CFPB ISSUES FINAL RULE DELAYING SOME BUT NOT ALL TITLE XIV MORTGAGE REFORMS

On November 19, 2012 the Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule that delayed the effective date of several mortgage reforms required by the Dodd-Frank Reform Act. The delayed provisions, all required by Title XIV of the Reform Act, will only go into effect when the Bureau issues its final rule on the TILA/RESPA integrated mortgage disclosures, now expected to be sometime in 2013. All of the delayed provisions will be made part of the integrated disclosures. This article summarizes which Title XIV requirements were delayed as well as those which were not. The non-delayed provisions will apparently still become effective on January 21, 2013 whether the Bureau can get final rules out in time or not.

The Reform Act provides that the mortgage reform provisions of Title XIV will become effective on January 21, 2013 (which is 18 months after the designated transfer date), unless the Bureau issues final rules providing for a different effective date. The Bureau's final rule issued on November 19, 2012 and a related addition to the commentary will cause certain of the Title XIV provisions not to go into effect on January 21, 2013. The Bureau's reasoning was that these provisions are going to be part of the upcoming integrated disclosures anyway and it would confuse consumers if the various provisions became effective piecemeal. However, only certain identified provisions of Title XIV are covered by the delaying rule, as follows:

- Warning regarding loans with negative amortization;
- Disclosure of state law anti-deficiency protections;
- Disclosure regarding creditor's partial payment policy;
- Several disclosures regarding mandatory escrow (impound) accounts and waivers of escrow accounts;
- Disclosure of the monthly payment, including escrowed amounts, at the initial and fully-indexed rate for adjustable-rate mortgages;
- Disclosure of aggregate settlement charges (charges included in the loan or paid at closing), the wholesale rate of funds and the aggregate amount of other fees or required payments in connection with a residential mortgage loan;

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- Disclosure of aggregate mortgage originator fees and fees paid by the consumer and the creditor;
- Disclosure of total interest as a percentage of principal; and
- Optional disclosure of appraisal management company fees.

In sum, compliance managers can relax for five minutes knowing that the above requirements will not go into effect until they do so as part of the integrated disclosures. The final rule promulgating the integrated disclosures is expected sometime later in 2013.

Equally important may be what the delay rule did not do. It did not delay the effectiveness of several other components of Title XIV which presumably are still going to go into effect on January 21, 2013 as provided by the Reform Act.

The following provisions were not delayed by the November 19, 2012 rule and will, absent some quick action by the Bureau before January 21, 2013, become effective (with or without implementing regulations) on that date:

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage;
- Loan originator identifier requirement;
- Consumer notification regarding appraisals for higher-risk mortgages;
- Consumer notification regarding the right to receive a copy of an appraisal; and
- Post-consummation escrow cancellation disclosure.

The Bureau quoted itself in the November 19 final rule as having stated in July 2012 that these "other Title XIV disclosures" were expected to be proposed separately "in summer 2012" and finalized by January 21, 2013. No indication was given in the November 19 rule whether the Bureau still thinks it can get final rules in place on the non-delayed provisions before they become automatically effective on January 21, 2013. Thus creditors are urged to stay tuned to the Bankers' Compliance Group website (www.bankerscompliancegroup.com) or to call the law firm for an update as the January 21, 2013 deadline approaches.

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