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CFPB Regulatory Agenda: Missing Items and Other Mysteries

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Law360, New York (January 15, 2013, 12:44 PM ET) -- The [Consumer Financial Protection Bureau](#) has issued its [semiannual regulatory agenda](#), which identifies seven regulatory matters that the CFPB “reasonably anticipates” having under consideration during the period from Oct. 1, 2012, to Oct. 1, 2013. The information in the CFPB’s notice is described as current as of Nov. 30, 2012.

The agenda identifies six matters that are in the “final rule stage.” Five of those matters are mortgage loan-related rules, consisting of two rules recently finalized (the Truth in Lending Act ability to pay rule and the rule on escrow accounts), the rules on loan originator compensation and mortgage servicing expected to be issued this week, and the rule integrating TILA and Real Estate Settlement Procedures Act disclosures (which, according to the timetable in the agenda, the CFPB expects to finalize in September 2013).

The sixth matter identified as being in the final rule stage is proposed amendments to Regulation CC (which implements the Expedited Funds Availability Act). The [Federal Reserve](#) had proposed the amendments in March 2011 and Dodd-Frank gave the CFPB joint rulemaking authority with the Federal Reserve over certain consumer-related EFTA provisions. The proposed amendments include changes intended to encourage banks to clear and return checks electronically, new provisions that govern electronic items cleared through the check-collection system, a shorter safe harbor period for an exception hold on deposited funds, and new model disclosure forms.

The only matter identified in the “long term actions” category is the development of proposed regulations to implement the Dodd-Frank amendments to the Equal Credit Opportunity Act that require financial institutions to collect and maintain certain data in connection with credit applications made by women- or minority-owned businesses and small businesses.

Not identified as a matter the CFPB reasonably anticipates having under consideration during the period covered by the agenda is the CFPB’s proposal^[1] for asserting its supervisory authority over nonbanks engaged in conduct that poses risk to consumers. Under Dodd-Frank, the CFPB has authority to supervise a nonbank, regardless of its size, that the CFPB has reasonable cause to determine “is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” The proposal was issued in May 2012 and the comment period closed on July 24, 2012.

Curiously, in describing the seven matters “identified [in the agenda]” the CFPB reasonably anticipates having under consideration during the period covered by the agenda, the CFPB states that the seven matters “primarily include” the mortgage-related rules and “rulemakings to implement the CFPB’s program for nondepository covered persons by, among other things,

defining “larger participants” in certain consumer financial product and service markets.”

Perhaps this is an outdated reference to the CFPB’s debt collection larger participant rule[2] which it finalized on Oct. 31, 2012. However, it seems more likely that this is a reference to future larger participant rulemakings which, for unknown reasons, were omitted from the list of long-term actions. This would be consistent with swirling rumors that the CFPB will soon be issuing a “larger participant” rule for the auto finance industry.

There are three other significant omissions from the agenda. First, the CFPB did not mention the rule on high-cost home loans which it finalized last week. A second item not mentioned is the CFPB’s recent proposal to make several revisions to the remittances transfer rule and delay the rule’s effective date (currently set for Feb. 7, 2013) until 90 days after the proposed revisions are finalized. The third omitted item is the CFPB’s study of consumer arbitration[3] mandated by Dodd-Frank.

In the supplementary information accompanying the agenda, the CFPB notes that it “is working on a wide range of initiatives to address issues in markets for consumer financial products and services that are not reflected in [the agenda] because the Unified Agenda is limited to rulemaking activities.” The CFPB also notes the various requests for comments and information it has issued on payday lending and deposit advance loans, bank overdraft programs, private student loans, prepaid cards, and reverse mortgages.

If you set aside the plethora of mortgage loan-related rules, the agenda is actually rather skimpy. Apparently, except for the EFTA/Reg. CC matter, the CFPB has no firm plans to do any rule-writing with respect to the Fair Debt Collection Practices Act, or any of the other “enumerated consumer laws” for which the CFPB inherited rule-writing authority from the Federal Reserve and other agencies on July 21, 2011. Of its future intentions, the CFPB states only that it “is continuing to assess the need and resources available for additional rulemakings” and expects to update its agenda in spring 2013 to reflect the results of its “prioritization and planning process.”

This equivocation on future rulemaking is consistent with the CFPB’s overall philosophy of focusing on supervision and enforcement rather than rule-writing.

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[1] <http://www.ballardspahr.com/alertspublications/legalalerts/2012-05-25-cfpb-proposes-procedures-for-supervision-of-nonbanks-engaged-in-risky-conduct.aspx>

[2] <http://www.ballardspahr.com/alertspublications/legalalerts/2012-10-25-cfpb-issues-final->

[debt-collection-larger-participant-rule.aspx](#)

[3] http://www.ballardspahr.com/alertspublications/legalalerts/2012-04-24_cfpb_launches_study_of_consumer_arbitration.aspx

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