

## CONSUMER FINANCIAL PROTECTION BUREAU'S REGULATORY AGENDA HIGHLIGHTS NUMEROUS MORTGAGE-RELATED RULES ON THE HORIZON

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On July 16, 2012, the Consumer Financial Protection Bureau ("CFPB") posted its Semiannual Regulatory Agenda ("Semiannual Agenda") as part of its participation in the Unified Agenda process. The CFPB acted in advance of the Office of Management and Budget's publication of the Spring 2012 Unified Agenda for the entire federal government in order to give the public more time to consider the Bureau's work. The CFPB's Semiannual Agenda indicates that it will undertake a number of mortgage-related rulemakings consistent with the CFPB's authority relating to consumer financial products and services. In this Alert, we describe two pending rulemakings that will affect the obligations of mortgage lenders, brokers, creditors, and appraisers.

### Know Before You Owe Mortgage Disclosure Integration

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requires the CFPB to issue proposed rules and model forms integrating certain disclosures that consumers receive in connection with applying for, and closing on, a mortgage loan under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). The model forms "will be designed to enhance consumer understanding and provide guidance to lenders and brokers on compliance with amended disclosure requirements." Semiannual Agenda at p. 13. According to the proposed rule (which is available at [http://files.consumerfinance.gov/f/201207\\_cfpb\\_proposed-rule-integrated-mortgage-disclosures.pdf](http://files.consumerfinance.gov/f/201207_cfpb_proposed-rule-integrated-mortgage-disclosures.pdf) and referred to herein as the "Proposed Rule"), the CFPB "engaged in extensive consumer and industry research and public outreach for more than a year" in order to develop the integrated forms with a detailed explanation of how the forms should be filled out and used. *Id.* at 3.

The two new forms, referred to in the proposed rule as the Loan Estimate Form and Closing Disclosure Form, "use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments and costs to close the loan." Proposed Rule at 4. According to the Proposed Rule, the forms "also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time." *Id.* While the Proposed Rule applies to most closed-end consumer mortgages, it does not apply to home equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or dwelling not attached to land.

While lenders may rely on mortgage brokers to provide the Loan Estimate form, the lender remains responsible for the accuracy of the form. *See* proposed § 1026.19(e)(1)(ii). The lender or broker must provide the form to the consumer within three business days of the consumer's application for a mortgage loan. The Proposed Rule defines "application" as the submission of a consumer's financial information for the purposes of obtaining an extension of credit, consisting of the consumer's name, income, and social security number to obtain a credit report, and the property address, an estimate of the value of the property, and the mortgage loan amount sought. *See* proposed § 1026.2(a)(3).

The Closing Disclosure form, which would replace the HUD-1, must be given to consumers at least three business days before the consumer closes on the loan. While a new form must be provided if changes occur between the time the initial Closing Disclosure form is given and the closing, the Proposed Rule contains an exception to this requirement if, for example, the changes are minor and would result in less than \$100 in increased costs. *See* proposed § 1026.19(f)(2).

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Under the Proposed Rule, lenders will be required to keep records of the Loan Estimate and Closing Disclosure forms in standard electronic format, which will make it easier for regulators to monitor compliance.

Public comments regarding these provisions of the proposed rule are due on or before November 6, 2012 (with public comments on other provisions due earlier — on September 7, 2012). The CFPB has sought comment on the final rule's effective date, noting that the final rule "will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff." Proposed Rule at 8.

### **Appraisals**

The CFPB, together with the Federal Reserve Board, the OCC, FDIC, the NCUA, and FHFA, is participating in interagency rulemaking efforts on development of proposed regulations concerning appraisals. These efforts will implement amendments made by the Dodd-Frank Act to the TILA and the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). The Dodd-Frank Act made amendments to TILA that require creditors to obtain an appraisal, including a physical property visit by a certified appraiser, before extending higher-risk mortgage credit. A higher-risk mortgage is defined generally as a residential mortgage loan secured by a principal dwelling that is not a "qualified mortgage" and that has an APR that exceeds the average prime offer rate for a comparable transaction by certain, specified thresholds. 15 U.S.C. § 1639h(f). The TILA amendments also require appraisal independence, portability of appraisal reports, and charging of customary and reasonable fees.

The Dodd-Frank Act amendments to FIRREA set minimum requirements for states to apply to the registration, reporting, and supervision of appraisal management companies. The FIREEA amendments also require implementation of regulations for "new quality control standards for automated valuation models to ensure confidence in the estimates produced by the models; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and address any other factors the agencies determine to be appropriate."

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Semiannual Agenda at 9. The CFPB expects publication in August 2012 of a proposed rule related to these appraisal requirements.

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This Alert discussed forthcoming regulations that will affect institutions in the mortgage lending, brokerage, appraisal, and other credit areas. The CFPB's complete Semiannual Agenda, however, reflected a wide range of regulatory initiatives mandated by the Dodd-Frank Act, including the CFPB's supervisory program for nondepository covered persons; the definition of "larger participants" as part of that supervisory program; requirements for pre-paid cards; and other administrative matters. The Semiannual Agenda is available online at [http://files.consumerfinance.gov/f/201204\\_cfpb\\_semiannual-regulatory-agenda\\_2012-spring.pdf](http://files.consumerfinance.gov/f/201204_cfpb_semiannual-regulatory-agenda_2012-spring.pdf), and is further described in a July 16, 2012 CFPB blog posting at <http://www.consumerfinance.gov/blog/cfpbs-rulemaking-agenda/>. ♦

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