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May 3, 2022

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Supervisory Highlights – Mortgage Origination

On May 2, 2022, the Consumer Financial Protection Bureau released its Supervisory Highlights report on legal violations identified during its supervisory examinations in the second half of 2021. This memorandum addresses the three mortgage origination violations of Regulation Z discussed in the report's Section 2.6 summarized below.

Compensating Loan Originators Differently Based on Product Type

The loan originator compensation rule in Regulation Z §1026.36(d)(1)(i) prohibits compensating a loan originator based on a term of a transaction. CFPB examiners found that certain loan originator compensation agreements provided for higher loan originator compensation where Fannie Mae conforming fixed rate loans surpassed a designated threshold percentage of the total loans closed by the loan originator, which compensation was higher than the compensation paid when such loans did not surpass the designated threshold percentage. The report states that "[p]aying higher commissions under these circumstances constitutes paying compensation based on credit product type, which violates the loan originator rule as compensation based on the term of a transaction, since product types are simply a bundle of particular terms."

Insufficient Documentation for Changed Circumstance

A changed circumstance under Regulation Z §1026.19(e)(3)(iv)(A) – (E) permits a lender to use a revised estimate of a charge, instead of the estimate of the charge originally disclosed, to reset tolerances if the changed circumstance caused the charge to increase out of tolerance. However, the report points out that the lender must also maintain documentation explaining the reason for revision. Examiners found that certain lenders failed to retain sufficient documentation for a changed circumstance involving an increase in appraisal fees. Comment 19(e)(3)(iv)-3 states that to comply with the record retention requirements of §1026.25, "creditors must retain records demonstrating compliance with the requirements of §1026.19(e)."

Disclosures Failed to Reflect the Terms of Legal Obligation

Regulation Z §1026.17(c)(1) requires the Closing Disclosure to "reflect the terms of the legal obligation between the parties." According to the report, examiners found instances where the Closing Disclosure's method of rounding a fully-indexed-rate was different from the method used in the corresponding promissory note. The lenders' software rounded the fully-indexed-rate up to the nearest one-eighth, whereas the promissory notes rounded to the nearest one-eighth percent – up or down.