



Mortgage Industry Bulletin

Mortgage Origination Under CFPB Spotlight

January 12, 2012 — Considering the CFPB (Consumer Financial Protection Bureau) went live July 21, 2011, there was little to show at the end of the year for the work carried out by the 400+ staff. That is changing. In rapid succession, we have seen the deployment of technical pieces that more completely describe the mission of the CFPB.

Today the CFPB released supplemental guidance in the form of Mortgage Origination Examination Procedures [1], especially as they apply to non-traditional and subprime loan products. Added to the guidance released last fall that was directed at mortgage servicing, we now have a much better idea what the focus of the first examinations will be for previously unregulated business entities in the mortgage space.

Also published today was the Justice Department's internal legal opinion [2] regarding advice given to the White House about recess appointments and the legal implications. "In our judgment, the text of the Constitution and precedent and practice thereunder support the conclusion that the convening of periodic pro forma sessions in which no business is to be conducted does not have the legal effect of interrupting an intrasession recess otherwise long enough to qualify as a 'Recess of the Senate' under the Recess Appointments Clause," stated the legal opinion. "In this context, the President therefore has discretion to conclude that the Senate is unavailable to perform its advise-and-consent function and to exercise his power to make recess appointments." Although subject to anticipated challenge, Justice makes a case that could be hard to overturn.

We are beginning to develop a clear picture of where the CFPB intends to go. Some industry players are involved with mortgage origination and servicing, while others may have one or the other as their primary focus. Those organizations that have not been regulated in the past will have adjustments and a steep learning curve. So what are the primary examination factors that will be at the top of the agency list?

Including various elements of the mortgage origination process, mortgage brokers and lenders will be evaluated based on a complete risk assessment and examination scope process. As released today, there are seven (7) modules defined. According to the individual business model, one or more of the following modules will be included to identify acts or practices that would pose a material risk of regulatory violations.

Module 1 – Company Business Model – Look at retail, wholesale and correspondent channels and RESPA, TILA, ECOA, SAFE Act, HMDA, GLBA and FCRA regulations. Will also analyze funding sources, quality control/audit and compliance management.

Module 2 – Advertising and Marketing – Review specific marketing program to determine if it meets requirements of applicable laws and regulations. In addition to traditional offerings, also review marketing for non-traditional and reverse mortgages.

Module 3 – Loan Disclosures and Terms – Identify acts, practices and materials that could indicate potential violations of federal consumer financial law. File documents will be carefully checked for alteration, forgery and consumer complaint responses.

Module 4 – Underwriting, Appraisals and Originator Compensation – This module applies only to mortgage originators, not mortgage brokers. Examine non-traditional and subprime products as they relate to compensation and appraisal issues.

Module 5 – Closing – Review for completed and accurate disclosures, sample files and escrow accounts will be checked for errors and improper fees charged to borrowers.

Module 6 – Fair Lending – Interagency guidelines will be used to examine for adverse impact and discrimination in loan products, interest rates and closing costs or fees.

Module 7 – Privacy – Determine when and how non-public information is shared among affiliated and non-affiliated parties, and protected throughout the mortgage loan application process.

According to the CFPB press release, a significant segment of the mortgage market, including independent lenders, brokers, servicers and others not affiliated with banks and depository institutions, that has not been subject to any supervision in the past will now be regulated. Based on the CFPB assessment of risk to consumers, this extension of the mortgage oversight process will be coordinated with federal and state regulators to maximize overall supervisory capability and minimize regulatory burden.

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[1] A link is provided below to the Mortgage Origination Examination Procedures on the CFPB website <http://www.housingwire.com/wp-content/uploads/2012/01/Mortgage-Origination-Examination-Procedures.pdf>

[2] A link is provided below to the legal opinion from the Justice Department <http://www.justice.gov/olc/2012/pro-forma-sessions-opinion.pdf>

This information offers speculative insight into possible controls impacting the mortgage servicing industry. Loan Protector provides this information as a service to our clients. A link is provided to a URL for the indicated materials, but Loan Protector is not responsible for the content of these sites. Information provided by Loan Protector Insurance Services, a Willis North America Company. Contact Ken Evans, 440-505-6099.

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