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To the Point!

legal, operations, and strategy briefs for financial institutions April 30, 2013

Revision to Guidance on Community Reinvestment

The banking regulatory agencies (FRB, OCC and FDIC) have proposed revisions to the "Interagency Questions and Answers Regarding Community Development." The changes are primarily directed at "community development" activities. The proposal clarifies how the agencies consider:

- community development activities outside an institution's assessment area; and
- an investment where only a portion of the investment supports a community development purpose.

In addition, the proposal provides additional ways a bank can determine whether recipients of community services are low- or moderate-income and clarifies that for large institutions, community development lending could have a positive, neutral or negative effect on the institution's lending test rating.

The proposal was based on information obtained by the agencies during hearings held in 2010 to identify "gaps" between CRA guidance and changes to the banking industry, including how bank customers access and use credit and financial services. The agencies will be accepting comments on the proposal until May 17, 2013.

CFPB Enforcement Action Under RESPA

In its first public action to enforce RESPA, the CFPB recently announced a settlement, including a $15.4 million civil money penalty, with four mortgage insurance companies that had captive reinsurance arrangements with affiliates of mortgage lenders. The complaints asserted that the insurance companies violated section 8 of RESPA by purchasing reinsurance from captive insurance companies of mortgage lenders in exchange for business.

The Consent Orders prohibit the mortgage insurers from entering into any new captive mortgage insurance arrangement with affiliates of mortgage lenders and impose compliance monitoring, reporting and recordkeeping obligations. In addition, as part of the Consent Orders each insurance company is required to comply on an expedited basis with any Civil Investigation Demand or subpoena issued by the CFPB associated with the transactions that are subject to the complaints. Such information would assist the CFPB in its investigations of the mortgage lenders involved in the captive insurance arrangements.

Banks that have captive reinsurance companies should note that no action has been taken against the mortgage lenders to date, but the CFPB stated in its press conference announcing the settlements that it is continuing its investigation into captive mortgage reinsurance, including the lender side of the arrangements.

New York and Massachusetts Use New Tool to Protect Consumers from Payday Loans

The financial services regulators in New York and Massachusetts have both provided written notices to licensed debt collectors reminding them that they are prohibited from collecting loans that violate state laws and will be held accountable if they attempt to collect any such loans from consumers. In the notices, the regulators specifically identified Internet lenders and unlicensed lenders originating high cost, short term payday loans that violate state loan laws. The regulators reminded debt collectors that it is their obligation to confirm that the loans they collect are enforceable and collectable under state law, and that attempting to collect an unenforceable debt could be viewed as an unfair and deceptive trade practice violative of state and federal law.

A lender considering a national loan program will need to carefully consider the extent to which it is eligible to exercise federal preemption of state law to ensure that its loans will be enforceable in state court and will not subject the lender (or its debt collectors) to a UDAAP claim. If a lender is not eligible to exercise federal preemption, the lender will need to confirm that its program terms comply with each state's loan laws. Finally, lenders with national programs should be prepared to address the basis under which they offer their loan programs to out-of-state customers with local debt collectors hired to enforce such consumer loans.

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To the Point! is a summary of items of interest and current issues for financial institutions with primary focus on regulatory, consumer, and corporate issues. Chapman and Cutler LLP maintains a dedicated practice group with expertise to counsel on these issues and other enterprise risk management matters facing financial institutions. If you would like to discuss any of the items contained in these briefings or other legal, regulatory, or compliance issues facing your institution, please contact one of the partners in our Bank Regulatory Group:

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