PUBLICATION

What You Need to Know from the CFPB Spring 2017 Supervisory Highlights

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The Consumer Financial Protection Bureau (CFPB) released its Spring 2017 Supervisory Highlights last month. This is the 15th volume to be released and each volume is a great resource to obtain line-of-sight into what the CFPB is focusing on in multiple lines of business. In this most recent issue, we learn about the Bureau's supervisory observations within mortgage origination, mortgage servicing, student loan servicing and fair lending, as well as recent enforcement actions and new developments in the Bureau's supervision program.

Supervisory Observations

We routinely remind clients that the CFPB operates on a risk-based model. Part of that model is identifying and noting trends during supervisory exams and then searching for those same trends in upcoming examinations to ensure the trend is not systemic to the industry. It therefore would behoove you to be aware of what the Bureau is finding in recent exams and taking the opportunity to double check these issues within your institution prior to ***your*** exam. The CFPB has recently identified the following issues in exams:

1. In mortgage origination, they are seeing issues regarding compliance with the Ability to Repay (ATR) rule including: (i) failure to meet the reasonable and good faith determination standards of a borrower's ability to repay; (ii) verification using third-party records and verification of income or assets; (iii) use of third-party verification of income and/or assets; (iv) proper reliance on only the assets of a borrower in a determination of a borrower's ability to repay; and (v) reliance on down payment size to support repayment ability for a consumer with no verified income or assets.
2. In mortgage servicing, the CFPB continues to identify Dual Tracking violations where one or more servicers did not properly classify loss mitigation applications as facially complete after receiving the documents requested and then failed to afford these borrowers with the foreclosure protections required under Regulation X.
3. Also in mortgage servicing, the Bureau noticed that servicers are allowing escrow disbursements from some borrowers' escrow accounts to pay insurance premiums owed by other borrowers, this is viewed as an unfair practice and will be pursued as a UDAAP violation and will be pursued by the CFPB.
4. Again in mortgage servicing, the CFPB found that periodic statements that tended to be vague and non-compliant under Regulation Z.
5. Within the servicing of student loan debt, the CFPB found UDAAP violations including: (i) failing to reverse negative consequences of erroneous deferment terminations and (ii) deceptive statements about interest capitalization during successive deferments.
6. Lastly, in regards to fair lending compliance within non-mortgage products the CFPB noted a failure to update the proxy methodology used for an entities self-assessments. In December of last year, the U.S. Census Bureau released a list of the most frequently occurring surnames based on the most recent census data, the CFPB examination teams are now relying on this updated data and therefore so should you, to avoid any unnecessary findings (it is important to note that the CFPB uses the Bayesian Improved Surname Geocoding (BISG) proxy methodology for race and ethnicity in their fair lending analysis of non-mortgage credit products.)

Actions to Come

In the Spring 2014 and Fall 2016 issues of supervisory highlights, as well as other issued guidance, the CFPB has continually emphasized the importance of proper vendor and service provider oversight and reiterated that said oversight is needed for a complete and effective compliance management system (CMS) and takes this opportunity to state that they will continue to evaluate said oversight during their reviews. However, they also announced that they have "begun to develop and implement a program to supervise these service providers directly" stating that "direct examination of key service providers will provide the CFPB the opportunity to monitor and potentially reduce risks to consumers at their source." They will begin with baseline reviews of some service providers to learn about the structure of these companies, their operations, their compliance systems and their CMS, then move to more targeted reviews focusing on service providers that directly affect the mortgage origination and servicing markets.

Finally, the CFPB referenced their November 2016 guidance on production Incentives and went on to state: "the Bureau recognizes that many supervised entities may choose to implement incentive programs to achieve business objectives. These production incentives can lead to significant consumer harm if not properly managed. However, when properly implemented and monitored, reasonable incentives can benefit consumers and the financial marketplace as a whole." At this point, you should be on full notice that any production incentive plans that your institution may have in place will be reviewed during your next exam, so it would be wise to re-review the available guidance and ensure your compliance. If you have any questions about the impact of regulations, guidance or the best practices for an exam or investigation, please contact a member of Baker Donelson's Financial Services Department.