

CFPB Observer: Recent Developments from April 20-24, 2015

CFPB Enforcement Action Against Military Allotment Processor

On April 20, the CFPB announced an enforcement action against a military allotment processing company for allegedly charging servicemembers illegal fees. Before it became common for banks to provide automatic payments and electronic transfers, the military created an allotment system that allows deployed servicemembers to deduct amounts directly from their paychecks and deposit that money in an account managed by a third-party allotment processing company. The processing company then makes regular payments on behalf of servicemembers to meet their financial obligations, such as mortgage or car loan payments. According to the consent order that the CFPB entered with the military allotment processing company, the company routinely charged recurring, undisclosed fees for residual balances in servicemembers' accounts. The CFPB alleged that the company did not disclose these fees, their dollar amounts, or the circumstances under which they would be charged. The CFPB alleged that this was an unfair, deceptive, and abusive act or practice in violation of Sections 1031 and 1036(a)(1)(B) of the Consumer Financial Protection Act. Under the terms of the consent order, the payment processing company must provide \$3.1 million in relief to harmed servicemembers.

CFPB Enforcement Action Against National Mortgage Servicer

On April 21, the CFPB announced a joint enforcement action with the Federal Trade Commission against a national mortgage servicing company that specializes in servicing delinquent loans. The complaint alleges that the mortgage servicer violated various consumer protection laws and injured borrowers by, among other things, failing to honor modifications for loans transferred from other servicers, delaying decisions on short sales, and harassing and threatening delinquent borrowers. Specifically, the CFPB and FTC alleged the following violations by the mortgage servicer during the period 2010 to 2014:

- **UDAP/UDAAP.** The complaint alleges that the mortgage servicer's actions violated both the FTC's prohibition against unfair or deceptive acts or practices in Section 5(a) of the FTC Act, and the CFPB's prohibition against unfair, deceptive, or abusive acts or practices in Sections 1031 and 1036(a)(1)(B) of the Consumer Financial Protection Act. Specifically, the complaint alleges that the servicer deceived borrowers regarding account terms, the requirements for loan modification consideration, the status of borrower short sale requests, and available payment methods. The complaint also alleges that the servicer engaged in unfair acts or practices by causing borrowers' bank accounts to be debited without borrower consent, and by breaching contracts that borrowers had negotiated with prior servicers.
- **Fair Debt Collection Practices Act.** The complaint alleges that the mortgage servicer violated the FDCPA disclosing borrowers' debts to third parties, calling borrowers during the hours proscribed

by the FDCPA, calling borrowers at their place of employment, and by using abusive and harassing behavior on phone calls.

- **Fair Credit Reporting Act.** The complaint alleges that the mortgage servicer violated the FCRA by furnishing information to credit reporting agencies that the servicer knew to be accurate and by failing to correct inaccurately reported information.
- **Real Estate Settlement Procedures Act.** The complaint alleges that the mortgage servicer violated RESPA's mortgage servicing rules by failing to timely respond to borrowers' qualified written requests for information, and by failing to make timely escrow account disbursements.

Under the terms of the consent order, the mortgage servicer has agreed to pay \$48 million in restitution to victims and a \$15 million civil money penalty. In addition, the mortgage servicer must engage in specific efforts to help affected borrowers keep their homes by, among other things, converting in-process loan modifications into permanent modifications. To ensure that borrower loan files that the mortgage servicer receives are complete and accurate, the consent order requires the mortgage servicer to implement and adhere to stringent servicing transfer requirements.

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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