

The Consumer Financial Protection Bureau (CFPB), Recent Developments: October 7, 2013 – October 10, 2013

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CFPB Removing Enforcement Attorneys from Supervisory Exams

On October 10th, the CFPB announced that it will discontinue its controversial practice of sending its enforcement attorneys to participate alongside supervision examiners in its examinations of supervised entities. This practice had been a major point of contention between the CFPB and the financial industry. The industry repeatedly protested that the attendance of enforcement attorneys at examinations threatened the sanctity of the supervisory process by transforming it into an adversarial proceeding. Meanwhile, the Bureau repeatedly sought to assure the industry that its practice was nothing more than a benign effort to educate enforcement attorneys about compliance trends.

CFPB spokeswoman Jen Howard asserted that Bureau's sole motivation for discontinuing its policy was to conserve enforcement resources for other purposes. Nevertheless, it seems clear that the Bureau acted – at least in part – to mollify its critics. Although the industry has reason to cheer this development, its importance should not be overstated. The Bureau has made clear and supervised entities should expect that examiners will continue to coordinate closely with their enforcement counterparts, but they will do so off-site.

The Bureau's new policy will go into effect on November 1, 2013, affecting both the bank and nonbank supervision programs.

CFPB Takes Action against Financial Institutions for HMDA Violations

On October 9th, the CFPB ordered both a bank and nonbank mortgage lender to pay fines for violating the Home Mortgage Disclosure Act (HMDA). The CFPB entered consent orders with Mortgage Master, Inc. and Washington Federal, requiring them to pay civil penalties of \$425,000 and \$34,000, respectively, to resubmit corrected HMDA data, and to revise their HMDA compliance systems.¹

As a means of preventing discrimination in lending, HMDA requires financial institutions to collect and to report to regulators certain data about home loan applications and approvals. The Federal Financial Institutions Examination Council annually releases certain HMDA data to the public. The Dodd-Frank Act transferred HMDA rulemaking and enforcement authority to the CFPB.

In announcing the actions, CFPB Director Richard Cordray stated “Today we are sending a strong signal that no mortgage lending institution – whether bank or nonbank – should be able to mislead the public with erroneous data.” The CFPB’s press release further stated that “inaccurate HMDA data impedes the Bureau’s efforts to detect violations of the Equal Credit Opportunity Act...and to stop discrimination in home mortgage lending.”

The Bureau indicated that it has already conducted “dozens” of HMDA reviews at bank and nonbank mortgage lenders, finding largely that they have adequate HMDA compliance management systems and few HMDA reporting errors. Unfortunately, however, the CFPB has not revealed those limited respects in which the compliance systems were inadequate.

CFPB Issues HMDA Compliance Bulletin

In conjunction with the CFPB’s HMDA actions discussed above, the CFPB issued Bulletin 2013-10 on October 9th.^{[2](#)} The Bulletin sets forth the Bureau’s expectations that lenders will implement compliance programs designed to ensure that they collect and report accurate HMDA data in a timely manner. The Bulletin outlines the components of an effective HMDA compliance management system, including the following:

- Comprehensive policies, procedures and internal controls to ensure ongoing compliance;
- Comprehensive and regular internal, pre-submission HMDA audits that are appropriate to the size and complexity of the institution;
- Reviews of any relevant regulatory changes;
- Reporting systems that are appropriate given the volume of the institution’s lending operations;
- Assignment of one or more individuals to oversee HMDA compliance;
- Appropriate, sufficient and periodic employee training to ensure compliance;
- Effective corrective action in response to previously identified deficiencies; and
- As appropriate, board and management oversight.

The Bulletin also provides a non-exclusive list of factors the CFPB considers relevant when determining whether to pursue an enforcement action with respect to HMDA violations:

- The size of an institution’s HMDA LAR and the observed error rate;
- Whether an institution self-identified its HMDA errors outside the context of an active examination or examination-related activity, and independently took appropriate corrective action; and
- If the institution has previously been on notice regarding high HMDA LAR errors, the extent to which those error rates have changed.

The CFPB also released its HMDA Resubmission Schedule and Guidelines,³ which establish thresholds for determining whether an institution must resubmit data where errors are discovered during a HMDA data integrity examination. The new Resubmission Schedule and Guidelines apply to all HMDA data integrity reviews initiated on or after January 18, 2014.

These HMDA developments follow the CFPB's recent release of a new online tool to access HMDA data. The stated purpose of the tool is to enable "greater transparency by helping inform people of trends in their local mortgage markets." Foreshadowing the potential uses of the tool, however, the CFPB added in its press release that the "public information is important because it helps show whether lenders are serving the housing needs of their communities; it gives public officials information that helps them make decisions and policies; and it sheds light on lending patterns that could be discriminatory."

Financial Regulators Encourage Working with Borrowers Affected by Government Shutdown

Joining several other financial regulators, the CFPB issued a statement on October 9th, encouraging financial institutions to work with borrowers affected by the federal government shutdown. Noting that affected borrowers may be facing temporary hardships as a result of the shutdown, the regulators suggest lenders consider "prudent workout arrangements" and other solutions to help borrowers meet their obligations.

¹ The Mortgage Master Consent Order and the Washington Federal Consent Order are available [here](#) and [here](#).

² CFPB Bulletin 2013-10 is available [here](#).

³ The CFPB's HMDA Resubmission Schedule and Guides are available [here](#).

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