

## CFPB Observer: Recent Developments from Nov. 17-28, 2014

### CFPB Proposes New Mortgage Foreclosure Rules

On Nov. 20, the CFPB issued a [proposed rule](#) that would expand its mortgage foreclosure protections. These new servicing requirements would expand upon the CFPB's mortgage servicing rules that went into effect Jan. 10, 2014. Among other things, the proposed rule would do the following:

- **Require servicers to provide certain borrowers with CFPB's required foreclosure protections more than once over the term of the loan.** Under existing regulations, a servicer need only provide certain protections, such as the right to be evaluated for loss mitigation options, once during the loan term. Under the proposal, servicers would be required to provide these protections again for borrowers who have brought their loans current at any time since the last loss mitigation application.
- **Require servicers to provide foreclosure protections to surviving family members and other homeowners.** Under existing regulations, if a homeowner dies, then the servicer must provide certain communications and other consumer protections to other persons who have a legal interest in the home (i.e., successors-in-interest). The proposal would expand the circumstances in which a person would be considered a successor-in-interest to include circumstances such as when a property is transferred after a divorce, legal separation, through a family trust or between spouses.
- **Require servicers to notify borrowers when loss mitigation applications are complete.** Under existing regulations, servicers need not provide such notice. However the CFPB feels that borrowers would benefit from knowing when their application is complete because certain foreclosure protections take effect when a loss mitigation application is deemed complete.
- **Require servicers to provide additional borrower protections during servicing transfers.** The proposed rule would generally clarify that transferee servicers must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer.
- **Clarify requirements to avoid dual-tracking.** Under existing regulations, a servicer may not proceed to foreclosure after it has received a complete loss mitigation application from a borrower at least than 37 days prior to a scheduled foreclosure sale. The proposal would clarify what steps a servicer must take to protect borrowers from a wrongful foreclosure sale.
- **Clarify the definition of "delinquency."** The proposed rule would clarify the definition of "delinquency" for purposes of the mortgage servicing rules. For example, the proposed rule would clarify that when a borrower misses a payment but later makes it up, if the servicer applies that payment to the oldest outstanding periodic payment, the date of delinquency advances.

- **Require servicers to provide more information to borrowers in bankruptcy.** Under existing regulations, servicers are not required to provide periodic statements or loss mitigation information to borrowers who are in bankruptcy. The proposed rule would generally require servicers to provide such information to borrowers in bankruptcy.

Comments on the proposed rule will be accepted for 90 days after the rule's publication in the Federal Register.

#### **CFPB Enforcement Action against "Buy-here, Pay-here" Auto Dealer**

On Nov. 19, the CFPB entered into a [consent order](#) with a "buy-here, pay-here" auto dealer to settle allegations of illegal debt collection practices and improper credit reporting practices. In addition to selling vehicles, such dealers also originate, hold and service the financing contract. In the consent order, the CFPB alleges that the auto dealer engaged in the following activities that were unfair and thus in violation of the law:

- **Harassing borrowers at work.** The auto dealer's collection agents called delinquent borrowers at their places of employment and in some circumstances the agents continued to call when asked not to do so.
- **Harassing borrowers' references.** The auto dealer's collection agents called delinquent borrowers' references and in some circumstances the agents continued to call the references when asked not to do so.
- **Repeated calls to wrong numbers.** The auto dealer's collection agents attempted to call delinquent borrowers, but would use wrong numbers. In some circumstances the agents continued to call these unrelated third parties when asked not to do so.
- **Failing to accurately report repossession information.** In a number of cases, the auto dealer would provide inaccurate information to credit reporting bureaus regarding the dates on which the dealer repossessed cars from delinquent borrowers. The auto dealer also failed to properly address disputes regarding such information when raised by borrowers and further failed to implement reasonable procedures to ensure that such credit information was accurate.

Under the terms of the consent order, the auto dealer must pay an \$8 million civil money penalty, end its unfair debt collection tactics, fix its credit reporting practices, and arrange for harmed consumers to obtain free credit reports.

#### **CFPB Provides Guidance on Discrimination against Consumers Receiving Disability Income**

On Nov. 18, the CFPB issued a compliance [bulletin](#) "to help lenders avoid imposing illegal burdens on consumers receiving disability income who apply for mortgages." The bulletin provides guidelines on verification of Social Security disability income in several mortgage lending contexts, including under the CFPB's Ability-to-Repay and Qualified Mortgage Standard Rule. The bulletin reminds lenders that, pursuant to the Equal Credit Opportunity Act (ECOA) and Regulation B, a creditor is prohibited from discriminating against an applicant for credit on the basis of the fact that all or a portion of the applicant's income derives from a public assistance program, such as Social Security Disability Insurance or Supplemental Security Income. The bulletin also specifies that, when determining whether a loan meets the 43 percent debt-to-income ratio necessary to qualify it as a Qualified Mortgage, lenders may not require excessive proof to verify the applicant's receipt of income. Lenders should rely upon the

Social Security Administration benefit verification letter or equivalent document. Unless the letter specifically states that benefits will expire within three years of loan origination, lenders should treat the benefits as likely to continue. Moreover, lenders should not treat pending or current re-evaluations of medical eligibility for benefit payments as an indication that the benefit payments are not likely to continue.

#### **CFPB Director Cordray Speaks at The Clearing House**

On Nov. 20, CFPB Director Richard Cordray [spoke to The Clearing House](#), an association formed by banks for the purpose of overseeing and processing financial transactions. Cordray criticized banks for doing business with payday lenders, stating: “Surely, the financial institutions that accept these unscrupulous lenders and their payment processors as clients need to do a better job of ensuring that they are honoring the protections afforded (to) consumers under the Electronic Fund Transfer Act. But more fundamentally, consumers expect their own bank or credit union to be on their side. They trust them to hold on to their money, and banks and credit unions need to be better about doing just that.”

Director Cordray also encouraged members of the organization to speed up their development of a new real-time payment system, but warned them that such a system should be designed with consumer protections in mind. Specifically, Cordray articulated four consumer protection principles that he wants the new payment system to include: (1) “faster payments should bring with them faster access to the funds that a consumer deposits”; (2) “a faster payment system should include real-time access to information about the status of an account as well as protections from hair-trigger assessments of fees”; (3) “faster payments must be accompanied by robust consumer protections with respect to fraudulent or otherwise unauthorized transactions and erroneous debits”; and (4) “a faster payment system should be accessible to all consumers and not just to the most privileged.”

#### **CFPB Issues Financial Report for Fiscal Year 2014**

On Nov. 17, the CFPB issued a financial report for fiscal year 2014 as required by the Dodd-Frank Act. The report describes the CFPB’s objectives and financial results compared with the previous fiscal year. According to the report, in FY2014, “CFPB enforcement actions resulted in almost \$4 billion in penalties, redress and relief to consumers imposed against defendants who violated Federal consumer financial laws. For example, enforcement actions against several credit card companies provided relief of more than \$1 billion to harmed consumers. The CFPB also ordered \$2.6 billion in relief for consumers who were harmed by systemic misconduct by two mortgage servicers. Further, we assessed an additional \$92.7 million in Civil Monetary Penalties to deter future occurrences of unfair, deceptive and abusive acts.” Also of note is the growth of the CFPB. It has grown from 663 employees in FY 2011 to 1,443 employees in FY 2014.

#### **CFPB Field Hearing on Medical Debt Collection**

The CFPB has scheduled a field hearing on medical debt collection for Thursday, Dec. 11 at 11 a.m. CST in Oklahoma City, Okla. The hearing will feature remarks from CFPB Director Richard Cordray, as well as testimony from consumer groups, industry representatives and members of the public. The event is open to the public, but an [RSVP is required](#). The event will also be broadcast 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.

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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