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June 2013 Banking and Mortgage Regulatory Update

For monthly updates on compliance issues email mortgage@mccathernlaw.com with your request.

We are roughly six months away from January 10, 2014, when many of the Dodd-Frank Act's regulations are effective. That date will surely be closely intertwined with inspections (audits) performed by CFPB examiners. These examiners will perform detailed and intensive inspections to determine whether your company is in compliance with the Dodd-Frank Act, with most of their investigation focused naturally on the consumer. The Bureau has established four key areas where companies can proactively prepare for inspections. Those areas are self-policing, self-reporting, remediation, and cooperation. To fully prepare, all areas of your company must participate. This includes senior management and even the Board of Directors.

To be best prepared for a CFPB Audit, follow the McCathern Standard:

- Review the CFPB Origination Examination Manual; the Servicing Examination Manual; and make frequent visits to the CFPB website to review guidance issued by the Bureau.
- Review federal regulations including RESPA, TILA, ECOA, HDMA, FDPCA, FCRA, SAFE, and GLBA.
- Ensure you have a policy in place to regularly review and certify that all internal compliance policies and procedures are up-to-date, and that all compliance policies and procedures are readily available to all employees and are specific in nature.
 - Focus of audits will be consumer non-public personal information.
 - Make sure you have a current privacy policy and that all employees are trained on the policy.
 - Board of Directors and senior management must also be involved in consumer compliance and their involvement must be documented in order to show auditors that your company is compliant from the top-down.
 - Develop a system that tracks and reports the nature of any violations, the length of the conduct attributable to the violation, the number of violations, and whether the conduct attributable to the violation was significant to the profitability of the company.
 - If your company discovers a violation, what changes were made to revise or improve the company's compliance policies and procedures?
- Create self-reporting procedures where violations are fully disclosed to the Bureau, regulators and affected consumers in a proactive and prompt manner.
- Develop remediation procedures that include:
 - Immediately ceasing conduct creating a violation and implementing effective responses;
 - Enact consequences for responsible persons;
 - Preserve data to identify harmed consumers;
 - Measures designed to prevent future similar violations;

- Ensure that you have formal compliance training programs in place and that they are made available to all employees and that the training covers receiving, reporting, and resolving customer complaints.
- Ensure that you have a loss mitigation management system that is in compliance with fair lending standards.
- Develop a record retention policy that complies with state and federal law.
- Ensure that a fair lending analysis is performed on your originating and lending functions as well as on your servicing functions, and that such analysis is performed and recorded on a regular basis.
- Ensure you have a formal Quality Control program with regular, documented reviews.
- Take substantial steps above and beyond that required by law when violations are discovered and cooperate with Bureau examiners on a proactive basis.
- Have you performed mock exams?
- Ensure that you have an examination procedure in place that includes the following:
 - A Lead/Contact person responsible for interfacing with examiners
 - A person responsible for compiling information requested and strategy for dealing with requests for privileged documents
 - Procedures in place for all employees on the company's protocol when questioned by examiner
 - Physical space for the examination team including system access
 - Competent outside counsel

McCathern has the experience you need to address CFPB audits including:

- Creating and orchestrating self-evaluations
- Reviewing your company's policies and procedures and revising them when necessary
- Performing compliance audits
- Conducting mock exams

This update is not to be considered an offering of legal advice and does not constitute an attorney-client relationship. If you are interested in a more specific and tailored analysis of the compliance-related issues associated with the Dodd-Frank Act, and how it affects your business, please contact Arnold Shokouhi at 214.741.2662.