

CFPB Observer: Recent Developments from June 2015

CFPB Releases Spring 2015 Rulemaking Agenda

The CFPB recently released its [spring 2015 rulemaking agenda](#) as required by the Regulatory Flexibility Act. It described the following upcoming rulemakings:

- **Home Mortgage Disclosure Act.** The CFPB issued a proposed rule in August 2014 to implement Dodd-Frank Act amendments to the Home Mortgage Disclosure Act (HMDA). The proposal would expand requirements for collecting data on mortgage loans and applications. It would also expand institutional and transactional coverage, modify reporting requirements, and clarify certain existing regulatory provisions. A final rule is expected late summer 2015.
- **Modifications to Mortgage Rules.** In February 2015 the CFPB issued proposed amendments to its mortgage rules that originally became effective in January 2013. The proposed amendments include several clarifications and modifications to the original rules. In particular, the proposal would revise requirements for small creditors that operate predominantly in “rural or underserved” areas. A final rule is expected fall 2015.
- **Prepaid financial products.** The CFPB issued a proposed rule in December 2014 that would create comprehensive consumer protections for a range of prepaid financial products, including general-purpose reloadable prepaid cards and certain digital and mobile wallets. The rule would impose certain protections on these products that are similar to those that currently exist now for debit and payroll cards. A final rule is expected early 2016.
- **Payday, auto title, and certain other loans.** The CFPB recently released an outline of a proposed rule that would regulate payday loans, auto-title loans, and certain other longer-term credit products. The CFPB has already held a Small Business Review Panel as a required part of the rulemaking process. It intends to issue a Notice of Proposed Rulemaking in late 2015.
- **Overdrafts.** The CFPB continues to analyze issues relating to overdraft services on checking accounts after issuing a white paper in June 2013 and a report in July 2014. The CFPB states in its rulemaking agenda that it will conduct additional research to assess whether a rulemaking is warranted.
- **Debt collection.** Last year the CFPB issued an Advanced Notice of Proposed Rulemaking covering debt collection activities. It has been reviewing comments received and is continuing to do consumer outreach as it develops formal proposed rules.
- **Arbitration.** The CFPB issued a preliminary report in December 2013 on research it conducted regarding the use of arbitration agreements in consumer financial contracts as required under the Dodd-Frank Act. It issued a report on the same issue to Congress in March 2015. The CFPB is now evaluating feedback it has received and

considering whether rules governing arbitration clauses may be warranted.

CFPB Enforcement Action Against Foreclosure Relief Company

On May 29, the CFPB and Florida Attorney General received a final judgment in a joint enforcement action against a Florida foreclosure relief company, its owners, and their affiliated companies. Florida and the CFPB had alleged that the foreclosure relief company, which claimed that it could help consumers to avoid foreclosure, used deceptive marketing practices and charged illegal advance fees in violation of Regulation O. The Florida court found the defendants liable for the amount of fees paid by consumers (\$11,730,579) and ordered them to pay a \$10 million civil penalty.

CFPB and DOJ Enforcement Action Against Mortgage Lender for Fair Lending Violations

On May 28, the CFPB and Department of Justice announced a joint enforcement action against a wholesale mortgage lender for violations of both the Fair Housing Act (“FHA”) and the Equal Credit Opportunity Act (“ECOA”). ECOA prohibits creditors from discriminating against credit applicants on the basis of race, sex or national origin. The FHA similarly prohibits discrimination in residential mortgage lending. The proposed consent order would settle allegations that the lender violated these fair lending laws by permitting its brokers to charge higher fees to African-American and Hispanic borrowers than to similarly situated non-Hispanic white borrowers. According to the complaint, during the period 2006 and 2011, the lender gave its brokers discretion to charge borrowers higher fees that were unrelated to the borrower’s creditworthiness or the terms of the loan. The CFPB and DOJ allege that this discretionary policy resulted in discriminatory credit practices. The terms of the consent order would require the lender to pay \$9 million in monetary relief to aggrieved borrowers.

CFPB Enforcement Action Against Mortgage Company for Alleged Loan Originator Compensation Violations

On June 4, the CFPB announced an enforcement action against a non-bank mortgage lender for alleged violations for the CFPB’s loan originator compensation rules. According to the complaint, the lender paid bonuses and higher commissions to its loan originators to incentivize them to steer consumers into costlier mortgages. The CFPB’s compensation rule prohibits a loan originator’s compensation from being based on the terms of the transaction or a proxy for a transaction term. The company established employee expense accounts funded by profits from closed loans. The loan profits deposited into the expense accounts were tied to the loans’ interest rates. The CFPB alleges that the company’s loan originators were able to utilize the expense accounts to pay themselves bonuses that were tied to the terms of loan transactions in this indirect manner. According to the terms of the proposed consent order, the lender must pay \$18 million in redress to consumers and a \$1 million civil penalty. The company’s CEO would have to pay an additional \$1 million civil penalty.

CFPB Issues Study on Reverse Mortgage Advertising

On June 4, the CFPB released a [study of reverse mortgage advertising](#). The study is based on 97 unique ads found on TV, radio, the Internet, and in print. In addition, the CFPB conducted a focus group, interviewing approximately 60 homeowners aged 62 and older. As a result of the study, the CFPB found that the ads exhibited the following concerning characteristics: ambiguity that reverse mortgages are actually loans; false impressions about government affiliation; difficult-to-read fine print; celebrity endorsements that imply reliability and trust; and false impressions about financial security and staying in the home for the rest of the consumer’s life. Along with the study, the CFPB also issued a [consumer advisory](#) advising older borrowers to be wary of these potentially misleading advertisements for reverse mortgages.

CFPB Issues Decision in Appeal of Administrative Enforcement Action

On June 4, CFPB Director Richard Cordray issued a final decision in the first appeal of a CFPB administrative enforcement proceeding. Cordray’s decision concluded that the defendant mortgage lender had violated the Real Estate Settlement Procedure Act’s prohibition against a person giving or accepting a fee, kickback or anything of value in exchange for the referral of settlement service business. In this case, the kickbacks took the form of mortgage reinsurance premiums that the mortgage insurers paid to a subsidiary of the mortgage lender. The final order mostly upheld the administrative law

judge's recommended decision from November 2014. However, in a surprising reversal of the recommended decision, Cordray increased the civil penalty from \$6.4 million to \$109 million. Rather than calculating the penalty based on kickbacks that the lender received for mortgages that closed on or after July 21, 2008 (the effective date of the Dodd-Frank Act), Cordray reasoned that the penalty should be calculated based on each payment the lender received following that date. This novel calculation dramatically increased the penalty. The company is expected to challenge Cordray's ruling in federal court.

CFPB Enforcement Action Against Mortgage Company for Alleged Loan Originator Compensation Violations

On June 5, the CFPB announced another enforcement action against a non-bank mortgage lender for alleged violations for the CFPB's loan originator compensation rules. According to the complaint, the lender paid its employees based partially on the interest rates of the loans they closed. The CFPB's loan originator compensation rule prohibits a loan originator's compensation from being based on the terms of the transaction or a proxy for a transaction term. The lender made these allegedly illegal payments to its employees in an indirect manner by paying for market services provided by entities that were owned in part by the lender's employees. According to the terms of the consent order, the company, which is in the process of dissolving, must pay a \$228,000 civil money penalty to the CFPB.

Financial Regulatory Agencies Issue Final Standards for Assessing Diversity Policies and Practices of Regulated Entities

On June 9, the CFPB and five other federal financial regulatory agencies issued a [final interagency policy statement](#) establishing joint standards for assessing the diversity policies and practices of the entities they regulate. Section 342 of the Dodd-Frank Act required the CFPB, Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission to each establish an Office of Minority and Women Inclusion (OMWI). The OMWIs, which are responsible for diversity matters, developed the standards for assessing the diversity policies and practices of their respective regulated entities. The final standards establish a framework for regulated entities "to create and strengthen their diversity policies and practices—including their organizational commitment to diversity, workforce and employment practices, procurement and business practices, and practices to promote transparency of organizational diversity and inclusion within the entities' U.S. operations." The standards only serve as recommendations for regulated entities. They do not create any actual requirements on regulated entities and there is not direct enforcement mechanism. The final standards became effective June 10, 2015.

FTC Issues Annual Enforcement Report to CFPB

The Federal Trade Commission recently provided the CFPB with its [2014 Annual Financial Acts Enforcement Report](#). The report describes the FTC's enforcement activities regarding the Truth in Lending Act, Consumer Leasing Act, and Electronic Fund Transfer Act. Under the Dodd-Frank Act, the FTC retained authority to enforce the implementing regulations of these consumer financial protection statutes with respect to entities subject to FTC jurisdiction. The FTC and CFPB coordinate their enforcement efforts pursuant to a memorandum of understanding.

CFPB Issues Larger Participant Rule for Nonbank Auto Finance Market

On June 10, the CFPB issued a [final rule defining larger participants of the auto finance market](#). The rule extends the CFPB's supervisory authority to any nonbank auto finance company that, together with any affiliates, makes, acquires, or refinances 10,000 or more auto loans or leases in a year. These "larger participants" may be examined by the CFPB to determine whether they are complying with federal consumer financial laws, including the Equal Credit Opportunity Act, the Truth in Lending Act, the Consumer Leasing Act, and the Dodd-Frank Act's broad prohibition on unfair, deceptive, or abusive acts or practices.

Examinations under the [CFPB's Auto Finance Examination Procedures](#) are extensive and can be very time and resource consuming. The CFPB estimates that an exam will involve two weeks of preparation time, nine weeks of onsite examination, and total labor costs for an examination of approximately \$30,000.

CFPB Enforcement Action Against Auto Lender for Debt Collection Violations Involving Servicemembers

On June 17, the CFPB announced an enforcement action against an auto loan company for its debt collection actions against servicemembers. In a complaint filed in federal court, the CFPB alleges that the company violated the Dodd-Frank Act's prohibition against unfair, deceptive, and abusive acts or practices by making threats and deceptive claims in order to collect debts from servicemembers. Specifically, the CFPB alleges that the company exaggerated potential disciplinary action that servicemembers would face, contacted servicemembers' commanding officers to pressure them into repayment, falsely threatened to garnish wages, and misled servicemembers about taking legal action that the company did not actually intend to take. The CFPB is seeking an injunction to stop the company's allegedly illegal conduct, restitution for harmed servicemembers, and a civil money penalty.

CFPB Issues Mid-Year Report on Private Student Loan Complaints

On June 18, the CFPB's Student Loan Ombudsman released its mid-year report on private student loan complaints. The report analyzed more than 3,100 private student loan complaints and approximately 1,100 debt collection complaints related to student loan debt received by the CFPB between Oct. 1, 2014, and March 31, 2015 (an increase of 34 percent over the same time period from the prior year). According to the report, most private student loans require a co-signer but advertise options to release the co-signer. However, the report emphasized that 90 percent of borrowers who applied for a co-signer release were rejected. In addition, the report found that some servicers automatically defaulted borrowers when a co-signer died or filed for bankruptcy. This was the case even though the loans were in good standing. Finally, the report described specific ways for the private student loan industry to improve in these areas. Specifically, the CFPB believes that consumers could benefit from more transparency around co-signer release criteria and improved notifications for co-signer release eligibility.

CFPB Releases Supervisory Highlights Report

On June 23, the CFPB released its most recent [Supervisory Highlights Report](#). The Report generally covers supervision work conducted by the CFPB between January 2015 and April 2015. According to the report, non-public supervisory actions and self-reported violations at supervised entities during the report period resulted in \$11.6 million in remediation to approximately 80,000 consumers. The Report highlighted several findings of concern to the CFPB, including illegal dual-tracking of foreclosures and loss mitigation applications, improper handling of loss mitigation applications, accuracy problems at consumer reporting agencies, and fair lending violations.

CFPB Publishes Consumer Complaint Narratives

On June 25, the CFPB announced that it was going live with the consumer complaint narratives in its public consumer complaint database. The database now includes over 7,700 consumer complaint narratives describing the details of the consumers' issues with financial companies concerning various financial products, including mortgages, bank accounts, student loans, and credit cards. The CFPB also issued a [Request for Information](#) seeking public input on ways to make the data more useful to the public.

On March 19, the CFPB issued its final [Consumer Complaint Narrative Policy](#) that established specific procedures and safeguards permitting consumers to post complaint narratives on the CFPB's consumer complaint database. Since then, whenever a consumer submits a complaint through the CFPB's consumer complaint portal, the consumer has also been able to choose whether to share a narrative account of their complaint.

CFPB Enforcement Action Against Vendors for Credit Card Add-On Products

On July 1, the CFPB announced separate enforcement actions against two credit card add-on product vendors. Credit card companies will often offer their customers various add-on services such as credit monitoring that are actually provided by third-party vendors. In the past, the CFPB has taken action against the credit card companies that market these products; this is the first direct CFPB action against the vendors that actually provide these products and services.

The vendors in these enforcement actions sold identity theft and credit monitoring products to consumers through

marketing and service agreements with banks. The CFPB alleges that the vendors did not provide the full services as promised and also failed to refund fees to these consumers when the consumers did not receive the benefits for which they paid. The CFPB alleges that these practices violated the CFPB's prohibition against unfair and deceptive acts or practices. According to the terms of the proposed consent orders, the vendors must reimburse consumers who have not already received refunds for unfair billing practices, cease the allegedly unfair billing practices, and pay civil money penalties of between \$1 million and \$2 million.

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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