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Special Double Issue on the Dodd-Frank Financial Reform Bill

President Signs Financial Reform Bill

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank),¹ the most important change in consumer-protection law since the late 1960s, was signed into law on July 21, 2010. Most readers by now are familiar that it will create a new Consumer Financial Protection Bureau (CFPB) which will issue extensive new regulations and otherwise dramatically change lending practices for years to come.

Perhaps less well known is that Dodd-Frank makes scores of important changes to TILA, RESPA, HAMP, EFTA, HMDA, CLA, FCRA, and other consumer laws, particularly changes related to mortgage originations and servicing. Federal preemption of state consumer law is also restricted.

This double issue examines all aspects of Dodd-Frank relevant to a consumer law practice. [NCLC is also presenting a webinar on the subject on Sept. 15 at 2 p.m. EST.](#)²

Effective Dates Vary

The most immediate question for practitioners is when these dramatic changes go into effect. The answer varies by provision and in some cases is unclear.

The Designated Transfer Date

The CFPB assumes full authority and takes over any authority transferred from other federal agencies on the “Designated Transfer Date.” Virtually all other provisions of Title X of Dodd-Frank also either go into effect on that date or that date is key in computing the effective date.

The designated transfer date is an unspecified date to be determined (by Sept. 19, 2010) by the Secretary of the Treasury in consultation with other agencies. The date must be between January 21, 2011 and July 21, 2011, though it can be as late as January 21, 2012 if the Secretary justifies a later date in a report to Congress.³

Effective Dates for Title XIV: Mortgage-Related Provisions

Dodd-Frank Title XIV enacts a large number of significant mortgage provisions. The effective dates for these provisions depend on whether and when regulations are written

to implement them. If regulations are enacted to implement a section or provision, then the section or provision takes effect on the date that the final regulations take effect.⁴ A rule required by the mortgage title must be prescribed in final form within 18 months of the transfer date and must take effect within 12 months of the rule’s promulgation. If regulations have not been issued for a section by 18 months after the transfer date, then that section becomes effective at that point (sometime between July 21, 2012 and July 21, 2013).⁵

It is unclear if these dates apply to provisions for which no regulations are needed or expected.⁶ If they do not, then Dodd-Frank’s default effective date—July 22, 2010—applies.⁷

For example, no regulations are needed for Dodd-Frank’s HAMP changes, and delaying their implementation until 2012 or 2013 would defeat their goal of reducing foreclosures, especially in light of HAMP’s sunset date. Regardless of the technical effective date, in the case of HAMP, the Treasury Department, which controls HAMP, could adopt the new measures immediately as supplemental directives. But for other provisions, where Dodd-Frank does not require regulations and no regulations are issued, the provision’s effective date may only be settled by litigation.

TILA Coverage, Damages, and Class Action Limit Increased

Dodd-Frank raises from \$25,000 to \$50,000 the amount over which leases and non-mortgage, non-student loan credit are exempt from TILA and the Consumer Leasing Act.⁸ This change is effective on the transfer date.⁹ The CFPB also must adjust the limit in the future for inflation.¹⁰

The range of TILA statutory damages for closed-end, non-mortgage transactions, currently \$100 to \$1000, is raised to \$200 to \$2000.¹¹ TILA’s class action cap is raised from \$500,000 to \$1 million.¹² See the Title XIV effective date discussion on page 1 for when these changes take place.

⁴ *Id.* § 1400(c)(2).

⁵ *Id.* § 1400(c)(3).

⁶ Dodd-Frank § 1400(c)(3) states “A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.” The confusion is whether the term “regulations” refers to the regulations mentioned in § 1400(c)(1), which are “the regulations required to be prescribed under this title...” If so, § 1400(c)(3) does not apply to sections where no regulations are required and the Act’s default effective date applies. If § 1400(c)(3) is referring to all sections in the title, even sections for which regulations are not required, then the effective date will be 18 months after the transfer date.

⁷ Dodd-Frank § 4.

⁸ *Id.* § 1100E, to be codified at 15 U.S.C. §§ 1603(3), 1667(1). Student loan limits were eliminated in 2009 and there is no limit for mortgage credit.

⁹ Dodd-Frank § 1100H.

¹⁰ *Id.* § 1100E(b), to be codified at 15 U.S.C. § 1603

¹¹ *Id.* § 1416, to be codified at 15 U.S.C. § 1640(a)(2)(A)(ii).

¹² *Id.* § 1416, to be codified at 15 U.S.C. § 1640(a)(2)(B).

¹ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) [hereinafter Dodd-Frank].

² Contact jhiemenz@nclc.org to join the webinar. Also go to www.nclc.org for the 2010 schedule and downloads of past webinars.

³ Dodd-Frank § 1062.

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