

CFPB Observer: Recent Developments from Sept. 29-Oct. 3, 2014

CFPB Enforcement Action Against Mortgage Servicer

On September 29th, the CFPB entered a [consent order](#) with a federal savings bank to settle allegations that the bank violated the CFPB's new mortgage servicing rules. The CFPB alleged that during the time period from 2011 to the present, the bank failed to devote sufficient resources to administer its loss mitigation program for delinquent borrowers. The bank had 25 full-time employees assigned to loss mitigation that were responsible for reviewing 13,000 active loss mitigation applications. Among other things, the CFPB alleged that the bank closed borrower loss mitigation applications due to the bank's own delay, failed to alert borrowers about incomplete applications, and misinformed borrowers about their appeal rights.

Although the CFPB's mortgage servicing rules did not become effective until January 2014, the CFPB alleged that it had authority to take action against the bank for engaging in unfair, deceptive or abusive practices prior to that time based on the CFPB's authority under section 1031 of the Dodd-Frank Act. As a part of the consent order, the bank is required to pay \$27.5 million in redress to borrowers, pay a \$10 million civil penalty, stop the alleged mortgage servicing violations and cease acquiring default servicing rights from third parties.

CFPB Releases Statement on DOD's Military Lending Act Rule Proposal

Last week the CFPB [released a statement](#) supporting a proposal by the Department of Defense (DOD) to amend rules implementing the Military Lending Act (MLA). The DOD's rule proposal would expand the scope of the MLA's protections. The MLA provides specific protections to servicemembers and their dependents in consumer credit transactions. Among other things, the law sets a 36 percent annual rate cap on extensions of consumer credit to such persons. When first implemented in 2007, the scope of the term "consumer credit" was limited to the following: (1) closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer; (2) closed-end auto title loans with a term of 181 days or fewer; and (3) closed-end tax refund anticipation loans. The DOD's proposal would expand the scope of this restriction to cover most other types of consumer credit that are subject to the Truth in Lending Act. However, the proposed rule would still retain the exclusion under the MLA for residential mortgages and credit extended to finance the purchase of personal property. The DOD has rule making authority with respect to the MLA, but it is enforced by the CFPB and other federal regulators.

CFPB Issues White Paper on Manufactured Housing

On September 30th, the CFPB issued a [white paper](#) on lending in the manufactured housing market. According to the report, manufactured-home owners generally pay a higher rate of interest for credit than borrowers whose homes are built on-site. In addition, manufactured-home owners are more likely to be older, have a lower net worth and live in a rural area. The report also found that two out of three manufactured-home owners eligible for mortgages still finance their purchase of manufactured homes using more expensive personal property loans instead. This appears to be an area of concern for the CFPB because although such personal property loans have lower origination costs, they also afford fewer consumer protections than mortgage loans.

CFPB Enforcement Action Against Title Insurance Agency

On September 30th, the CFPB entered a [consent order](#) with a title insurance company to settle allegations of an illegal referral arrangement. The CFPB alleged that the company violated the Real Estate Settlement Procedures Act (RESPA). RESPA prohibits real estate settlement agencies from providing value to any person with an agreement or understanding that the person will refer real estate settlement services. According to the consent order, the company entered marketing services agreements with various real estate brokers with the understanding that these brokers would refer business to the title insurance company. Although under the terms of the agreements, the title insurance company was paying the other companies for their marketing services, the fees were allegedly set, at least in part, on the basis of the number of referrals the title insurance company received. Under the terms of the consent order, the company must cease also such illegal referral activity and pay a civil money penalty of \$200,000.

CFPB to Hold Community Bank Advisory Council Meeting

The CFPB has announced that it will hold a Community Bank Advisory Council meeting at the CFPB's offices in Washington, D.C., on October 15th from 3:30 -5:30 p.m. While the meeting is open to the public, an [RSVP](#) is required to attend. An agenda for the meeting, which will also be streamed live on the CFPB's website, is [available online](#). The meeting will cover several topics, including mortgages and overdrafts.

CFPB Announces New Project Catalyst Research Pilot on Tax Reporting

On October 2nd, the CFPB announced a [new Project Catalyst research pilot](#) that will look at ways to encourage consumers to engage in tax-saving practices. The CFPB launched Project Catalyst in 2012 as "an initiative designed to encourage consumer-friendly innovation and entrepreneurship in markets for consumer financial products and services." Through the program, the CFPB engages with companies and entrepreneurs that are developing new forms of consumer financial products and services. Specifically, this pilot will focus on tax-saving practices among low-income consumers. In announcing the new research pilot, CFPB Director Richard Cordray stated that "[s]aving a portion of tax refunds can enable consumers to improve their long-term financial health and place more low-income consumers on a path to economic stability."

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:

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