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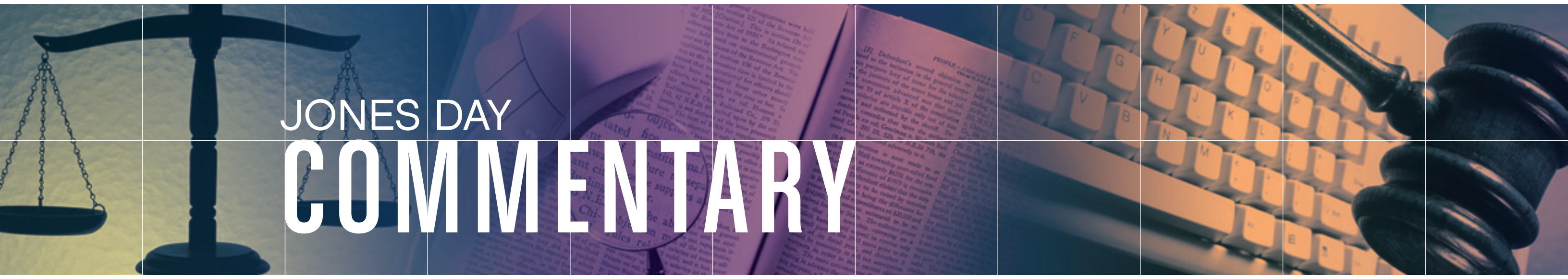

CONSUMER FINANCIAL PROTECTION BUREAU IDENTIFIES INITIAL PRIORITIES AND APPOINTS HEAD OF ENFORCEMENT

Although the newly created Consumer Financial Protection Bureau ("CFPB" or "Bureau") will not assume its full regulatory authority under the Dodd-Frank Act until July 21, 2011, Assistant to the President Elizabeth Warren's actions over the past month give an indication of the Bureau's direction. Ms. Warren has identified credit card disclosures, reverse mortgages, and mortgage disclosures as the CFPB's initial priorities. Companies under the Bureau's regulatory authority should review their practices in these priority areas and prepare initial company positions on the Bureau's anticipated rules for these issues. In addition, signaling its intent to actively enforce its regulations and applicable federal consumer protection laws, the Bureau has appointed Richard Cordray, the outgoing Ohio Attorney General, to head its enforcement division.

CREDIT CARD DISCLOSURES

The Credit CARD Act of 2009 prohibits a series of industry-wide practices, including retroactive rate increases and rigid late-fee provisions. Yet, regulators worry that fine print continues to impair the average consumer's ability to make "apples-to-apples" comparisons among credit products. As a result, Ms. Warren has informally proposed an "FDA-type" label that would outline key terms, rates, and penalties. Ultimately, commentators expect the Bureau's proposed rules to include disclosures validated through consumer studies. While Ms. Warren and the Treasury Department have communicated with the banking community on the issue, the Bureau's position likely will be the basis for any proposed rules. Treasury Department General Counsel George Madison told *The Wall Street Journal* to expect the Bureau's proposed rules on these issues well before the July 21, 2011 transfer date.

REVERSE MORTGAGES

The typical reverse mortgage involves payments to the homeowner in exchange for a claim to the property upon death or sale. They are offered almost exclusively to individuals over the age of 62. Section 1076 of the Dodd-Frank Act directs the CFPB to conduct a study of these loans. The Act also grants regulators the authority to issue integrated disclosure standards, identify deceptive industry practices, and promulgate regulations. One anonymous official told *The Wall Street Journal* that this process already has started. And, unlike its approach to credit card regulation, Dodd-Frank has highlighted specific regulatory possibilities. Most notably, the Act requires investigation into the use of reverse mortgages to fund investments, annuities, and other investment products. This area is likely to be the subject of early rulemaking and may be indicative of the type of regulation the Bureau will promulgate in its early months.

Recent proposals by the Federal Reserve Board allow a glimpse into other expected areas of reform. In September, the Reserve Board proposed amendments to "Regulation Z," which implements the Truth in Lending Act of 1968. New rules would:

- Ban or severely limit the practice of conditioning a reverse mortgage on the purchase of other insurance or investment products;
- Prohibit reverse mortgage advertisements from using language that may "mislead or confuse" purchasers, unless the advertisements also include clarifying statements;
- Require a borrower to be provided with (1) simplified notice of the right to rescind; (2) a list of "material disclosures" that can trigger the extended right to rescind; and (3) clarification of parties' obligations when the right to rescind is exercised; and
- Provide additional TILA disclosures when the parties agree to (1) change interest rates or monthly payments; (2) advance new money; or (3) add an adjustable rate or other "risky feature."

While the Federal Reserve Board currently has regulatory authority to amend Regulation Z, the Dodd-Frank Act explicitly transfers such authority to the Bureau on the July 21, 2011 transfer date. Accordingly, the Bureau is likely to build on the framework established by the Reserve Board.

MORTGAGE DISCLOSURES

The Dodd-Frank Act also requires that the CFPB take certain actions regarding traditional mortgages. Thus, Ms. Warren has made it a priority to combine and simplify overlapping mortgage disclosure forms from the Truth in Lending Act and the Real Estate Settlement Procedures Act. When asked about traditional mortgages, Ms. Warren stressed the need to reduce the "incomprehensible paperwork" associated with the current process. Although neither Ms. Warren nor Treasury Department officials have made any formal recommendations, a single simplified disclosure is expected.

ENFORCEMENT

Ms. Warren recently appointed outgoing Ohio Attorney General and former Jones Day attorney Richard Cordray as head of its enforcement division. Mr. Cordray earned a national reputation as a staunch consumer rights advocate by obtaining nearly $2 billion in settlements from banks and other financial institutions over consumer-related practices. The Dodd-Frank Act authorizes all 50 state attorneys general to enforce CFPB regulations and consumer financial laws. After a national meeting of state attorneys general in Florida this month, Ms. Warren stated that she expected the attorneys general "to be good partners with this consumer agency" and "important players." Indeed, some attorneys general say they now speak with Ms. Warren on a near-weekly basis. Given the diversity in interests of the various attorneys general and Mr. Cordray's activism, it is difficult to predict whether the various government agencies will act on a single unified basis or pursue their own agendas.

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