

The Consumer Financial Protection Bureau (CFPB), Recent Developments: July 21, 2014 – August 15, 2014

CFPB Issues Consumer Complaint Report

In July, the CFPB issued another "[snapshot](#)" of the consumer complaints it has received through June 30, 2014. The CFPB has received almost 400,000 consumer complaints since it began collecting complaints in July 2011. The overall breakdown of complaints handled by the CFPB shows that 34 percent involved mortgages, 20 percent involved debt collection, 14 percent involved credit cards, 12 percent involved credit reporting, 12 percent involved bank accounts and services, three percent involved student loans, and one percent involved payday loans. Note that these percentages are not necessarily reflective of the prevalence of these types of issues among consumers because the CFPB has not always accepted all of these categories of complaints. For example, the CFPB only began accepting complaints relating to payday loans in November 2013. Nonetheless, the complaint database can still serve as a guide as to where the CFPB may focus its future regulatory and enforcement activities.

CFPB Now Accepting Prepaid Cards and Other Nonbank Products Complaints

On July 21st, the [CFPB announced](#) that it is now accepting complaints relating to prepaid cards, which include gift cards, benefit cards and general-purpose reloadable cards. The CFPB is now also accepting complaints related to other non-bank products, such as debt settlement and credit repair services, and pawn and title loans.

CFPB, FTC, and 15 States Announce Suits against Foreclosure Relief Companies

On July 23rd, the CFPB, the Federal Trade Commission (FTC), and 15 states [announced a concerted effort against foreclosure relief companies](#) that were allegedly using false and deceptive means to market foreclosure relief services to distressed homeowners. The CFPB sued three companies, and individuals associated with those companies, that allegedly collected more than \$25 million in advance fees for foreclosure relief services. The CFPB is seeking monetary compensation for consumers, civil fines and injunctions against the companies. As a part of the concerted effort, the FTC also filed six lawsuits and the states took 32 actions.

The CFPB alleges that the companies engaged in deceptive marketing practices in order to convince consumers to pay advance fees in exchange for promised mortgage modifications. In addition, the CFPB alleges that the companies falsely claimed to be performing legal work on behalf of consumers. The companies also allegedly inflated their success rates and the likelihood of obtaining modifications for consumers.

The CFPB alleges that this conduct violated Regulation O, which generally bans mortgage assistance relief companies from receiving advance fees for their services. In addition, Regulation O prohibits deceptive statements relating to the services and imposes certain disclosure requirements when the companies

market their services. The CFPB also alleges that the companies violated the Dodd-Frank Act's general prohibition against deceptive acts and practices relating to consumer financial products.

In conjunction with the announcement of the enforcement actions, the CFPB also released a [consumer advisory](#) aimed at helping consumers identify and avoid foreclosure relief scams.

CFPB Issues Proposed Rule Implementing Dodd-Frank Amendments to HMDA

On July 24th, the CFPB issued a [proposed rule](#) that would amend Regulation C to implement amendments to the Home Mortgage Disclosure Act (HMDA) made by the Dodd-Frank Act. HMDA generally requires mortgage lenders to report information about loan applications they receive and about loans they originate or purchase. The resulting data set that is published is generally used by both regulators and the public to determine whether financial institutions are serving the housing needs of their communities, and also to identify potential discriminatory lending patterns.

Among other things, section 1094 of the Dodd-Frank Act amended HMDA to expand the HMDA dataset. The CFPB's proposed rule would make three significant revisions to Regulation C: (1) revise the tests for determining which financial institutions and housing-related credit transactions are covered under HMDA; (2) require financial institutions to report the new data points identified in section 1094 of the Dodd-Frank Act, in addition to certain other data points added by the CFPB; and (3) align the reporting requirements of Regulation C with existing industry standards.

First, the proposed rule would revise the tests for determining coverage of financial institutions under HMDA. To simplify the institutional coverage requirements, the proposed rule would adopt, for all financial institutions, a uniform loan-volume threshold of 25 loans. Regulation C currently has different thresholds for determining coverage based on whether a financial institution is a depository or non-depository institution.

Second, the proposed rule would add several new data points to HMDA's reporting requirements, as well as modify some existing data points. While some of the new data points were mandated by section 1094 of the Dodd-Frank Act, the CFPB is also proposing adding other additional data points using its discretionary rulemaking authority. The CFPB has grouped the new data points that it is proposing into the following four categories:

- Information about applicants, borrowers, and the underwriting process (e.g., age, credit score, debt-to-income ratio, reasons for denial of an application, the application channel, and automated underwriting system results).
- Information about the property securing the loan (e.g., construction method, property value, lien priority, number of dwelling units, etc.).
- Information about loan features (e.g., pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and type of loan).
- Unique identifying information (e.g., a universal loan identifier, property address, loan originator identifier, and a legal entity identifier for the financial institution).

Third, the proposed rule would align Regulation C requirements with existing industry standards for collecting and transmitting mortgage loan data. To this end, the CFPB is proposing to align many of the HMDA data requirements with the Mortgage Industry Standards Maintenance Organization (MISMO) data standards for residential mortgage loans.

Aside from these main revisions to Regulation C, the CFPB is also proposing several other changes to clarify and provide additional guidance on existing requirements that are confusing or otherwise unclear. Comments on the proposed rule must be received on or before October 22, 2014.

CFPB Issues Annual Financial Literacy Report

In July, the CFPB issued its second [Financial Literacy Annual Report to Congress](#). The report, which covers the period from June 2013 through May 2014, reviews the CFPB's activities relating to its efforts, mandated by the Dodd-Frank Act, to improve consumer financial literacy. The CFPB's strategy to improve consumer financial literacy has three dimensions: (1) educational initiatives, both direct and in partnership with other organizations like local public libraries; (2) research to identify effective approaches to financial education and to better define the metrics for successful financial education; and (3) engaging a range of stakeholders to assist in designing effective methods for consumer outreach.

CFPB and State Attorneys General Take Enforcement Action against Consumer Lending Company

On July 29th, the CFPB and 13 state attorneys general entered a [consent order](#) with a consumer lending company to settle allegations that the company violated the Consumer Financial Protection Act's prohibition against engaging in unfair, deceptive or abusive acts or practices. The CFPB also alleged violations of the Truth in Lending Act, which requires creditors to accurately disclose the cost of credit and other credit terms to consumers. The company offered credit to consumers purchasing various electronic products that were typically sold at mall kiosks. According to the consent order, the company obscured a higher finance charge than was actually disclosed by artificially inflating the disclosed purchase price of the goods. The company also allegedly withheld information on billing statements such as the account balance and APR.

Under the terms of the consent order, the company must cease efforts to collect on existing financing agreements. Consumers may retain the merchandise they purchased. This will result in approximately \$92 million in debt relief for the affected consumers. In addition, the company and its owners are permanently banned from engaging in the consumer lending business. No civil penalty was assessed because the company is in bankruptcy.

CFPB Announces Efforts to Improve Financial Education of the Poor

On July 30th, the CFPB announced its partnership with various national and local organizations to train local social service staffs how to educate poor people and the financially illiterate using the CFPB's ["Your Money, Your Goals" toolkit](#). According to the CFPB, the toolkit provides "a comprehensive guide to empowered financial decision-making that covers topics like budgeting daily expenses, managing debt, and avoiding financial tricks and traps." The CFPB believes that local social service organizations are in a good position to be able to help provide financial education to those that need it most. This effort is a part of the CFPB's broader education initiative that is mandated under the Dodd-Frank Act.

CFPB Extends Comment Period for Consumer Complaint Narrative Policy Statement

On July 16th, the CFPB issued a [proposed policy statement](#) that would expand the scope of the public portion of its consumer complaint database to include "unstructured consumer complaint narrative data." The CFPB has since [extended the comment period](#) on the proposed policy statement from August 22, 2014 to September 22, 2014.

CFPB Issues Report on Overdraft Charges

On July 31st, the CFPB issued a [report on overdraft charges](#). The study is based on a set of account-level and transaction-level data from several of the large depository institutions which the CFPB supervises. In addition, the study was supplemented by CFPB research derived from a February 2012 *Request for Information* issued to the public. The results of this recent study raised concerns at the CFPB. Despite 2010 regulatory amendments to Regulation E that imposed an "opt-in" regime for overdraft charges on debit card and ATM transactions, the CFPB is still concerned that "a small number of consumers are paying large amounts for overdraft, often for advances of small amounts of money for short periods of time."

Specifically, the report found:

- **Debit card use is nearly three times that of check writing or online bill pay.** According to the study, debit cards are the most common manner in which consumers access their checking accounts. Consumers use their debit cards for purchases about 17 times a month while writing fewer than three checks per month and making only about three automated debits per month.
- **The majority of debit card overdraft fees are incurred on transactions of \$24 or less.** The majority of overdraft transactions for which a fee is incurred are \$50 or less. Among consumers who opt-in for overdraft coverage on debit and ATM transactions, the majority of their overdraft fees are incurred on transactions of \$24 or less.
- **The majority of consumers cover any negative balance within three days of overdrawing their account.** More than half of consumers who overdraw their accounts return their accounts to a positive balance within three days of overdrawing and more than 75 percent bring their accounts back to a positive balance within one week.
- **The median overdraft charge is \$34.** The CFPB equated this average fee to a 17,000 percent APR on a loan of \$24.
- **Approximately one-fifth of consumers who opt-in overdraw their accounts more than 10 times per year.** According to the study, 18 percent of opted-in accounts are overdrawn more than ten times per year. By comparison, only six percent of non-opted-in accounts are overdrawn more than 10 times per year. Not surprisingly, the study also found that opted-in accounts incur seven times more in overdraft fees per year than non-opted-in accounts.

Last year, the CFPB issued a [report](#) that raised similar concerns about whether consumers are able to understand and avoid overdraft charges. The report revealed disparities in overdraft programs among banks which raised a concern that the disclosure of overdraft programs and the related fees might be inadequate. The CFPB indicated that it intends to further study overdraft programs as it continues to consider rulemaking in the area, which is still in the pre-rule stage.

CFPB Reviews Disclosure of Financial Institution Marketing Agreements with Certain Colleges

On August 6th, the CFPB published a [blog post](#) regarding its review of whether certain financial institutions have publicly disclosed their agreements with colleges to market financial products to those colleges' students. Last year, the CFPB initiated an inquiry into the impact of such financial products being marketed to students by colleges. The CFPB raised concerns that the college-endorsed financial products marketed to students did not have the best possible terms when compared with other financial products

offered by other financial institutions. To address these concerns with what the CFPB calls "secret banking contracts," the CFPB called on financial institutions to publically disclose these agreements. Regulations already require disclosure of this information for marketing arrangements with credit cards and private student loans to students. The CFPB reviewed 14 schools and found that at least 11 of them have established marketing agreements with a financial institution. Of those 11, the CFPB claimed to only be able to find easily four contracts on the partner websites. According to the CFPB, "[m]aking these agreements available for all financial products shows schools' and companies' commitment to transparency, helping students and their families understand basic information about these products before you sign up."

CFPB Issues Consumer Advisory on Virtual Currencies

On August 11th, the CFPB issued a [consumer advisory on virtual currencies](#), such as Bitcoin. In addition, the CFPB announced that it would begin to accept consumer complaints regarding virtual currencies through its complaint portal. The advisory alerts consumers to various risks associated with virtual currencies, such as their fluctuating value and susceptibility to hackers and fraud. We note that the CFPB has yet to explain a basis for any authority to regulate virtual currencies.

CFPB Takes Enforcement Action against Mortgage Lender for Deceptive Practices

On August 12th, the CFPB announced that it had entered a consent order with a mortgage lender. According to the CFPB, the mortgage company "lured consumers by advertising misleading interest rates, locked them in with costly up-front fees, failed to honor its advertised rates, and then illegally overcharged them for affiliated 'third-party' services." Specifically, the CFPB alleged that the mortgage lender engaged in the following improper conduct:

- **Deceptive advertisement of unavailable interest rates.** The mortgage lender advertised interest rates on its website or in banner ads that were either not available or that were lower than rates available to the typical borrower. The CFPB found this conduct to be deceptive in violation of both the Mortgage Acts and Practices Rule and the Consumer Financial Protection Act's prohibition against deceptive acts or practices.
- **Use of initial fees.** The mortgage lender required applicants to provide payment authorization for an appraisal before the lender provided the applicant with a Good Faith Estimate. The CFPB alleged this was a violation of both the Truth in Lending Act and the Real Estate Settlement Procedures Act. According to the consent order, the mortgage lender led applicants to believe that they were obligated to pay these fees and that they were thus deterred from shopping for a mortgage from other lenders.
- **Failure to properly disclose affiliate relationships.** The lender referred applicants to an affiliate of the lender for obtaining appraisals, but failed to disclose the affiliate relationship. According to the consent order, the lender also led consumers to believe that the affiliate had no relation to the lender and that its fees were reasonable third-party charges. The CFPB alleged these were violations of the Real Estate Settlement Procedures Act.

Under the terms of the consent order, the mortgage lender and its affiliate must provide \$14.8 million in refunds to consumers and pay a \$4.5 million civil money penalty. The owner of the company is subject to an additional \$1.5 million penalty.

CFPB Takes Enforcement Action against Consumer Goods Retailer

On August 14th, the CFPB entered a [consent order](#) with a company that operates a chain of consumer retail stores located mainly near military bases. The company also finances the sale of the goods. The CFPB alleges that the company engaged in unfair and deceptive practices by selling servicemembers, as a benefit, a legal protection that they were otherwise already guaranteed under the Servicemembers Civil Relief Act (SCRA). Under the SCRA, active duty servicemembers are provided with various consumer protections. Among them is a protection that permits courts to delay lawsuits if the court finds that the servicemember's military duty inhibits his ability to defend himself. A party seeking to obtain a default judgment against a servicemember must determine whether the servicemember is on active duty and thus unable to appear in the case.

According to the consent order, the company deceptively marketed and sold this legal obligation as a service to servicemembers. Under the terms of the consent order, the retailer must refund more than \$350,000 to servicemembers that paid these fees. In addition, the retailer is subject to an additional \$50,000 civil money penalty.

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.

This *GT Alert* was prepared by **Gil Rudolph, Brett Kitt, Scott Sheehan** and **Peter Cockrell**. Questions about this information can be directed to any member of Greenberg Traurig's **Consumer Financial Protection Bureau (CFPB)** team of professionals:

- [Gil Rudolph](#) | Co-Chair, Financial Regulatory & Compliance | +1 202.530.8575 | rudolphg@gtlaw.com
- [Brett Kitt](#) | Financial Regulatory & Compliance | +1 202.533.2359 | kittb@gtlaw.com
- [Scott Sheehan](#) | Financial Regulatory & Compliance | + 1 713.374.3543 | sheehans@gtlaw.com
- [Michael Sklaire](#) | Financial Services Litigation & Regulation | +1 703.749.1308 | sklairem@gtlaw.com
- [Andy Berg](#) | Financial Services Litigation & Regulation | +1 202.331.3181 | berga@gtlaw.com
- [Michele Stocker](#) | National Chair, Financial Services Litigation | +1 954.768.8271 | stockerm@gtlaw.com
- [Jennifer Gray](#) | Financial Services Litigation & Regulation | +1 310.586.7730 | grayjen@gtlaw.com
- [Brian Schulman](#) | Financial Services Litigation & Regulation | +1 602.445.8407 | schulmanb@gtlaw.com
- [Jacob Bundick](#) | Financial Services Litigation & Regulation | +1 702.792.3773 | bundickj@gtlaw.com

- [Alan Slomowitz](#) | Government Law & Policy | +1 202.533.2318 | slomowitza@gtlaw.com
- [Patrick Anderson](#) | Government Law & Policy | +1 202.331.3100 | andersonp@gtlaw.com
- [Thomas McKee](#) | Litigation | +1 703.749.1300 | mckee@gtlaw.com
- [Michael Lawrence](#) | Litigation | +1 310.586.7719 | lawrencem@gtlaw.com
- [Peter Cockrell](#) | Financial Regulatory & Compliance | +1 202.530.8517 | cockrellp@gtlaw.com

Albany +1 518.689.1400	Denver +1 303.572.6500	New York +1 212.801.9200	Shanghai +86 (21) 6391.6633
Amsterdam +31 (0) 20 301 7300	Fort Lauderdale +1 954.765.0500	Northern Virginia +1 703.749.1300	Silicon Valley +1 650.328.8500
Atlanta +1 678.553.2100	Houston +1 713.374.3500	Orange County +1 949.732.6500	Tallahassee +1 850.222.6891
Austin +1 512.320.7200	Las Vegas +1 702.792.3773	Orlando +1 407.420.1000	Tampa +1 813.318.5700
Boca Raton +1 561.955.7600	London* +44 (0) 203 349 8700	Philadelphia +1 215.988.7800	Tel Aviv^ +972 (0) 3 636 6000
Boston +1 617.310.6000	Los Angeles +1 310.586.7700	Phoenix +1 602.445.8000	Warsaw~ +48 22 690 6100
Chicago +1 312.456.8400	Mexico City+ +52 (1) 55 5029 0000	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Dallas +1 214.665.3600	Miami +1 305.579.0500	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Delaware +1 302.661.7000	New Jersey +1 973.360.7900	Seoul∞ +82 (0) 2 369 1000	West Palm Beach +1 561.650.7900

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. *Operates as Greenberg Traurig Maher LLP. **Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2014 Greenberg Traurig, LLP. All rights reserved.*