July 25, 2013

CFPB Proposes Modifying Mortgage Rules

On June 24, 2013, the Consumer Financial Protection Bureau (CFPB) proposed seven separate "clarifications" and "narrow revisions" to certain mortgage rules it first issued in January 2013. The rules are targeted at mortgage lenders; however, they have an impact on the entire real estate industry. Given that the deadline to comply with the new rules is less than six months away, it is critical for all real estate industry professionals to understand the ways these rules will impact their business.

Here's a quick look at what the CFPB intends with its proposed changes:

1. Outline procedures for obtaining follow-up information on loss-mitigation applications:

- This proposed clarification would result in a loan servicer only being required to seek additional information for a loss-mitigation application from the borrower if the servicer could not complete the assessment without the additional information. In other words, if the loan servicer has enough information to complete the assessment, the servicer does not need to jump through additional hoops.

- The modification also requires that a servicer ensure that the borrower does not lose certain protections, such as a foreclosure ban during the first 120 days, until the borrower has had a reasonable time to supply the needed documentation.

2. Facilitate servicers' offering of short-term forbearance plans:

- This revision would make it easier for a servicer to offer short-term forbearance plans to delinquent borrowers who only need temporary relief by not requiring the servicer to go through the full loss-mitigation evaluation process.

3. Facilitate lending in rural or underserved areas:

- This modification would extend an exception to a ban on high-cost mortgages featuring balloon payments to small creditors who do not operate predominantly in rural or underserved counties. The loans would still need to meet particular restrictions.

- The proposal would clarify an exemption from the requirement of maintaining escrows on certain high-priced loans for small creditors who operate mostly in rural or underserved areas as long as other criteria were met. This proposal would extend availability to qualified small creditors in any of the previous three calendar years to prevent creditors from losing eligibility for the exemption in 2014 due to changes.

410 17th Street, Suite 2200
Denver, CO 80202

4. Make clarifications about financing of credit insurance premiums:

- This proposal would clarify what constitutes finance of credit insurance premiums by a creditor, with particular application to level premiums, where the monthly premium is the same each month rather than decreasing along with the loan balance.
- The clarification would provide guidance on when credit insurance premiums are considered to be calculated and paid on a monthly basis for exception purposes.

5. Clarify the definition of a “loan originator”:

- This clarification is meant to resolve the current ambiguity about under what circumstances the staff of a loan originator or creditor’s administrative staff acts as a loan originator.

6. Clarify the points and fees thresholds for manufactured housing employees:

- This proposal would clarify what compensation must be counted toward certain thresholds for points and fees under the “Ability to Repay” and “High Cost Mortgage” rules currently in effect for retailers of manufactured homes and their employees.

7. Revise the effective dates of the Loan Originator Rule and current ban on financing of credit insurance:

- This proposal would consider whether to delay the current effective date of January 1, 2014, for implementation of its loan originator rule, and whether to adjust the effective date for the ban on financing credit insurance to on or before January 10, 2014.

These proposed modifications are in response to the many questions being raised by lenders about existing mortgage regulations. In fact, on July 8, 2013, the CFPB released a Readiness Guide to aid mortgage lenders in achieving compliance with the new rules. These rules, when finalized and implemented, will affect the mortgage industry in ways not contemplated before the CFPB’s creation. Brownstein Hyatt Farber Schreck’s CFPB Task Force can help you interpret the rules, as well as develop and implement a comprehensive compliance strategy. Again, the deadline to comply with the new rules is less than six months away. It is critical for all real estate industry professionals—not just mortgage lenders—to understand the ways these rules will impact their business. Please contact one of our task force members with any questions.

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

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

Jason R. Dunn
jdunn@bhfs.com
T 303.223.1114

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

Jeffrey Rugg
jrugg@bhfs.com
T 702.464.7011

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

Eric Berg
eberg@bhfs.com
T 805.882.1408

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

Jonathan Sandler
jsandler@bhfs.com
T 310.564.8672

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

Carmencita N. M. Whonder
cwhonder@bhfs.com
T 202.652.2343

Washington, DC Office
1350 I Street, NW, Suite 510
Washington, DC 20005