CFPB Observer:
Recent Developments from April 27 – May 1, 2015

CFPB Issues Servicemembers Complaints Report

On April 27, the CFPB's Office of Servicemember Affairs issued its third report of consumer complaints that the CFPB has received from servicemembers, veterans, and their families. The report covers the period from July 21, 2011 through December 31, 2014. It notes that the number of servicemember complaints received over that time has increased, with approximately 17,000 complaints received in 2014. The report analyzes the data and trends regarding these complaints. According to the report, debt collection complaints were the most common, comprising 39 percent of the total. Mortgages and credit reporting were the second and third most common complaints received. In addition to reviewing related enforcement actions, the report also contains a separate section addressing concerns for servicemembers regarding managing their financial accounts while on active duty, especially with respect to avoiding fees.

CFPB Enforcement Action Against Bank for Overdraft Practices

On April 28, the CFPB announced an enforcement action against a national bank for alleged violations of Regulation E. According to the consent order, the bank charged consumers overdraft fees even though the consumers had not opted-in for overdraft coverage. Reg. E prohibits banks and credit unions from charging overdraft fees on consumers' ATM and one-time debit card transactions without first obtaining the consumer's affirmative consent. This "opt-in" rule took effect in 2010. According to the consent order, the bank failed to obtain required opt-ins for certain consumers when it linked the consumers' checking accounts to either their savings accounts or credit card accounts. Since the bank did not have these consumers' consent, when consumers made purchases that overdrew their accounts, the bank should have declined the transactions. Instead the bank honored those transactions, charged them overdraft fees of up to $36, and therefore, according to the consent order, violated the overdraft opt-in rule.

Under the terms of the consent order, the bank must provide refunds to all affected consumers that have not already received a refund. Since identifying the issue in 2012, the bank has refunded $49 million in fees to consumers who did not opt-in but that were nonetheless charged overdraft fees. However, the CFPB's investigation determined that the bank did not completely resolve the issue and continued to charge consumers overdraft fees when they had not opted in. To ensure that all affected consumers receive refunds, the bank must now hire an independent consultant to identify all remaining consumers who were affected so that they may receive refund as well. The consent order also requires the bank to correct related errors made to consumers' credit reports as a result of the overdrafts and inappropriately charged fees. Finally, the bank must pay a $7.5 million civil money penalty to the CFPB.

CFPB Enforcement Action Against Mortgage Loan Officers and Title Company for RESPA Section 8 Violations

On April 29, the CFPB announced enforcement actions against a title company and several individual mortgage loan officers for violation of the Real Estate Settlement Procedures Act (RESPA) Section 8. RESPA Section 8 prohibits any person from giving a "fee, kickback, or thing of value" in exchange for a referral of business related to a real estate settlement service. The actions were the result of a joint investigation by the CFPB, the State of Maryland, and the Maryland Insurance Administration. This announcement follows enforcement actions brought earlier this year against other financial institutions involved in the alleged scheme. The complaint alleges that the title company provided various marketing services to the loan officers and that in exchange the loan officers referred settlement services to the title company.

Under the terms of the proposed consent orders filed today, the individual defendants would be banned from the mortgage industry for several years and required to pay civil money penalties and redress totaling $662,500.

CFPB Issues Annual Fair Lending Report

On April 28, the CFPB's Office of Fair Lending issued its annual fair lending report. The report reviews the CFPB's fair lending supervision, enforcement, and rulemaking efforts during 2014. According to the report, the CFPB obtained $224 million in remediation in 2014 as a result of both its public fair lending enforcement actions and supervisory activities. Much of the report's information on supervisory activities restates information already reported in the CFPB's Supervisory Highlights.

Financial Regulatory Agencies Issue Joint Final Rule on Minimum Requirements for Appraisal Management Companies

On April 30, the CFPB, Department of Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, and Federal Housing Agency issued a joint final rule on minimum requirements for appraisal management companies (AMCs). AMCs provide appraisal management services to lenders and underwriters in the mortgage market. These services include contracting with appraisers to perform appraisals. The final rule implements amendments made by the Dodd-Frank Act to the Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989. It establishes a federal/state regulatory regime for AMCs that is similar to the regime established for mortgage loan officers under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The final rule provides a registration and supervision regime for AMCs. States are permitted but not required to establish a regulatory system for registering and supervising AMCs. In addition, the rule provides minimum requirements for AMCs that will be imposed on states that elect to register and supervise AMCs. Although states are not required to establish registration and supervision systems, if a state has not established such a system after 36 months from the effective date of the final rule, non-federally regulated AMCs will be prohibited from engaging in appraisal management services in that state. Only if the state provides the required regulatory structure would this ban be lifted.

Federally regulated AMCs (AMCs that are subsidiaries of an insured depository institution regulated by a federal financial institution regulatory agency) must also meet the same minimum AMC requirements that the rule imposes on state-regulated AMCs; however, the federally regulated AMCs need not register with a state.

The final rule becomes effective 60 days after its publication in the Federal Register. Federally regulated AMCs must comply with the rule no later than 12 months from the effective date. Participating states will specify their own compliance deadline for state-regulated AMCs.

CFPB Enforcement Action for Marketing Violations by Property Developers

On May 1, the CFPB announced an enforcement action against a land development company and related individuals involved in a property development for certain marketing violations. According to the administrative consent order, the respondents violated the Interstate Land Sales Full Disclosure Act by making misrepresentations to consumers regarding the development's roads. The respondents represented in marketing materials and elsewhere that the developer would maintain the roads and that they would be accepted by the county. However, in reality the developer did not maintain the roads and they were not accepted by the county. Under the terms of the administrative consent order, the company and the individuals must make repairs to the roads in the development that satisfy the requirements established by an independent engineer.

CFPB Field Hearing on Student Debt

The CFPB will hold a field hearing addressing student loan debt on Thursday, May 14 at 10 a.m. CDT in Milwaukee. The field hearing will include remarks from Director Richard Cordray, and testimony from consumer groups, industry representatives, and members of the public. Although the event is open to the public, an RSVP is required. The event 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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