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CFPB Observer

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The Consumer Financial Protection Bureau (CFPB), Recent Developments: April 21, 2014 – May 2, 2014

CFPB Proposes Minor Amendments to Mortgage Rules

On April 30th, the CFPB issued a proposed rule that would make minor adjustments to the CFPB's mortgage rules that were originally issued in 2013 and that became effective in January 2014.[1] The proposed rule would do the following:

- **Define nonprofit small servicers:** Currently, "small servicers" are exempt from some of the CFPB's new mortgage servicing rules if they service 5,000 or fewer mortgage loans and meet other requirements. However, some nonprofit organizations have been unable to qualify for this exemption because they may service loans from other associated nonprofit lenders. As a result of their structure, some of these organizations have not been able to consolidate their servicing activities to take advantage of the small servicer exemption. Thus, the CFPB's proposed rule offers an alternative definition of a small servicer applicable to certain 501(c)(3) nonprofit organizations so that they can benefit from the exemption.

- **Nonprofit Ability-to-Repay exemption amendment:** Currently, some nonprofit organizations that lend to low- and moderate-income consumers are exempt from the Ability-to-Repay Rule if they make no more than 200 mortgages a year, among other limitations. The proposed rule would amend this provision so that certain 501(c)(3) nonprofit groups, such as Habitat for Humanity, would be able to extend certain interest-free, forgivable loans without regard to the 200-mortgage loan limit.

- **Refunding excess points and fees:** Presently, for a loan to qualify as a "Qualified Mortgage" under the Ability-to-Repay Rule, the points and fees charged on the loan generally cannot exceed three percent of the loan principal. However, the CFPB has recognized that a situation may arise where a lender believes it has offered a Qualified Mortgage but afterwards discovers that it has exceeded the three percent cap. The proposed rule would establish limited circumstances where the excess can be refunded to the consumer and the loan will still be able to satisfy the legal requirements of a Qualified Mortgage. To meet the new requirement, the refund must be provided within 120 days after the loan is made and the lender must also maintain and follow policies and procedures for reviewing the loans and providing refunds to consumers.

In addition to the specific amendments proposed above, the CFPB also asked for comments on (i) whether to provide for a cure provision for Qualified Mortgages that inadvertently exceed the 43 percent debt-to-income ratio required under the Ability-to-repay rule, and (ii) feedback from small creditors regarding how the new rules have affected originations and operations. Comments on the proposed rule are due within 30 days after publication in the Federal Register.

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[1] See the proposed rule here.

CFPB Applauds Auto Lender's Move to Flat-Fee Compensation Model

On April 30th, CFPB Director Richard Cordray issued a statement in response to an indirect auto lender's announcement that it is planning to alter its dealer compensation program to align with the CFPB's fair lending guidance.[2]

The lender announced that it plans to abandon the traditional compensation model for indirect auto lending, in which lenders pay dealers the sum of a percentage of the minimum interest rate that lenders charge to purchase auto loans (the buy rate) and any mark-up in interest rates above the buy rate that dealers wish to charge to consumers. In March 2013, the CFPB issued a compliance bulletin that warned indirect auto dealers that the traditional compensation model exposed them to liability for violations of the Equal Credit Opportunity Act and Regulation B if the CFPB determined that dealers marked up the buy rates on loans with discriminatory intent against or impact upon minorities and other protected classes. Subsequent to issuing this guidance, the CFPB's Enforcement Division brought an enforcement action against one larger lender for such violations.

To minimize the risks of liability, the CFPB suggested in its compliance bulletin that indirect auto lenders simply pay dealers a flat percentage of loan amounts and eliminate incentives for dealers to engage in discriminatory mark-ups. The lender in this instance heeded the CFPB's guidance, and Director Cordray, in his statement, commended the lender for doing so proactively.

CFPB Issues Fair Lending Activity Report

On April 30th, the CFPB issued a report to Congress reviewing the CFPB's "efforts to promote consistent, efficient, and effective enforcement of federal fair lending laws."[3] Among other things, the report summarizes the CFPB's risk-based fair lending prioritization process, guidance on supervisory reviews, supervision and enforcement priorities, and interagency coordination and collaboration. The report also summarizes the CFPB's recent fair lending enforcement actions.

CFPB Releases Tools Aimed to Protect Foster Care Children from Credit Reporting Issues

On May 1st, the CFPB released tools that will help protect foster care children from credit reporting problems.[4] The CFPB has identified children in foster care as particularly susceptible to problems with their credit reports. Indeed, federal law requires that state child welfare agencies ensure that their foster care children receive an annual free credit report and assist them in resolving issues with their reports.

Specifically, the CFPB published sample action letters for child welfare caseworkers to send to credit bureaus if they discover errors on children's credit reports. The letters cover such situations as where the credit report contains errors. The CFPB also published tip sheets for parents and guardians to help children start to maintain good credit.

CFPB Issues Mid-Year Private Student Loan Report

On April 22nd, the CFPB's Student Loan Ombudsman issued a mid-year report on private student loan complaints.[5] The report covers more than 2,300 private student loan complaints and more than 1,300

[2] See Cordray's statement here.
[3] See the fair lending report here.
[4] See the CFPB's tools here.
[5] See the report here.

debt collection complaints related to student loan debt submitted to the CFPB between October 1, 2013 and March 31, 2014.

The report focuses on complaints about "auto-defaults" on loans with co-signers where the lender demands immediate and full repayment upon the death or bankruptcy of the co-signer. Prior to resorting to auto-defaults in these circumstances, the CFPB suggests that lenders and servicers should first determine whether they can instead simply release borrowers from the co-signer requirement. If they cannot do so, the CFPB suggests that lenders should honor the existing payment schedule for a certain period of time so that borrowers can identify new co-signers.

The report also emphasizes so-called "bureaucratic barriers" borrowers complained about facing when seeking the release of co-signers from their loans. To help borrowers overcome these barriers, the CFPB released a consumer advisory and sample letters.[6] The advisory and sample letters explain how borrowers may request from their lender information about how to obtain a release of a co-signer.

CFPB Publishes Report on Mortgage Closing Process and Unveils eClosing Project

On April 23rd, the CFPB published a report on the mortgage closing process, which found that many consumers have a short amount of time to review a large amount of documents when finalizing a mortgage.[7] According to the report, there were four major "pain points" for consumers during the closing process: (i) insufficient time to review all of the closing documents; (ii) an "overwhelming" amount of paperwork; (iii) the complexity of the documents; and (iv) errors in the documents that caused delays in the closing process. In conjunction with issuing the report, the CFPB also released guidelines for an upcoming electronic closings (eClosings) pilot project.[8] The CFPB has identified eClosings as a solution to the problems identified in the report. The guidelines list the minimum functionalities required for potential participants and describe the features that the CFPB hopes to test in the pilot. Participants should submit their proposals as a partnership between a technology vendor and a lender that has contracted with that vendor. The pilot project will launch later this year. The report and guidelines are the most recent part of the CFPB's "Know Before You Owe" mortgage initiative.

New York State Financial Regulator Sues Auto Lender under Dodd-Frank Act

On April 23rd, the superintendent of the New York Department of Financial Services (DFS) sued an auto lender and its owner in federal court. The complaint alleges that the lender operated a scheme to steal millions of dollars from consumers, among other unfair practices. Of note, is the fact that the complaint alleges a violation of section 106(a)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5536(a)(1)(B), which prohibits the use of abusive practices with respect to consumer financial products. According to DFS's allegations in the complaint, the lender had been wrongfully retaining consumers' positive credit balances and concealing that fact from both the customers and regulators. DFS is seeking restitution for the consumers, disgorgement of profits, and the appointment of a receiver to wind down lender's operations and other remedies.

CFPB Files Petition to Enforce CIDs against Tribal Lenders

On April 25th, the CFPB filed a petition in the U.S. District Court for the Central District of California seeking to have enforced its civil investigative demands (CID) against three Native American tribal

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[6] See the advisory letter can be found here, and sample letters can be found here and here.
[7] The report on mortgage closings is available here.
[8] The closing pilot program guidelines are available here.

lenders.[9] In June 2012, the CFPB sent the lenders CIDs seeking information and documents regarding their lending programs. The CFPB's enforcement action comes nearly two years after the CIDs were sent and following significant back-and-forth between the CFPB and the tribes. The tribal lenders have maintained that as economic arms of sovereign tribes they are not subject to the CFPB's jurisdiction and thus are not required to respond to the CIDs. A hearing in the matter is set for May 12th.

CFPB Adds Two Members to Academic Research Council

On April 22nd, the CFPB announced the appointment of two new members to its Academic Research Council, which advises the CFPB's Office of Research on its work. The two new members are Raphael Bostic from the University of Southern California and Melvin Stephens from the University of Michigan.[10]

> **The Consumer Financial Protection Bureau (CFPB),** created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, implements and enforces federal consumer financial law. Greenberg Traurig monitors the CFPB's activities, including the almost daily movement on multiple industry fronts that the CFPB makes as it redefines consumer finance law. An entirely new system has been and is being created for the consumer financial services industry. Once complete, the question will be, "How does our clients' business match up?" Our GT CFPB Team regularly observes and analyzes the actions of the CFPB in order to advise clients in best practices, risk management and compliance procedures.

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[9] See the CFPB's petition in the case, *Cons. Fin. Protec. Bureau v. Great Plains Lending, LLC,* C.D. Cal., No. 14-cv-02090, here.
[10] See the announcement and biographies of the members here.

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