

CFPB Observer: Recent Developments from Dec. 15, 2014 – Jan. 2, 2015

CFPB Report on College Credit Card Agreements

On Dec. 15, the CFPB issued its annual report on college credit card agreements. The report showed a 70 percent decline in marketing agreements between colleges and credit card issuers since passage of the Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) in 2009, which imposed greater disclosure requirements and consumer protections on credit card products. However, the report also found that over this same period there has been a shift in these marketing partnerships to cover other products like debit and prepaid cards. Remarking on these findings, CFPB Director Richard Cordray stated: “Schools and financial institutions should be up front on their website with students and their families about whether or not the school is being compensated to encourage students to use a specific account or card product.” Last year the CFPB initiated an inquiry into how these financial products are marketed to college students, and as a result of that initiative asked financial institutions to voluntarily release their agreements with colleges.

CFPB Sues National Wireless Carrier for Third-Party Charges

On Dec. 17, the CFPB sued a national wireless carrier for allegedly billing its customers for unauthorized third-party charges. The CFPB is claiming jurisdiction over the wireless carrier, which is traditionally subject to the jurisdiction of the Federal Communications Commission, as a “covered person” under the Consumer Financial Protection Act on the basis that the wireless carrier both extends credit to and processes payments for consumers. According to the complaint, for the period 2004 through 2014, the wireless carrier allegedly collected charges for various wireless products (e.g., premium text messages, apps, games, etc.) sold by third-party merchants. The wireless carrier contracted with a third-party “billing aggregator” that processed the payments. Many of these charges that were processed by the billing aggregator were not authorized by consumers, but allegedly the wireless carrier still placed these charges on consumers’ wireless bills.

Regardless of the outcome of the lawsuit, it should serve as a reminder to all consumer financial service companies subject to the CFPB’s jurisdiction that they should be mindful of the actions of their vendors. In prepared remarks announcing the filing of the lawsuit, CFPB Director Richard Cordray stated: “If companies hire vendors to manage their billing and payment systems, which they are certainly entitled to do, they must carefully monitor and police their vendors’ activities. Companies are responsible for ensuring that their vendors are not violating the law, and need to take appropriate steps to remedy any harm done when they fail to meet their responsibility to treat consumers fairly. As we have said previously about other consumer financial markets, simply contracting with a vendor does not absolve the provider of its legal responsibility to treat consumers fairly.”

CFPB Enforcement Action Against Retailer for Unlawful Debt Collection Practices

On Dec. 18, the CFPB [entered a consent order](#) with a retailer and its affiliates for unlawful debt collection practices. The affiliated companies sell merchandise online and at retail locations near military bases and offer financing for the purchases through retail installment contracts. The CFPB alleged in the complaint that the retailer engaged in unfair, deceptive and abusive practices (UDAAP) in violation of section 1031 of the Dodd-Frank Act by violating provisions of Fair Debt Collection Practices Act (FDCPA). Specifically, the complaint alleged that the companies filed illegal lawsuits, debited consumers' accounts without authorization, and contacted servicemembers' commanding officers. Although the FDCPA only applies to a person collecting debts on behalf of a third party creditor, the CFPB has taken the position that a creditor that collects its own debt and that fails to abide by the FDCPA nevertheless engages in a UDAAP.

The consent order requires the retailer and its affiliates to provide over \$2.5 million in consumer redress (in the form of refunds and balance reductions) and pay a \$100,000 civil penalty to the CFPB. In addition, the order requires the retailer and its affiliates to establish procedures to avoid similar future violations and to submit to compliance monitoring by the CFPB.

CFPB Sues Credit Card Issuer

On Dec. 17, the CFPB [sued a Texas company](#) for allegedly deceiving consumers into signing up and paying fees for a "sham" credit card. According to the complaint, the company advertised a general-purpose credit card that in reality could only be used to buy products from the company. The CFPB is taking action against the company under its authority in section 1031 of the Dodd-Frank Act to prohibit unfair, deceptive or abusive practices. The complaint seeks redress for injured consumers, a civil money penalty, and an injunction against the company.

CFPB Increases Exemption Threshold for HMPL Appraisal Requirement

On Dec. 18, the CFPB and several other financial regulators [issued a final rule](#) raising the threshold dollar amount for the exemption from the special appraisal requirement for higher-priced mortgage loans under the Truth in Lending Act. The original rule exempted from the appraisal requirement mortgage loan transactions of \$25,000 or less. However, the rule subjects this amount to annual adjustments according to changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The regulators thus raised the exemption threshold to \$25,500, effective Jan. 1, 2015.

SCRA's One-Year Foreclosure Protection Period Extended until January 2016

On Dec. 18, the President signed into law the Foreclosure Relief and Extension for Servicemembers Act of 2014 (S. 2404), a bill that will extend a foreclosure protection provision of the Servicemembers Civil Relief Act (SCRA) until January 2016. The specific provision prohibits mortgage lenders from foreclosing on a servicemember's home for one year following that servicemember's return from active duty. Had it not been extended, the SCRA foreclosure protection would have reverted back to its pre-2008 protection period of three months.

CFPB Issues Report and Comment Letter on Military Lending Act Proposed Rule

On Dec. 29, the CFPB issued a [report](#) that identified provisions of the current rules implementing the Military Lending Act (MLA) that permit lenders to offer certain loan products to military families without having to comply with the MLA's military-specific credit protections. The protections afforded by the current MLA rules only apply to three types of consumer credit products: (1) closed-end payday loans for

no more than \$2,000 and with terms of 91 days or fewer; (2) closed-end auto title loans with terms of 181 days or fewer; and (3) closed-end tax refund anticipation loans. For these types of credit products the MLA provides a 36 percent interest rate cap, among other protections. These protections thus do not currently apply to a number of credit products offered to servicemembers. However, the Department of Defense (DOD) recently proposed broadening the scope of these protections to more generally cover consumer installment loans offered to servicemembers. In conjunction with the report and in response to the proposal, the CFPB also issued a [comment letter](#) urging the DOD to finalize the proposed rule.

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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