March 20, 2013

You Need to Pay Attention to the Consumer Financial Protection Bureau

For those companies who pay attention to the always evolving regulatory environment as we do at Brownstein Hyatt Farber Schreck, you have likely heard the debate regarding the validity of rules promulgated by organizations with recess appointments at their head. To that end, you have likely questioned whether you need to follow the rules laid out by the Consumer Financial Protection Bureau (CFPB) as its director, Richard Cordray, was a recess appointment. The answer is absolutely "YES."

The CFPB is continuing to publish and enforce its own rules and regulations and will not be deterred by political infighting. Most recently, the CFPB met its January 21, 2013, deadline for issuing new mortgage rules. On February 13, 2013, the CFPB published how it intends to implement those new rules. Companies have until June 2013 and/or January 2014 to meet the deadlines and will likely need every month to implement the significant systematic changes.

The new mortgage rules include:

- **The Ability-to-Repay Rule** (rule effective January 14, 2014) – The rule aims to protect consumers from irresponsible mortgage lending by requiring lenders to make a reasonable, good faith determination that the prospective borrower can repay their mortgage.
- **Amending Escrow Requirements Under the Truth in Lending Act** (Reg. Z) (rule effective June 1, 2013) – The rule amends existing regulations that require creditors to establish and maintain escrow accounts for at least five years (up from one year) after originating a "higher-priced mortgage loan," creating an exemption from the escrow requirement for small creditors (assets size less than $2 billion) that operate predominately in rural or underserved areas, and expands an exemption from escrowing insurance premiums for condominium units to other situations in which an individual consumer's property is covered by a master insurance policy.
- **High-Cost Mortgage and Home Ownership Counseling Amendments** (rule effective January 10, 2014) – The CFPB expanded the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act (HOEPA), revised and expanded the tests for coverage, imposed additional restrictions on mortgages that are covered by HOEPA, including pre-loan counseling.
- **The Real Estate Settlement Procedures Act** (rule effective January 10, 2013) – The rule affects the requirement of periodic billing statements, interest-rate adjustment notices for adjustable-rate mortgages, prompt payment crediting and payoff statements, force-placed insurance, error resolution and information requests. This establishes general servicing policies, procedures and

410 17th Street, Suite 2200
Denver, CO 80202

requirements, early intervention with delinquent borrowers, continuity of contact with delinquent borrowers, and loss mitigation procedures.

- **Equal Credit Opportunity Act Rule on Providing Appraisals and Valuations** (rule effective January 18, 2014) – The rule requires creditors to notify applicants within three business days of receiving an application of their right to a copy of appraisals, requires creditors to provide applicants a copy of each appraisal or written valuation promptly upon their completion or three business days before consummation or account opening, permits applicants to waive the timing requirements for the copies, and prohibits creditors from charging for the copy of appraisals and other written valuations.

- **Truth in Lending Act on Appraisals** (rule effective January 18, 2014) – The rule allows a creditor to extend a higher-priced mortgage loan only if: (1) the creditor obtains a written appraisal, (2) the appraisal is performed by a certified or licensed appraiser, and (3) the appraiser conducts a physical property visit of the interior of the property. Creditors are also required to provide the applicant with notice of the rule regarding the purpose of the appraisal, a copy of any written appraisals that the creditor may charge the applicant for the appraisal and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant. The creditor must provide the consumer with a free copy of any written appraisals obtained for the transaction at least three business days before consummation.

- **Loan Originator Compensation Requirements** (rule effective date both June 1, 2013, and January 10, 2014) – The final rule places a prohibition against compensation based on a term of a transaction or proxy for the term of a transaction and a prohibition against dual compensation, but does not prohibit a consumer payment of upfront fees and points. The rule imposes loan originator qualifications and identifier requirements. The rule prohibits mandatory arbitration clauses and single premium credit insurance. The rule also extends recordkeeping requirements concerning loan originator compensation to apply to both creditors and mortgage brokers for three years.

The ramifications for failing to meet the requirements are too significant to ignore. Implementation of the rules will take time, but if companies delay in addressing them, they will not be able to meet the challenges that these rules create. If you have additional questions regarding how these rules may impact your company directly, please contact one of our team members below.

This document is intended to provide you with general information regarding the CFPB new mortgage rules. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

Rich Benenson
rbenenson@bhfs.com
T 303.223.1203

Jeffrey Rugg
jrugg@bhfs.com
T 702.464.7011

Eric Berg
eberg@bhfs.com
T 805.882.1408

Jonathan Sandler
jsandler@bhfs.com
T 310.564.8672

Denver Office
410 Seventeenth St, Suite 2200
Denver, CO 80202

Las Vegas Office
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Santa Barbara Office
21 East Carrillo Street
Santa Barbara, CA 93101-2706

Los Angeles Office
2029 Century Park East, Suite 2100
Los Angeles, CA 90067-3007