need not comply with the requirement to establish escrow accounts on higher-priced mortgage loans.

Since the rules were finalized, the CFPB has received feedback regarding the scope of the small creditor exception and whether it sufficiently accomplishes its purpose of ensuring that borrowers in rural and underserved areas receive sufficient access to credit. To that end, the CFPB’s proposed rule seeks to make certain changes in order to promote greater access to credit. First, the rule would expand the definition of small creditor by increasing the loan origination limit for the small creditor status from 500 first-lien mortgage loans to 2,000 loans and would exclude from this calculation loans held in portfolio by the creditor and its affiliates. Second, the rule would maintain the current asset level threshold of \$2 billion for small creditor status, but would include the assets of a creditor’s mortgage-originating affiliates in the asset calculation. Third, the proposed rule would expand the definition of “rural” areas to include census blocks that are not in an urban area as defined by the Census Bureau. Finally, the proposed rule would also provide greater flexibility to creditors by allowing for grace periods for certain small creditors that exceed the origination limit or asset-size limit.

Comments on the proposed rule will be accepted until March 30, 2015.

CFPB Issues Supervisory Compliance Bulletin

On Jan. 27, the CFPB issued [Compliance Bulletin 2015-01](#) to provide guidance to supervised financial institutions, including nonbank companies, of the CFPB’s regulations governing the use and disclosure of confidential supervisory information (CSI), which are found at 12 CFR Part 1070. Specifically, the Bulletin provides guidance on what types of information constitute CSI. It also reiterates the general rule that “supervised financial institutions and other persons in possession of CSI of the CFPB may not disclose such information,” except for limited exceptions. Of particular interest, the Bulletin addresses the issue of non-disclosure agreements between financial institutions and third parties that attempt to restrict the financial institution from sharing certain information with a regulator, or that require the financial institution to notify the third party when it shares such information. The Bulletin makes clear that such provisions in non-disclosure agreements purporting to limit sharing do not alter the CFPB’s supervisory authority or the financial institution’s obligations relating to CSI.

Regulatory Agencies Issue Guidance on Private Student Loans

On Jan. 29, the CFPB, in conjunction with several other federal financial regulators, [issued guidance](#) to financial institutions regarding the making of private student loans with graduated repayment terms. In addition to offering traditional student loans with fixed amortizing terms, financial institutions may also offer private student loans that are structured with lower initial monthly payments that gradually increase over the term of the loan. In addition to stating that borrowers on such loans should be provided with clear disclosures describing the timing and amounts of the payments, the guidance also lays out principles for financial institutions to consider when originating such loans, including avoiding payment shock for borrowers, contacting borrowers before reset dates, ensuring orderly repayment, and aligning payment terms with a borrower's income.

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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