

CFPB Observer: Recent Developments from Oct. 6-31, 2014

CFPB Holds Forum on Access to Checking Accounts

On October 8th, the Consumer Financial Protection Bureau (CFPB) held a [forum on access to checking accounts](#). The event included [remarks from CFPB Director Richard Cordray](#), as well as commentary from various consumer groups, government officials and industry representatives. The goal of the forum was to examine checking account screening policies and practices in an effort to determine “whether they unfairly block some consumers from opening checking accounts, while exposing other consumers to inappropriate risk.” When determining whether to open a consumer checking account, financial institutions often rely on consumer reports provided by specialty consumer reporting agencies. These consumer reporting agencies collect a variety of information on a consumer’s checking account history, including previous accounts, records of bounced checks and overdraft fees. The financial institution will use this information when determining whether to open a checking account for a particular consumer. The CFPB presented its three main concerns with the manner in which this market is currently functioning: (1) the accuracy of information contained in the consumer reports; (2) consumers’ ability to access these reports and dispute any incorrect information; and (3) the manner in which such reports are used by financial institutions. This is a market where future CFPB action is likely, and Director Cordray intimated as much, stating: “We need to move from screening processes designed to make banks safe from consumers to ones designed to make them safe for consumers.”

CFPB Issues Proposed Policy for Limited No-Action Letter Procedure

On October 10th, the CFPB issued a [proposed policy](#) providing for a No-Action Letter procedure for industry participants developing new consumer financial products. While welcoming consumer-friendly innovations that drive down costs and improve transparency, the CFPB has expressed concern that new products can pose risks to consumers in the form of unexpected costs and confusing terms. Under the policy, a firm developing a new financial product may provide the CFPB with a description of the new product and the CFPB would then analyze the implications of the new product under applicable CFPB regulations. If deemed compliant, the CFPB would issue a No-Action Letter to the firm stating that the CFPB Staff is not planning to recommend initiation of supervisory or enforcement action with respect to certain legal requirements applicable to the product. The scope of this policy is thus very narrow. Indeed, the extent to which the industry will avail itself of this policy is unclear given the fact that there is risk associated with it. In evaluating the features of a product or service disclosed to the CFPB, the CFPB may determine that the product or service is harmful for consumers and scrutiny of the product or service will ensue.

CFPB Proposes Amendments to TILA-RESPA Integrated Disclosure Rule

On October 10th, the CFPB issued a [proposed rule](#) that would make revisions to the TILA-RESPA Integrated Disclosure (TRID). TRID, which becomes effective August 1, 2015, combines the disclosures consumers are required to receive under the Truth in Lending Act and the Real Estate Settlement Procedures Act when applying for and closing on a mortgage loan. The proposed rule would make two significant changes to TRID and the Loan Estimate in particular. First, it would relax the timing requirement for re-disclosing interest rate-dependent charges and loan terms when the interest rate is locked. Whereas the original rule required that the revised Loan Estimate be provided on the same day that the interest rate is locked, under the revised rule, a creditor would be required to provide the revised Loan Estimate no later than the next business day after the date the rate is locked. Second, the proposed rule would provide for the placement of language relating to certain new construction loans on the Loan Estimate form that is required in order for creditors to re-disclose estimated charges. In addition, the proposed rule would make several other non-substantive corrections, updates and wording changes for clarification purposes. Comments must be received on or before November 10, 2014.

CFPB Student Loan Ombudsman Issues Annual Report

On October 16th, the CFPB's Student Loan Ombudsman, Rohit Chopra, issued an annual report on the private student lending market. The report analyzes approximately 5,300 private student loan complaints received by the CFPB between October 1, 2013, and September 30, 2014. Among other issues, the report highlights consumer complaints about receiving insufficient information on options for avoiding default, a lack of loan modifications options, and temporary forbearance options that only delay default. The report's findings are a fair indication of what types of activities the CFPB may focus on in the coming year. Among the possible changes the CFPB may be looking for are options for borrowers to lower loan payments by extending repayment terms, interest-rate reductions and principal reductions.

In conjunction with issuing the report, the CFPB also offered new tools to help consumers deal with their student loan debt. These tools included a form letter that consumers may send to their student loan servicers requesting lower monthly payments and information on available repayment plans. The CFPB also prepared a sample financial worksheet that consumers may use to assist them in determining the affordability of their student loan payments.

CFPB Issues Final Rule on Annual Privacy Notices

On October 20th, the CFPB issued a [final rule](#) that will permit financial institutions subject to the CFPB's Regulation P, which implements the Gramm-Leach-Bliley Act's privacy provisions (GLBA), to provide their customers with the annual privacy notice by an alternative method. Under GLBA, financial institutions must provide their customers with initial and annual notices regarding their privacy policies. Currently, most financial institutions mail printed copies of annual privacy notices to their customers. To address concerns that this practice is unhelpful to consumers and produces unnecessary costs for financial institutions, the CFPB issued a proposed rule in May 2014 that would permit financial institutions to provide annual privacy notices to their customers by posting it on their website, so long as certain other conditions are met. The CFPB has finalized the rule largely as proposed.

In order to be able to provide the annual privacy notice by this alternative method, the financial institutions must first satisfy the following requirements: (1) the financial institution's information sharing practices must not trigger a GLBA opt-out right; (2) the financial institution must otherwise have complied with the Fair Credit Reporting Act's opt-out notice requirements, if applicable; (3) the information included in the privacy notice must not have changed since the customer received the previous notice; and (4) the financial institution must use the model form provided in Regulation P as its annual privacy notice.

In addition, to take advantage of the new alternative method, the financial institution must continuously post the annual privacy notice in a clear and conspicuous manner on its website. It must also provide customers with limited or no access to the Internet with a means to request a copy of the privacy notice. Finally, it must provide a clear and conspicuous statement to customers at least once per year on some other required disclosure that informs customers that: (1) the privacy notice is available online; (2) the institution will mail the notice to customers who request it; and (3) the notice has not changed.

If the event a financial institution changes its privacy practices or engages in information-sharing activities for which customers have an opt-out right, the financial institution is still obligated under the new rule to send the annual privacy notice by mail.

Note that this rule only applies to financial institutions subject to the CFPB's Regulation P. Thus, entities subject to GLBA as implemented by the SEC, CFTC and FCC may not utilize this alternative method for providing their customers with the annual privacy notice.

The rule became effective October 28, 2014.

CFPB Finalizes Amendments to Mortgage Rules

On October 23rd, the CFPB issued a [final rule](#) amending three provisions of the CFPB's 2013 mortgage rules.

First, the amendment provides a limited, post-consummation cure mechanism for loans that exceed the points and fees limit acceptable for qualified mortgages (QM). Generally, to qualify as a QM, a mortgage loan must not have points and fees that exceed 3 percent of the loan amount. Where a lender originates a purported QM and discovers after consummation that points and fees actually exceed the 3 percent limit, the cure provision will permit the lender to refund the overage amount of points and fees, plus interest, to the borrower within 210 days of consummation as a means of maintaining the loan's QM status. The lender must also cure the overage prior to the occurrence of any of the following: (1) the consumer files an action regarding the loan; (2) the creditor receives written notice from the consumer regarding the overage; or (3) the consumer becomes 60 days past due. The final rule also requires lenders to maintain and follow policies and procedures for implementing this cure procedure. The cure provision will sunset on January 10, 2021.

Second, the amendment provides an alternative definition of the term "small servicer" applicable to certain nonprofit entities that service loans on behalf of other nonprofit chapters of the same organization. "Small servicers" are exempt from certain provisions of the CFPB's mortgage servicing rules

if they service 5,000 or fewer mortgage loans annually and satisfy other requirements. To address concerns that some nonprofits might not be able to qualify for the exemption because of the number of loans they service, the rule provides an alternative definition. The final rule expands the definition of a small servicer to include “a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor.”

Third, the amendment provides that certain non-interest bearing, contingent subordinate lien loans that are originated by nonprofit lenders will not be counted towards the credit extension limit that applies to the nonprofit lender exemption from the “ability-to-repay” requirements.

The CFPB declined in the final rule to address a cure for QM loans that inadvertently exceed the 43 percent debt-to-income ratio required under the ATR rule.

The rule took effect upon publication in the Federal Register on November 3, 2014.

CFPB Issues Fall 2014 Supervisory Highlights Report

On October 30th, the CFPB issued its Supervisory Highlights Report. This is the fifth edition of the Report and generally covers CFPB supervisory activities between March and June 2014. The Report highlights problems in two specific markets: student loan servicing and mortgage servicing.

The Office of Supervision observed that some student loan servicers subject to its oversight had violated the law by: (1) misrepresenting minimum payment amounts to borrowers; (2) allocating loan payments in a manner that maximized late fees; (3) charging illegal late fees; (4) failing to provide borrowers with accurate tax information; (5) misleading borrowers about bankruptcy protections; and (6) making debt collection calls to borrowers at “inconvenient times.”

The Office of Supervision also discussed its findings that mortgage servicers had violated the law by: (1) failing to properly oversee their service providers; (2) unfairly delaying permanent loan modifications; and (3) deceiving consumers about the status of their permanent loan modifications.

CFPB to Hold Field Hearing on Prepaid Accounts

The CFPB will hold a field hearing on prepaid accounts on Thursday, November 13th at 11 a.m. EST in Wilmington, Del. The hearing will feature remarks from Director Richard Cordray, as well as testimony from consumer groups, industry representatives and members of the public. The hearing is open to the public, but an [RSVP is required](#). The hearing will also be streamed live on the [CFPB's blog](#).

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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