MBa

MORTGAGE BANKERS ASSOCIATION

Supervisory and Enforcement Flexibilities

Effective April 1, 2021, the CFPB rescinds the "Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic." The Statement, which was issued on March 26, 2020, noted that when conducting supervisory activities and determining whether to take enforcement action, the Bureau would consider "account staffing and related resource challenges confronting financial institutions at the onset of the COVID-19 pandemic," as well as other "circumstances that entities may face as a result of the COVID-19 pandemic." The Bureau justifies its decision to rescind by explaining that circumstances have changed relative to the early days of the pandemic, specifically mentioning that institutions have adjusted operations and states have eliminated or modified stay-at-home orders. Going forward, the Bureau intends to "use its supervisory and enforcement tools to the full extent and with the full flexibility afforded by Congress."

As part its decision to rescind the "Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic[,]" the Bureau also withdraws as a signatory to two interagency statements. First, the "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus," published April 7, 2020, which explains the agencies flexibilities with respect to loan modifications. Of note, this interagency statement explained that "[t]he agencies do not expect to take a consumer compliance public enforcement action against an institution, provided that the circumstances were related to the [COVID-19 pandemic] and that the institution made good faith efforts to support borrowers and comply with the consumer protection requirements, as well as responded to any needed corrective action." In addition, the Bureau withdraws as a signatory to the "Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus[,]" issued April 14, 2020, which outlined "existing flexibilities in industry appraisal standards and in the appraisal regulations issued by the OCC, FRB, FDIC, and NCUA" as well as additional, temporary "changes to Fannie Mae and Freddie Mac appraisal standards[.]"

Also included in the rescinded policies is the CFPB's "Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act" issued April 1, 2020. This recision leaves intact the "Furnishing Consumer Information Impacted by COVID-19" section which articulates the CFPB's support for furnishers' voluntary efforts to provide payment relief and that the CFPB does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

Supervisory Communications

The CFPB rescinds and replaces CFPB Bulletin 2018-01, issued September 25, 2018, which described changes to how the Bureau communicates supervisory expectations to institutions in connection with supervisory events. Pursuant to the guidance articulated in the new bulletin, CFPB Bulletin 2021-01, the Bureau will no longer issue formal written Supervisory Recommendations. Instead, the Bureau will rely on Matters Requiring Attention (MRAs) to identify violations of law, risk of such violations, or compliance management system deficiencies. The bulletin also notes that "[w]hile MRAs are not legally enforceable, the Bureau expects supervised entities to correct the matters identified in MRAs promptly and effectively[,]" as well as that "a supervised entity's response to MRAs" will factor into the institution's compliance rating.

Quarterly HMDA Reporting

The Bureau also rescinds the "Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act," issued March 26, 2020, which noted that the Bureau did not intend to "cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly[.]" The rescission explains that institutions have had adequate time to adjust to the pandemic and can now be expected to comply with quarterly HMDA filing requirements. Therefore, effective April 1, 2021, the Bureau "instructs all financial institutions required to file quarterly to do so beginning with their 2021 first quarter data, due on or before May 31, 2021, for all covered loans and applications with a final action taken date between January 1 and March 31, 2021."