

## CFPB Observer: Recent Developments from March 2015

### CFPB Issues Outline of Payday Loan Rule

The CFPB held a field hearing on payday lending March 26 in Richmond, Virginia, where it [announced the details](#) of the payday loan rule that it is considering proposing. The outline of the rule, which is not a formal notice of proposed rulemaking, was provided ahead of a Small Business Review Panel that must be held as the next step in the rule-making process. While the hearing and the rule nominally target traditional short-term, small-dollar lending that is commonly referred to as “payday lending,” the scope of the proposed rule would more broadly cover vehicle title loans, deposit advance products, and certain high-cost installment loans and open-end loans. The [rule outlined by the CFPB](#) is complex and would have a significant impact on the small-dollar, short-term lending market. For more information, see our special [GT CFPB Observer Alert on the payday loan rule proposal](#).

### CFPB Releases Arbitration Study

On March 10, the [CFPB released its study](#) on the use of pre-dispute arbitration clauses in consumer contracts for financial products and services. In the results of its study, the CFPB found that “arbitration agreements restrict consumers’ relief for disputes with financial service providers by limiting class actions.” The study is being provided to Congress as required under section 1028 of the Dodd-Frank Act. That section of the Dodd-Frank Act also authorizes the CFPB to issue regulations “prohibiting or limiting” the use of pre-dispute arbitration clauses based on the CFPB’s research and its determination of what is in the public interest. For more information, see our special [GT CFPB Observer Alert on the arbitration study](#).

### CFPB Publishing Consumer Narratives on its Complaint Database

On March 19, the CFPB issued its final [Consumer Complaint Narrative Policy](#) that establishes specific procedures and safeguards permitting consumers to post complaint narratives on the CFPB’s consumer complaint database. When a consumer submits a complaint through the CFPB’s consumer complaint portal, the consumer will also now be able to choose whether to share a narrative account of their complaint. The narrative account will then be published on the complaint database. Although consumers could begin submitting a complaint narrative beginning March 19, the CFPB will not publish any consented-to narrative for at least 90 days after the Policy’s publication in the Federal Register.

The CFPB also issued a [Notice and Request for Information](#) seeking input from the public on the potential collection and sharing of information about positive interactions consumers have with financial companies. The CFPB is considering two options. Under one option, the CFPB would share positive information about a company by highlighting the quality of the company’s responses to consumer complaints it receives. Under the second option, the CFPB would separately report consumer compliments.

### **CFPB Releases Winter 2015 Supervisory Highlights Report**

On March 11, the CFPB released its [Winter 2015 Supervisory Highlights Report](#). This is the seventh edition of the Report and generally covers CFPB supervisory activities between July 2014 and December 2014. The Report highlights problems in numerous markets, including deceptive student loan debt collection practices, unfair and deceptive overdraft practices, mortgage origination violations, fair lending violations, and disputes handled by consumer reporting agencies. In the mortgage market, the Report indicates that examiners found that some loan originators illegally received compensation based on the terms of a transaction and that some mortgage lenders committed fair lending violations by rejecting mortgage applications because the applicants relied on public assistance income. Overall the Report touts that during this period the CFPB's supervisory resolutions resulted in remediation of \$19.4 million to consumers.

### **CFPB Issues Consumer Response Annual Report**

On March 30, the CFPB issued its [Consumer Response Annual Report](#) covering consumer complaints received during the 2014 calendar year. The CFPB has gradually expanded the scope of its consumer complaint database since its inception in 2011 to include complaints for various consumer financial products. The volume of complaints received has also steadily increased, rising 53 percent from 2013 to 2014. The most common complaints received in 2014 concerned debt collection, mortgage loans, and credit reporting. The biggest increases from 2013 were seen with debt collection and credit reporting complaints. The CFPB's complaint database, and this Report, can be a good barometer for financial institutions seeking to determine where their compliance risks lie so far as it concerns CFPB examination and enforcement activities.

### **CFPB Initiates Public Inquiry Regarding Credit Card Market**

On March 17, the CFPB issued a [Request for Information](#) on the credit card market and current consumer protections. The Credit Card Accountability, Responsibility, and Disclosure Act of 2009 requires the CFPB to conduct a review of the credit card market every two years and as a part of this review the CFPB is "seeking public comment from consumers, credit card issuers, industry analysts, consumer advocates, and others on the state of the credit card market." Specifically, the Request seeks information on issues such as credit card terms, the use of consumer disclosures, credit card debt collection practices, and the use and marketing of rewards programs. Comments on the Request are due within 60 days after publication in the Federal Register.

### **CFPB Issues 2015 FDCPA Report**

On March 26, the CFPB issued its [fourth Annual Report](#) summarizing its activities administering and enforcing the Fair Debt Collection Practices Act. Among other things, the Report provides an overview of consumer complaints submitted to the CFPB in 2014, summarizes the CFPB's supervisory and enforcement activities in the debt collection market, and describes developments in the CFPB's rulemaking activities. With respect to complaints received in 2014, the Report notes that they generally concerned excessive or inconveniently timed telephone calls, false threats of litigation, and false and misleading representations by debt collectors. With respect to the CFPB's rulemaking activities, the Report notes that the CFPB has received more than 23,000 comments regarding its November 2013 Advance Notice of Proposed Rulemaking on debt collection practices. For more information, see our special [GT CFPB Observer Alert on the ANPR](#).

### CFPB Enforcement Action Against Debt Collection Agency

On March 30, the CFPB announced an [enforcement action and proposed consent](#) order with a national debt collection agency and the company's CEO. The [complaint](#) alleges that the company used deceptive threats of criminal prosecution in order to encourage consumers to pay debts owed for bounced checks. The company created a false impression that its communications came from a state or district attorney's office. The company also allegedly deceived consumers into believing that they were required to pay for and enroll in a financial education program in order to avoid any criminal charges. If the proposed consent order is approved by a federal district court, the company would be enjoined from continuing the allegedly illegal activities and would be required to pay a civil money penalty of \$50,000.

### CFPB Releases New "Know Before You Owe" Mortgage Shopping Toolkit

On March 31, the CFPB [released a new "toolkit"](#) as a part of its "Know Before You Owe" mortgage initiative that is intended to guide consumers through the process of shopping for a mortgage and buying a house. The toolkit will replace the ["Shopping For Your Home Loan"](#) settlement cost booklet that creditors currently must provide to mortgage applicants. This settlement cost booklet required by the Real Estate Settlement Procedures Act was initially developed by the Department of Housing and Urban Development. The updated "toolkit" is designed to be used in connection with the new Loan Estimate and Closing Disclosure forms that creditors will be required to provide consumers for mortgage loan applications received starting Aug. 1, 2015. Creditors will still be required to provide the separate [Consumer Handbook on Adjustable-Rate Mortgages \(CHARM\) booklet](#) and the [What You Should Know about Home Equity Lines of Credit \(HELOC\) booklet](#), which are both required by the federal Truth in Lending Act.

### CFPB and FTC Reauthorize Memorandum of Understanding

On March 6, the CFPB and Federal Trade Commission reauthorized their ongoing [Memorandum of Understanding](#). The Memorandum establishes the manner in which the CFPB and FTC coordinate their working relationship and helps avoid duplication of federal law enforcement and regulatory efforts by the two agencies. The Memorandum was reauthorized for three years.

### CFPB Director Testifies Before Congress

On March 3, Director Richard Cordray appeared before the House Committee on Financial Services to deliver [testimony on the CFPB's Semi-Annual Report to Congress](#). In addition to his prepared remarks, Cordray discussed the CFPB's proposed rule on payday loans. Cordray also intimated that it is very unlikely the CFPB will grant an enforcement grace period for its new mortgage disclosure rule integrating the requirements under the Truth in Lending Act and the Real Estate Settlement Procedures Act that becomes effective Aug. 1.

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