Buckley Sandler LLP

DODD-FRANK DEVELOPMENTS AND TRENDSPOTTING

DIVERSITY INITIATIVE

Section 342 of Dodd-Frank Act

- Establishes an Office of Women and Minority Inclusion ("OMWI") in each of the federal financial regulatory agencies, including CFPB
- Director of OMWI is responsible for all agency matters relating to diversity in management, employment, and business activities
- Section 342(b)(2)(C) directs each agency's OMWI to develop standards for assessing the diversity policies and practices of regulated entities
  - On October 25, 2013, CFPB and prudential regulators published for comment proposed standards for assessing the diversity policies and practices of regulated entities (78 FR 64052)
    - Organizational commitment to diversity and inclusion
    - Workforce profile and employment practices
    - Procurement and business practices – supplier diversity
    - Practices to promote transparency of organizational diversity and inclusion
  - Proposed standards do not expressly define "minority" or "diversity"
  - Comment period closed February 2014

FROM UDAP TO UDAAP

UDAP- Federal Prohibition Under Section 5 of the Federal Trade Commission Act

- Unfair or Deceptive Acts or Practices ("UDAP")
  - Prohibits ''unfair or deceptive acts or practices in or affecting commerce"
  - Prudential regulators retain the ability to take action against supervised institutions under Section 5
  - No private right of action under Section 5

UDAP – State-Level Consumer Protection Laws

- All 50 states and the District of Columbia have UDAP laws
- State Attorneys General typically given enforcement authority
- Many states also permit private suits
- Remedies differ under state law, but may include injunctive relief, restitution and/or civil penalties

UDAAP – Dodd-Frank's Expansion (12 U.S.C.A. §§ 5531 and 5536)

- Prohibits Unfair, Deceptive, or Abusive Acts or Practices ("UDAAP")

- Adopts historical "unfair" and "deceptive" standards, while adding an "abusive" standard:
  - UDAAP standards provide great deal of subjectivity and leave terms such as "abusive" not fully defined. (E.g., What is /are "substantial injury," "not reasonably avoidable," "unreasonable advantage," "not outweighed by countervailing benefits," "material interference," "lack of understanding," "material risks, costs, or conditions," "inability of the consumer to protect the interests of the consumer," and "reasonable reliance"?)
  - Even actions technically permissible under other laws may constitute a UDAAP violation—means stricter standards and potential for increased enforcement activity
- Consumer Financial Protection Bureau ("CFPB"): New enforcer and rulemaker for UDAAP

SUMMARY OF ENFORCEMENT ACTIONS

- To date, the CFPB has negotiated resolutions in at least 26 matters, and has participated in several federal-state mortgage settlements.
- Eight enforcement actions have involved credit card issuers:
  - Some resulted from joint investigations conducted with prudential regulators
  - Many relied heavily on UDAAP and UDAP theories of liability
    - Alleged lack of oversight of vendors
    - Resulted in civil penalties and significant borrower restitution
    - Required changes to compliance management systems
- At the end of 2013, CFPB announced its first joint fair lending action with DOJ, and followed with two more so far in 2014.
  - The first action related to indirect auto financing and resulted in DOJ's largest ever auto finance action; the second involved mortgage lending; and a third regarding credit card repayment programs resulted in the largest ever credit card fair lending action.
- In several instances, CFPB has used its civil litigating authority to file suits and obtain negotiated resolutions. For example, in November 2013, CFPB settled a suits commenced in July 2013 against a mortgage company and two of its executives accused of using compensation to incentivize loan officers to steer consumers into costlier mortgages.
- The CFPB has reinvigorated RESPA enforcement, obtaining at least seven consent orders to date related to alleged improper referrals and fee splitting.
  - Four of those consent orders involved national mortgage insurers
    - Initiated by the HUD-OIG, and in July 2011, HUD's authority over the investigation transferred to the CFPB
    - Alleged improper kickbacks paid by mortgage insurers to mortgage lenders in exchange for business
    - Resulted in civil penalties and termination from business practices
    - Required changes to compliance management systems

July 2012 Consent Order

- CFPB issued its first Consent Order on July 18, 2012, in tandem with Bulletin 2012-06 on the marketing of credit card add-on products
  - Joint CFPB-OCC action

- The Consent Order between the CFPB and the credit card issuer alleged that the issuer's marketing practices for its add-on products violated UDAAP
- The CFPB Consent Order called for $140 million in remediation and imposed an additional $25 million in civil penalties
  - OCC issued a separate Consent Order requiring an additional $10 million in remediation and imposing $35 million in civil penalties
- See: http://files.consumerfinance.gov/f/201209_cfpb_0001_001_Consent_Order_and_Stipulation.pdf
- See: http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf

September 2012 Consent Order

- On September 24, 2012, CFPB and FDIC entered into a joint Consent Order with a credit card issuer to resolve allegations that the issuer's marketing and sales practices for add-on products violated UDAAP and UDAP
- The joint order required $200 million in restitution and imposed $14 million in civil penalties
- See: http://www.consumerfinance.gov/pressreleases/discover-consent-order/

July and September 2012 Consent Order Themes

- The CFPB's first two Consent Orders alleged unfair and deceptive practices in connection with the credit card issuer's marketing, enrollment, and billing practices
- Nature of alleged concerns vary for each Consent Order, but between the two include focus on:
  - Marketing selection process
  - Clarity regarding purpose of call
  - Use of terminology alleged to make it unclear that the consumer was purchasing a product (e.g., "enroll" or "become a member")
  - Delivery and disclosure of material terms and conditions
  - Use of rebuttals during initial enrollment or attempted cancellation
- Significant focus on telesales of products (third-party and in-house)
  - Alleged lack of oversight of vendors with specific focus on monitoring of third-party telesales agents
- In addition to restitution and penalties, banks were required to undertake actions to improve compliance programs

October 2012 Consent Orders

- Enforcement action stemmed from examinations of a major credit card issuer and its three subsidiaries by FDIC and Utah Department of Financial Institutions
  - CFPB, Federal Reserve Board, and OCC later joined the examination
  - Agencies alleged violations of Federal consumer financial laws as well as compliance management deficiencies occurring from 2003 to 2012
  - On October 1, 2012, CFPB entered into three Consent Orders with the card issuer's subsidiaries
    - FDIC was a party to one of the orders

- The orders included allegations that the issuer:
    - Employed deceptive marketing and debt collection practices in violation of UDAAP and UDAP laws
    - Committed age discrimination in violation of ECOA and Regulation B
    - Carried out unlawful fee collection in violation of TILA and Regulation Z
    - Failed to report consumer disputes in violation of FCRA

- The orders called for $85 million in restitution to 250,000 consumers, imposed $27.5 million in civil penalties, and required implementation of compliance risk management and vendor oversight programs
- See: http://files.consumerfinance.gov/f/2012-CFPB-0002-American-Express-Centurion-Consent-Order.pdf
- See: http://files.consumerfinance.gov/f/2012-CFPB-0003-American-Express-Bank-FSB-Consent-Order.pdf
- See: http://files.consumerfinance.gov/f/2012-CFPB-0004-American-Express-Travel-Related-Services-Company-Inc.-Consent-Order.pdf
- On October 1, 2012, OCC entered into a similar Consent Order with the card issuer's subsidiary
- The regulator asserted that the card issuer failed to properly manage vendors who engaged in deceptive debt collection practices in violation of section 5 of the FTC Act
- The OCC ordered a $500,000 civil money penalty against the card issuer and ordered the bank to provide approximately $6 million in restitution to an estimated 17,000 affected customers
- See: http://www.occ.gov/news-issuances/news-releases/2012/nr-occ-2012-137a.pdf
- See: http://www.occ.gov/news-issuances/news-releases/2012/nr-occ-2012-137.html
- Also on October 1, 2012, the Federal Reserve entered into a Consent Order with two of the card issuer's subsidiaries to address alleged deceptive marketing and debt collection practices and associated deficiencies in compliance risk management and internal audit
- The Federal Reserve ordered a $9 million civil money penalty against the card issuer's subsidiaries and required the card issuer to improve consumer compliance oversight and compliance risk-management and internal audit programs
- See: http://www.federalreserve.gov/newsevents/press/enforcement/enf20121001a1.pdf
- See: http://www.federalreserve.gov/newsevents/press/enforcement/20121001a.htm

December 2012 Consent Order

- On December 21, 2012, CFPB entered into a Stipulated Order with a nationwide payday debt relief services company to refund up to $100,000 to consumers who were charged advance fees for services
- CFPB was joined by Attorneys General of New Mexico, North Carolina, North Dakota, and Wisconsin, as well as Hawaii Office of Consumer Protection
- Alleged violations of FTC's Telemarketing Sales Rule, Dodd-Frank, and various state laws
- Company agreed to pay a $5,000 civil penalty, and to implement compliance monitoring and reporting

April 2013 Consent Orders

- On April 4, 2013, CFPB announced that it filed complaints and proposed Consent Orders with the United States District Court for the Southern District of Florida against four national mortgage insurance companies relating to improper kickbacks paid by mortgage insurers to mortgage lenders
- Consent Orders required the four mortgage insurance companies to change their practices and pay penalties to CFPB totaling more than $15 million
- Insurers agreed not to enter into captive mortgage reinsurance arrangements with affiliates of mortgage lenders and not to obtain captive reinsurance on new mortgages for a period of ten years
- Insurers also agreed to compliance monitoring and reporting
- See: http://files.consumerfinance.gov/f/201304_cfpb_Doc5_Genworth-Final-Order.pdf
- See: http://files.consumerfinance.gov/f/201304_cfpb_Doc5_MGIC-Final-Order.pdf
- See: http://files.consumerfinance.gov/f/201304_cfpb_Doc5_Radian-Final-Order.pdf
- See: http://files.consumerfinance.gov/f/201304_cfpb_Doc5_UGI-Final-Order.pdf

May 2013 Consent Orders

- On May 17, 2013, CFPB issued an order against a Texas homebuilder, which resolved allegations that the builder used sham mortgage companies to funnel kickbacks for referring mortgage origination business
- Consent Order called for $118,194 in disgorgement of profits, and prevents the homebuilder from engaging in real estate settlement services for five years
- On May 7 and May 30, 2013, CFPB filed two complaints in federal district courts against debt-relief service providers, each of which allege that the providers charged illegal up-front fees and misled consumers in violation of UDAAP and FTC's Telemarketing Sales Rule
- CFPB stated in a press release that the complaints are part of a "comprehensive effort to prevent consumer harm in the debt relief industry"
- See: http://files.consumerfinance.gov/f/291305_cfpb_consent-order-0001.pdf

June 2013 Consent Orders

- On June 7, 2013, CFPB issued an order against a debt settlement company to resolve allegations that the company charged illegal upfront fees and made misrepresentations to consumers about debt-relief services
- Consent Order required the company to pay nearly $500,000 in equitable relief and damages, and a $15,000 civil money penalty
- See: http://files.consumerfinance.gov/f/201306_cfpb_finalorder_adss_signed-judgment.pdf

September 2013 Consent Orders

- On September 19, 2013, CFPB issued an order against a credit card issuer to resolve allegations of unfair billing practices for certain ancillary products
- The Order required the issuer to provide $309,000,000 in consumer redress and to pay a $20,000,000 civil money penalty
- See: http://files.consumerfinance.gov/f/201309_cfpb_jpmc_consent-order.pdf

October 2013 Consent Orders

- On October 3, 2013, CFPB entered a consent order with a leading debt-settlement payment processor
- CFPB alleged that the company "knew or consciously avoided knowing" that its services charged illegal upfront fees in violation of the Telemarketing Sales Rule to more than 11,000 customers
- The order required the company to pay a $1,376,000 civil money penalty
- On October 9, 2013, CFPB announced its first HMDA enforcement actions—consent orders against two mortgage companies that allegedly reported inaccurate loan information in violation of HMDA
- One company agreed to pay a $425,000 civil money penalty, and the other agreed to pay a $34,000 civil money penlaty
- Both companies were required to (i) correct and resubmit its 2011 HMDA data and (ii) develop and implement an effective HMDA compliance management system to prevent future violations
- See: http://files.consumerfinance.gov/f/201310_cfpb_meracord-proposed-stipulated-final-judgment-and-consent-order.pdf
- See: http://files.consumerfinance.gov/f/201310_cfpb_consent-order_mortgage-master.pdf

November 2013 Consent Orders

- On November 20, 2013, CFPB announced its first enforcement action against a payday lender in which it alleged that the company was involved in robo-signing debt collection litigation documents and overcharging service members on payday loans
- The lender was ordered to pay $8,000,000 in consumer redress, in addition to the $6,000,000 the lender already distributed to consumers, and to pay a $5,000,000 civil money penalty
- On November 15, 2013, CFPB issued an order against alleging mortgage insurer to resolve allegations that the company violated RESPA by paying kickbacks to mortgage lenders in exchange for referrals of private mortgage insurance business
- The insurer was required to pay $100,000 in penalties and is subject to regular and mandatory compliance reporting and monitoring for a period of four years
- On November 7, 2013, CFPB resolved litigation against a mortgage company and its executives alleged the company paid illegal bonuses to loan officers
- The defendant was ordered to pay over $9,000,000 in restitution and a $4,000,000civil money penalty
- See: http://files.consumerfinance.gov/f/201311_cfpb_cashamerica_consent-order.pdf
- See: http://files.consumerfinance.gov/f/201311_cfpb_consent-order_RMIC.pdf
- See: http://files.consumerfinance.gov/f/201311_cfpb_final-order_castle-cooke.pdf

December 2013 Consent Order/Complaints

- On December 3, 2013, CFPB entered a Conset Order with a real estate company to resolve violations of the Interstate Land Sales Full Disclosure Act
- The order alleged material misrepresentations and omissions in marketing materials distributed to purchasers of lots in a development

- On December 10, 2013, CFPB and a credit card issuer resolved allegations that the company, through a network of medical providers, engaged in deceptive enrollment tactics by failing to adequately explain terms and provide proper disclosures, and failed to properly train sales staff
- The company was required to refund approximately $34 million to more than one million credit card holders who were enrolled in deferred-interest financing for healthcare services
- On December 19, 2013, CFPB participated in a federal-state action against, a nonbank mortgage servicer to resolve various allegations ofservicing misconduct The servicer was forced to provide $2,000,000,000iborrower relief and refund $125,000,000to almost $185,000 borrowers who were foreclosed upon
- On December 20, 2013, CFPB and DOJ announced their first joint fair lending enforcement action.
- The action targeted an indirect auto finance company that the authorities claim allowed dealers to discriminate against certain minority borrowers
- The finance company was required to pay an $18,000,000 civil money penalty and establish an $80,000,000 settlement fund to compensate borrowers
- On December 23, 2013, CFPB announced its first fair mortgage lending enforcement action, a joint action with DOJ against a mortgage lender that allegedly implemented policies that allowed for discretion in the pricing of mortgage loans, which resulted in a disparate impact on African American and Hispanic borrowers.
- The Consent Order required to the bank who had acquired the lender to pay $35 million in restitution but no civil money penalty
- On December 24, 2013, CFPB, in coordination with FDIC and OCC, entered a Consent Order with a credit card issuer and certain of its subsidiaries to resolve allegations of unfair billing practices and deceptive marketing of ancillary products
- The companies were ordered to pay an estimated $59,500,000 in consumer redress
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_centurion_011.pdf; http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_FSB_012.pdf; http://files.consumerfinance.gov/f/201312_CFPB_Consent_AETRS_013.pdf
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent_national-city-bank.pdf
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ocwen.pdf
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ge-carecredit.pdf
- See: http://files.consumerfinance.gov/f/201312_cfpb_consent-order_3dresorts-bluegrass.pdf

January/February 2014 Consent Orders

- On January 16, 2013, CFPB entered a Consent Order with a nonbank mortgage lender, to resolve allegations that the lender provided illegal kickbacks to a bank in exchange for loan referrals; CFPB claimed those kickbacks were disguised as inflated lease payments for renting officer space within the bank
- The lender was ordered to pay a $81,076 civil money penalty
- On February 24, 2013, CFPB announced another action against a nonbank mortgage lender to resolve self-reported potential RESPA violations
- Cooperating fully with the investigation, the nonbank lender was required to pay a $83,000 civil money penalty

- See: http://files.consumerfinance.gov/f/201401_cfpb_consent-order_fidelity.pdf
- See: http://files.consumerfinance.gov/f/201402_cfpb_consent-order_first-alliance.pdf

April 2014 Consent Orders

- On April 4, 2014, CFPB its latest credit card add-on product action, which resolved allegations that the company engaged in deceptive marketing of credit protection products
- The issuer was ordered to pay a $20,000,000 civil money penalty
- See: http://www.occ.gov/static/enforcement-actions/ea2014-028.pdf; http://www.occ.gov/static/enforcement-actions/ea2014-027.pdf

May 2014 Consent Orders

- On May 24, 2013, CFPB ordered a realty company to pay a $500,000 civil money penalty to resolve allegations that it provided inadequate disclosures of its relationship with an affiliated title insurance company
- See: http://files.consumerfinance.gov/f/201405_cfpb_consent-order_realty-south-and-title-south.pdf

June 2014 Consent Orders

- On June 12, 2013, CFPB ordered a title company to pay a $30,000 civil money penalty to resolve allegations that the company paid commissions to more than twenty independent salespersons who referred title insurance business to the company
- On June 17, 2013, CFPB, participated in a federal-state action against, a mortgage company to resolve, in relevant part, various allegations of servicing misconduct; with regard to the servicing allegations, the mortgage company agreed to measures similar to those in the National Mortgage Settlement reached in February 2012—the company will (i) provide at least $500 million in borrower relief in the next three years; (ii) pay $50 million to redress its alleged servicing violations; and (iii) implement certain changes in its servicing and foreclosure activities to meet new servicing standards.
- On June 19, 2013, CFPB and DOJ announced separate enforcement actions against a credit card issue alleged to have excluded from credit card debt repayment programs borrowers who indicated that they preferred communications to be in Spanish or who had a mailing address in Puerto Rico
- The CFPB also alleged that the issuer employed deceptive marketing practices to promote five credit card add-on products
- The Consent Order required the issuer to provide $169,000,000 in relief to resolve the fair lending violations, and $56,000,000 to resolve the alleged add-on product UDAP violations
- The issuer was ordered to pay a $3,500,000 civil money penalty related to the add-on product claims, but was not required to pay a penalty related to the fair lending claims given the issuer self-reported those potential violations, self-initiated remediation, and cooperated in the investigation
- See: http://files.consumerfinance.gov/f/201406_cfpb_consent-order_stonebridge-title-services.pdf
- See: http://files.consumerfinance.gov/f/201406_cfpb_consent-judgement_sun-trust.pdf
- See: http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf

OTHER CFPB INITIATIVES

Overdraft & Prepaid Issues

- On June 11, 2013, CFPB released a white paper with initial findings from its study of bank and credit union overdraft practices
- The paper reports that
  - Customers who opt-in to overdraft programs pay higher fees and are more likely to have their accounts involuntarily closed
  - Overdraft practices and costs / closures related to overdraft programs vary widely by institution, and
  - Some policies and practices are not disclosed or are disclosed in a technical manner

The report is based on a review of institution-level data, and CFPB plans to review account-level data in order to better understand how differences in bank practices affect customers

- CFPB has not publicly announced any overdraft-related enforcement activity, and has stated that it is still studying the market and has no immediate plans for an overdraft rule
- On March 18, 2014, CFPB announced that it is testing potential model prepaid card disclosures
- The model forms would provide a standard format for disclosing certain fees, including, among others, monthly, reload, per purchase, ATM withdrawal, and inactivity fees
- In May 2012 the CFPB solicited comments to evaluate prepaid cards, and the CFPB anticipates proposing a prepaid card rule in late summer 2014

Expanded Complaint Database

- CFPB public complaint database now contains complaints about credit cards, mortgages, student loans, bank accounts and services, other consumer loans, debt collection, credit reporting, and money transfers
  - In 2013, mortgage complaints outpaced all others (37%), followed by complaints regarding debt collection (19%), bank accounts (12%), and credit cards (10%). Complaints related to consumer loans, student loans, payday loans, money transfers, and “other” each comprised 3% or less of the total
- CFPB uses complaints its receives to prioritize and prepare for investigations and examinations
  - CFPB handled approximately 163,700 complaints in 2013
- CFPB does not verify the facts alleged in a complaint before making it public

Payday Lending

- On April 24, 2013, CFPB published a white paper on payday loan and deposit advance products that claims to show those products lead to a “cycle of high-cost borrowing”
- CFPB concluded that such products are only appropriate in limited circumstances and faults lenders for not determining whether the products are suitable for each customer
- CFPB white paper reflected the results of what CFPB characterizes as a year-long, in-depth review of short-term, small-dollar loans, which began with a January 2012 field hearing
- The white paper notes that a related CFPB study of online payday loans is ongoing

- On March 25, 2014, CFPB released a report and held a field hearing on payday loans. The Bureau sought to expand the record on which it will formulate new rules and address its concerns about the payday lending market. The report offers the findings on: (i) state rollover restrictions; (ii) sequence duration and volume; (iii) loan size and amortization; and (iv) loan usage. Based on the report and comments from Director Cordray, CFPB payday lending rules could include, among other things, ability to repay requirements, a two-week or more cooling off period, and limits on the number of rollover or renewal loans
- CFPB has not offered a timeline for a payday lending rule.

Amicus Program

- CFPB is actively filing amicus briefs in the Supreme Court and the Federal Courts of Appeal
  - Briefs to date have discussed TILA, FDCPA, and RESPA
  - All have supported the consumer position
- CFPB soliciting suggestions for briefs in cases that have "one or more important legal questions about the interpretation or application of a federal consumer financial protection statute or regulation that we interpret and enforce"
- Open issues:
  - What degree of deference will the courts give CFPB's briefs?
    - At least two circuit courts rejected the CFPB's position with regard to the applicable rescission period under TILA, an issue now pending before the Supreme Court

Information Sharing

- Coordinated examination and enforcement activity, and information sharing with prudential regulators and state regulators
- CFPB Information-Sharing Agreement with City of Chicago
  - Enhanced reporting of locally gathered data to CFPB, which will inform CFPB initiatives on a larger scale
- CFPB MOU with DOJ
  - Concentration on fair lending enforcement, with goal of streamlining enforcement efforts
- CFPB-State AG Cooperation
  - Joint Statement of Principles signed with NAAG addressing coordination of investigations, enforcement actions and information sharing
  - Few State AGs have signed an MOU establishing framework for information sharing

CFPB RULEMAKING: FINAL RULES ISSUED BY THE CFPB

See http://www.consumerfinance.gov/regulations/

2014

June 18

- Rules of Practice for Issuance of Temporary Cease-and-Desist Orders.

February 10

- Equal Access to Justice Act Implementation Rule

2013

December 12

- Appraisals for High-Priced Mortgage Loans – Supplemental Final Rule

December 11

- Truth in Lending (Regulation Z) – Threshold Adjustments (CARD, HOEPA)

December 3

- Defining Larger Participants of the Student Loan Servicing Market

November 20

- Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)
- Truth in Lending (Regulation Z) – Threshold Adjustments
- Consumer Leasing (Regulation M)

November 8

- Homeownership Counseling Organizations Lists Interpretive Rule

October 15

- Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

September 26

- Rules of Practice for Issuance of Temporary Cease-and-Desist Orders

September 13

- Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)

August 7

- Electronic Fund Transfers (Regulation E); Correction

August 5

- Claims under the Federal Tort Claims Act for Loss of or Damage to Property or for Personal Injury or Death

July 11

- Bureau Procedures for Collection of Debts Owed to the United States

July 10

- Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

June 26

- Procedural Rule to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination

May 29

- Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)
- Loan Originator Compensation Requirements under the Truth In Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date

May 16

- Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z)

April 30

- Electronic Fund Transfers (Regulation E)

April 29

- Truth in Lending (Regulation Z)

April 26

- Consumer Financial Civil Penalty Fund Rule

March 22

- Truth in Lending (Regulation Z)

March 21

- Amendments to Disclosures at Automated Teller Machines (Regulation E)

February 15

- ☐ Disclosure of Records and Information

January 20

- ☐ Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z)

January 18

- ☐ Appraisals for Higher-Priced Mortgage Loans (issued jointly with other agencies)
- ☐ Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B)

January 17

- ☐ Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules

January 10

- ☐ Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)
- ☐ Escrow Requirements under the Truth in Lending Act (Regulation Z)
- ☐ High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)

2012

- ☐ Procedure Relating to Rulemaking
- ☐ Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold
- ☐ Regulation M Exemption Threshold Adjustment
- ☐ Regulation Z Exemption Threshold Adjustment
- ☐ Regulation Z HOEPA Threshold Adjustment
- ☐ Defining Larger Participants of the Consumer Reporting Market
- ☐ Defining Larger Participants of the Consumer Debt Collection Market
- ☐ Defining Larger Participants of the Consumer Debt Collection Market; Correction
- ☐ Confidential Treatment of Privileged Information
- ☐ Rules Relating to Investigations
- ☐ Rules of Practice for Adjudication Proceedings
- ☐ State Official Notification Rule
- ☐ Equal Access to Justice Act Implementation Rule
- ☐ Disclosure of Records and Information
- ☐ Final Remittance Rule (Amendment to Regulation E)
- ☐ Home Mortgage Disclosure (Regulation C) asset threshold for 2012

- Fair Credit Reporting Act Disclosures ceiling for allowable charges
- Correcting amendments to Regulation V (fair credit reporting)
- Delayed Implementation of Certain New Mortgage Disclosures required under Title XIV of the Dodd-Frank Act
- Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection
- Enforcement of Nondiscrimination on the Basis of Disability in Programs and Activities Conducted by the Bureau of Consumer Financial Protection

CFPB RULEMAKING PRIORITIES

Spring 2014 Statement of Regulatory Priorities and Semiannual Regulatory Agenda

- The CFPB's latest rulemaking agenda lists for the first time a larger participant rule that would define the size of nonbank auto finance companies subject to CFPB's supervisory authority. The CFPB anticipates proposing a rule no sooner than August 2014. Stakeholders will have an opportunity to comment, and a final rule likely would not be issued until sometime in 2015.
- The CFPB anticipates finalizing its rule for larger participants in the international money transfer market in September 2014.
- As noted above, the agenda pushes back the timeline for the anticipated prepaid card proposed rule from May 2014 to June 2014. The CFPB has been testing potential prepaid card disclosures.
- The agenda does not provide timelines for proposed rules related to payday lending, debt collection, or overdraft products, but the CFPB states that additional prerule activities for each of those topics will continue through September 2014, December 2014, and February 2015, respectively. While "prerule activities" is not a defined term, it could include conducting a small business review panel for some or all of those topics. Such panels focus on the impact of anticipated regulations on small entities, but the CFPB typically makes the small business panel materials public, which provides an advance look at the potential direction for a proposed rule.
- The agenda does not include a rulemaking implementing the small business fair lending data reporting requirements in the Dodd-Frank Act, though the CFPB previously has indicated it could consider those issues in connection with its HMDA rulemaking. Prerule activities related to the HMDA rule are ongoing.