GreenbergTraurig

CFPB Observer

September 2014

CFPB Observer:
Recent Developments from Sept. 15-19, 2014

CFPB Sues Online Payday Lender

On September 8th, the CFPB sued an online payday lender alleging that the lender made unauthorized loans to consumers and then proceeded to collect interest on those loans without the consumers' consent. According to the complaint, the lender purchased consumer information, including bank account information, from an online lead generator. Using this information, the lender made "loans" to consumers by depositing money into their bank accounts without their consent. The lender then collected interest and fees on these "loans" even though the consumer had never applied for a loan from the lender. The U.S. District Court for the Western District of Missouri has issued a temporary injunction against the lender and frozen its assets. The suit seeks a return to consumers of all ill-gotten gains and a civil monetary penalty. The Federal Trade Commission filed a companion lawsuit on the same day.

CFPB Issues Proposed Rule for Larger Participants in the Nonbank Auto Lending Market

On September 18th, the CFPB issued a long-awaited proposed rule to define larger participants in the nonbank auto lending market. Once effective, the rule will give the CFPB power to supervise this group of financial institutions. The rule would define "larger participants" in the nonbank auto lending market as institutions that make or refinance at least 10,000 auto loans or leases per year. This would bring approximately 38 nonbank lenders under the CFPB's supervision, or about 90 percent of the nonbank auto loan market. Although the industry has been anticipating the rule, the threshold for larger participants is lower than some anticipated, thus subjecting a number of smaller lenders to a heavy compliance burden.

In conjunction with issuance of the rule, the CFPB also released a new "Supervisory Highlights" report that describes alleged instances of auto-lending discrimination by banks that the CFPB has investigated over the past two years.

In addition, the CFPB released a white paper detailing the precise proxy methodology its examination teams utilize in calculating the probability of auto lending discrimination.

Legislative Update

House Passes Bill Modifying Points and Fees Determination for Qualified Mortgages

On September 16th, by a margin of 327-97, the U.S. House of Representatives passed a consolidated bill, the "Insurance Capital Standards Clarification Act of 2014" (H.R. 5461), that would make adjustments to various provisions of the Dodd-Frank Act. The vote was taken under a procedure called "suspension of the rules" which is typically used to pass non-controversial bills. Votes under suspension require a two-thirds majority.

The Committee's Ranking Democrat, Rep. Maxine Waters (D-CA), voted against the bill. Rep. Waters opposed bringing up the bill on suspension because it "attaches three divisive measures that make substantive changes to the Dodd-Frank Wall Street Reform law to a bipartisan, Senate-passed measure that makes technical changes to the law."

Among other things, the H.R. 5461 would adjust the definition of "points and fees" in section 103(bb)(4) of the Truth in Lending Act (15 U.S.C. § 1602(bb)(4)) for purposes of determining whether a residential mortgage loan is a "qualified mortgage." In order to meet the definition of a "qualified mortgage" and gain the legal protections afforded by that status, points and fees generally may not exceed 3 percent of the loan principal amount. Currently, charges for title examination, title insurance or similar purposes are included in the points and fees calculation unless (i) the charge is reasonable; (ii) the creditor receives no direct or indirect compensation for the charge; and (iii) the charge is paid to a third party unaffiliated with the creditor.

H.R. 5461 would expand the exclusion for title charges from the points and fees calculation to also exempt reasonable charges that are retained either by the creditor or its affiliate as a result of their participation in an affiliated business arrangement under the Real Estate Settlement Procedures Act (12 U.S.C. § 2602(7)). This exclusion also would apply for purposes of determining status as a high cost mortgage loan.

These changes previously passed the House on June 9th as a part of the Mortgage Choice Act (H.R. 3211). The bill will now go back to the Senate for consideration.

Senate Passes Bill Addressing Sharing of Information by CFPB with State Agencies

On September 18th, the U.S. Senate passed a bill (H.R. 5062) that will require the CFPB to coordinate its supervision of non-depository institutions with the state regulatory agencies that also have authority to regulate those institutions. The bill would also amend the Consumer Financial Protection Act to provide that the sharing of information by the CFPB with such state agencies does not waive any privilege claimed by the non-depository institutions. The bill was already passed by the U.S. House of Representatives in July. It will take effect on the same day that it is signed by the President.

Upcoming CFPB Events

Credit Union Advisory Council Meeting

The CFPB will hold a meeting of its Credit Union Advisory Council on October 1st from 3:30 p.m. to 5:30 p.m. at the CFPB's headquarters in Washington, D.C. The meeting will include remarks from Director Richard Cordray and the discussion will focus on overdrafts and consumer complaints. Attendees must RSVP for the event. The meeting agenda has been published and a recording of the event will be made public later.

Webinar on TILA-RESPA Integrated Disclosure Rule

The CFPB will co-host a webinar with the Federal Reserve on October 1st on the TILA-RESPA Integrated Disclosure Rule (TRID). This will be the third in a series of discussions on TRID. This webinar will address questions that the CFPB has received from the industry regarding TRID implementation, as well as issues raised regarding completion of the Loan Estimate. A recording of the webinar will be made available on the CFPB's website.

Forum on Checking Account Screening Policies

The CFPB will host a forum on October 8th at 8:30 a.m. in Washington, D.C., addressing checking account screening policies and practices and the effect that such practices have on consumers' ability to acquire and use checking account products. The forum will include remarks from Director Richard Cordray and presentations from consumer groups, federal and local government officials and industry representatives. The event is open to public, but an RSVP is required.

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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