

The Consumer Financial Protection Bureau (CFPB), Recent Developments: May 19, 2014 – May 30, 2014

CFPB Releases Study on Credit Reporting and Medical Debts

On May 20th, the CFPB released a study on medical debt finding that “consumers’ credit scores may be overly penalized for medical debt that goes into collections and shows up on their credit report.”¹ The data set for the study consisted of five million credit records from September 2011 to September 2013. The study analyzed the models used to score these records and found that the models may underestimate consumers’ creditworthiness when consumers’ medical debts go into collections. In addition, according to the study, these credit scoring models may not properly recognize consumers for repaying such medical debts.

Specifically, the study found that “consumers with medical debt generally paid back their loans or bills on par with consumers with scores about ten points higher.” In addition, the study found that “consumers who subsequently paid medical debt that had gone into collections were more likely to pay back their debts, on par with consumers with scores 16 to 22 points higher.” Based on the findings of the study, the CFPB observed that credit scoring models could be more accurate if they accounted differently for medical and non-medical debt in collections.

This study is the latest in a series of steps that the CFPB has taken over the past few years to begin to understand and prepare to regulate the consumer reporting industry. The CFPB conducted two prior studies of the consumer credit reporting industry in 2012: an analysis of the differences between consumer- and creditor-purchased credit scores and a review of how the nation’s largest credit reporting bureaus manage consumer data.² Also in 2012, the CFPB began accepting consumer complaints about credit reporting and it issued a rule that provides for its supervision of certain larger participants in the consumer reporting market.

CFPB Opens Advisory Board Meetings to Public

Bowing to industry and political pressure for greater transparency, the CFPB announced on May 20th that it will open fully to the public the meetings of its Consumer Advisory Board, its Community Bank Advisory Council, its Credit Union Advisory Council, and its Academic Research Council, starting with its upcoming Consumer Advisory Board meeting to be held on June 18th.

The CFPB took the position previously that it was not subject to the Federal Advisory Committee Act (FACA), which normally requires federal agencies to open to the public the meetings of their advisory committees. On the basis of this position, the CFPB had closed portions of its meetings with the Consumer Advisory Board. That decision generated strong criticism from industry groups.

¹ See the study [here](#).

² See the reports [here](#) and [here](#).

It is not clear whether the CFPB's decision to open the meetings of these groups fully represents a change of position on the applicability of FACA or is merely a discretionary act.

CFPB Releases Supervisory Highlights Report

On May 22nd, the CFPB released its latest supervisory highlights report, which summarizes significant examination findings of its Office of Supervision during the time period from November 2013 through February 2014.³ The report focuses principally upon its examination findings relating to non-bank entities in the payday, debt collection, and consumer reporting industries.

One finding in the report that is common among these industries is that many entities have weaknesses in their compliance management systems. The report cites examples of institutions that have no formal compliance management systems, insufficient board and management oversight of systems, and either no chief compliance officers or ineffective ones, as well as entities that have failed to document their policies and procedures in writing, update policies and procedures regularly, track or analyze consumer complaints, and exercise adequate oversight of their business relationships with third-party service providers.

In addition, the report identified the following issues that are particular to each industry:

Payday Lending

- **Deceptive Debt Collection:** The report found that payday lenders collecting debts sometimes falsely threatened to take legal actions against consumers as a means of inducing payments. The report also noted that lenders would threaten to impose fees not permitted under loan agreements.
- **Unfair Harassment of Borrowers:** The report found that some payday lenders collecting debts called borrowers excessively and that some payday lenders would visit borrowers' workplaces to collect debt.
- **Use of Third-Party Service Providers:** The report found that payday lenders were not properly supervising their third-party debt collectors and that those third-party debt collectors sometimes would mislead borrowers about their debt obligations.

Debt Collection

- **Deceptive Debt Collection:** The report found that, like payday lenders, some debt collectors falsely threatened consumers with litigation that they did not actually intend to file as a means of inducing payments, in violation of the Fair Debt Collection Practices Act (FDCPA).
- **Harassment of Borrowers:** The report found that some debt collectors made excessive numbers of calls to borrowers and called consumers during inappropriate times, also in violation of the FDCPA.
- **Failure to Investigate Credit Report Disputes:** The report found that one debt collector failed to investigate disputed consumer credit report account information that it furnished to a credit reporting agency, as required by the Fair Credit Reporting Act (FCRA).

³ See the report [here](#).

Consumer Reporting Agencies

- **Policies that Made it Difficult for Consumers to File Disputes Online or by Telephone:** The report found that one or more consumer reporting agencies (CRA) refused to accept consumer disputes filed online or by telephone if the consumer had not recently received a consumer report or file disclosure from the CRA.
- **Failure to Forward Consumer Dispute Documents to Furnishers:** The report found that, when consumers disputed the completeness or accuracy of information contained in their credit files, some CRAs failed to forward to furnishers of credit reports the documents that consumers submitted to the CRAs to substantiate their disputes.

CFPB Posts Spring 2014 Rulemaking Agenda

On May 23rd, the CFPB posted a semi-annual update of its rulemaking agenda.⁴ Under the Regulatory Flexibility Act, federal agencies must publish their regulatory agendas twice a year.

According to the latest rulemaking agenda, the CFPB is in the “pre-rule” stage of developing regulations covering payday loan, deposit advance, overdraft, and debt collection products.

Regulations covering prepaid cards are in the “proposed rule” stage and are expected to be issued in June 2014.

Finally, the CFPB officially confirmed in the agenda that it intends to issue a proposed rule defining “larger participants” in the auto lending market in August 2014.

CFPB Extends Privacy Notice Rule Proposal Comment Period

On May 28th, the CFPB published a notice in the Federal Register extending the comment period for its proposed rule that would amend some of the privacy notice requirements imposed by the Gramm-Leach-Bliley Act (GLBA).⁵ The CFPB originally published the notice of proposed rulemaking in the Federal Register on May 13th. Among other things, GLBA requires financial institutions (a broadly defined term under the statute including both banks and non-banks) to provide their customers with annual privacy notices describing whether and how the financial institution shares a consumer’s nonpublic personal information. Currently GLBA requires that financial institutions deliver annual privacy notices to consumers individually. However, the proposed rule would allow financial institutions to simply post their annual privacy notices online, so long as they limit their customer data-sharing and satisfy other requirements such as not sharing data in a manner that would trigger a consumer’s opt-out rights. The CFPB is now extending the deadline for comments to be filed from June 12, 2014 to July 14, 2014.

Enforcement Action Against Real Estate Firm for Alleged RESPA Violations

On May 28th, the CFPB entered into a consent order with the largest real estate firm in Alabama to settle allegations that the real estate firm provided consumers with inadequate notices.⁶ The CFPB alleged that the real estate firm violated the Real Estate Settlement and Practices Act (RESPA) by failing to inform

⁴ See the Spring 2014 rulemaking agenda [here](#).

⁵ See the notice [here](#).

⁶ See the consent order [here](#).

consumers of their right to choose service providers during the home-buying process and of the real estate firm's affiliate relationships. RESPA provides home buyers with various protections, including prohibiting kickbacks for referrals of real estate settlement services. The CFPB alleged that the real estate firm's purchase contracts either explicitly directed or suggested that title and closing services would be provided by an affiliate of the real estate firm. RESPA does allow real estate companies to refer consumers to their affiliates, but it requires that firms provide consumers with a disclosure clearly explaining a consumer's right to shop for services and that the consumer is not required to use the services of the firm's affiliate.

Upon being informed of the potential violation by the CFPB, the real estate firm immediately revised its disclosures. Under the consent order, the real estate firm must pay a civil penalty of \$500,000, maintain its disclosures in compliance with RESPA, and also ensure that its training materials emphasize that it cannot require the use of its affiliates.

CFPB Issues Semi-Annual Report

On May 28th, the CFPB issued its fifth Semi-Annual Report for the period October 1, 2013 through March 31, 2014.⁷ The report generally describes all of the CFPB's activities to achieve its goal of "making consumer financial markets work better for the American people." The report is largely a summary of reports previously published by the CFPB, including the recently-issued Supervisory Highlights Report.

CFPB Issues Revised Consumer Survey on Arbitration

The CFPB published a notice in the Federal Register on May 29th proposing a new information collection titled, "Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit card Agreements."⁸ The CFPB is seeking approval from the Office of Management and Budget (OMB) to conduct this national telephone survey of 1,000 credit card holders. The survey is part of the CFPB's study of pre-dispute arbitration agreements in consumer credit contracts. Section 1028 of the Dodd-Frank Act mandated the study and upon its completion gives the CFPB authority to "prohibit or impose conditions or limitations on the use of" such arbitration agreements. The survey will explore "(a) the role of dispute resolution provisions in consumer card acquisition decisions and (b) consumers' default assumptions (meaning consumers' awareness, understanding, or knowledge without supplementation from external sources) regarding their dispute resolution rights vis-à-vis their credit card issuers, including their awareness of their ability, where applicable, to opt-out of mandatory pre-dispute arbitration agreements."

The OMB has made available the supporting documents provided by the CFPB relating to the survey. These documents include the survey questions⁹ and the justification for the proposed survey questions. The public comment period on the notice and supporting materials closes on June 30, 2014.

⁷ See the report [here](#).

⁸ See the notice [here](#).

⁹ See the supporting materials [here](#) and [here](#).

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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