

The Consumer Financial Protection Bureau (CFPB) at Year Three: A Look Back, and a Look Forward

Webinar

July 21, 2014, 2:00 – 3:15 pm ET

Venable LLP, Washington, DC

Jonathan L. Pompan

Suzanne F. Garwood

Allyson B. Baker

Alexandra Megaris



Welcome to Today's Webinar

This presentation is being recorded today and will be available at www.venable.com/cfpb later this week.

Please follow the onscreen prompts for submitting questions. Contacting us does not create an attorney-client relationship. While Venable would like to hear from you, we cannot represent you, or receive any confidential information from you, until we know that any proposed representation would be appropriate and acceptable, and would not create any conflict of interest. Accordingly, do not send Venable (or any of its attorneys) any confidential information.

This presentation is for general informational purposes only and does not represent and is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.

This presentation does not represent any undertaking to keep recipients advised as to all or any relevant legal developments.

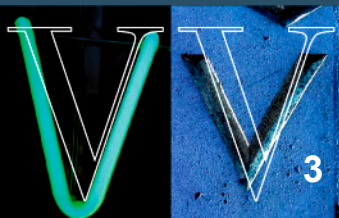
ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.



A note about CLE (live attendees only)

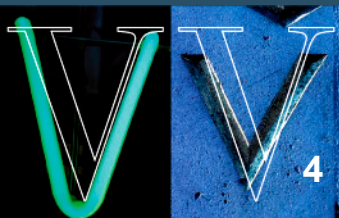
This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1.0 hours, of which 1.0 hours applies to the general credit requirement, and by the State Bar of New York in the amount of 1.5 credit hours, of which 1.5 credit hours can be applied toward the areas of professional practice requirement. Venable certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California and State Bar of New York, which govern minimum continuing legal education. Venable is a State Bar of California and State Bar of New York approved MCLE provider.

A code will be announced at the end of the webinar for those attending, and a “certificate” will be sent via email to participants.



Agenda

- **Welcome**
- **How it all began...**
- **Regulatory Updates**
- **Supervision and Examination**
 - Bank and Nonbank
 - Lessons learned, and which markets are next?
- **Enforcement Actions**
 - Who's at risk, and what to expect
- **Observations and Q & A**



How It All Began...

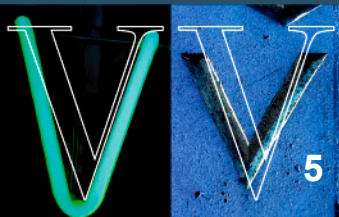
2007 – Elizabeth Warren proposes a “new” Consumer Protection Agency

2008 – Financial Crisis

July 2010 – Dodd-Frank Act enacted

Sept. 2010 – Warren appointed to oversee initial development (@ Treasury)

July 21, 2011 – CFPB opens for business



CFPB Formation and Implementation

- Title X of the Dodd-Frank Act, the Consumer Financial Protection Act of 2010, established the CFPB as an independent entity within, but autonomous from, the Federal Reserve System.
- The Dodd-Frank Act provided the CFPB with the authority to implement and, as applicable, enforce federal consumer financial laws consistently to ensure that all consumers have access to markets for financial products and services, and that these markets are fair, transparent, and competitive.
- As mandated by the Dodd-Frank Act, a presidentially appointed, Senate-confirmed director is to lead the agency.



July 21, 2011 – A New Sheriff

Transferred Authority

- Rules, orders, and guidance related to the federal consumer financial laws that were within the authority of the Fed, OCC, OTS, FDIC, NCUA, FTC, and HUD;
- Conduct examinations (for federal consumer financial law purposes) and enforce orders of banks, savings associations, and credit unions with total assets > \$10B, and any affiliates;
- Replace the Fed, OCC, OTS, FDIC, NCUA, and HUD in certain lawsuits or proceedings

New Authority

- Prohibit UDAAPs with consumer financial products and services;
- Prescribe rules and model disclosure forms to ensure that the features of a consumer financial product or service are fairly, accurately, and effectively disclosed both initially and over the term of the product or service;
- Supervise nondepository institutions, including examinations.



CFPB and the Recess Appointment Controversy

August 1, 2011 – Elizabeth Warren leaves CFPB to run for Senate; replaced by Acting Director Raj Date (Special Advisor to the Secretary of the Treasury).

January 4, 2012 – President Obama appoints Cordray as Director by recess appointment.



June 2013 – Supreme Court agrees to hear *Noel Canning v. NLRB*, which raised a Constitutional challenge to President Obama's use of his recess appointment power to fill administrative positions in the face of Congressional inaction.

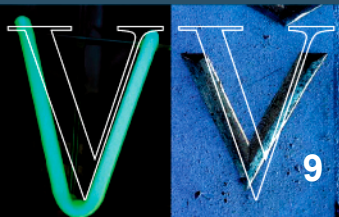
July 16, 2013 – Cordray confirmed by Senate (18 months later).

June 26, 2014 – Supreme Court unanimously rules in *Noel Canning v. NLRB* that the President of the United States can only use his authority under the Recess Appointment Clause of the Constitution when the Senate is in recess and not able to transact Senate business.



CFPB's Six Core Divisions

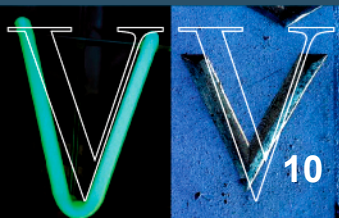
1. Consumer Education and Engagement
2. Supervision, Enforcement, and Fair Lending
3. Research, Markets, and Regulations
4. Legal Division
5. External Affairs
6. Operations



CFPB Staffing by the Numbers

[Source: CFPB Strategic Plan, Budget, and Performance Plan Report (March 2014)]


	FY 2013	FY 2014	FY 2015
Office of Director	27	27	28
Operations	221	304	325
Consumer Response	134	191	223
Consumer Education and Engagement	55	73	77
Research, Markets, and Regulations	107	147	156
Supervision, Enforcement, and Fair Lending	527	742	834
Legal	51	70	76
External Affairs	29	44	47
Other Programs	11	26	30
Total (58 in FY 2011)	1,162	1,624	1,796



Regulatory Updates

The screenshot shows a web browser window displaying the Federal Register website. The address bar shows the URL: https://www.federalregister.gov/agencies/consumer-financial-protection-bureau#recent_articles. The page header includes navigation links for Sections, Browse, Search, Policy, Learn, Blog, and My FR. The main content area features the Federal Register logo and the text "FEDERAL REGISTER The Daily Journal of the United States Government". Below this, the "Consumer Financial Protection Bureau" (CFPB) is highlighted. A search bar is present with the text "Search Agency" and a search term input field. To the right, there is a "Site Feedback" button and a "SUBSCRIBE" button. The main text on the page describes the CFPB's mission and functions.

FEDERAL REGISTER
The Daily Journal of the United States Government

Consumer Financial Protection Bureau 

Search Agency



Agency URL: <http://www.consumerfinance.gov/>


The Bureau of Consumer Financial Protection (CFPB) is an independent bureau within the Federal Reserve System that empowers consumers with the information they need to make financial decisions in the best interests of them and their families. The CFPB was created under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

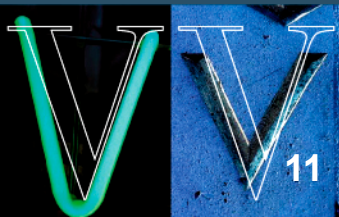
The purpose of the CFPB is to promote fairness and transparency for mortgages, credit cards, and other consumer financial products and services. The CFPB will set and enforce clear, consistent rules that allow banks and other consumer financial services providers to compete on a level playing field and that let consumers see clearly the costs and features of products and services.

The functions of the CFPB to assist people in borrowing money or using other financial services include: implementing and enforcing Federal consumer financial laws; reviewing business practices to ensure that financial services providers are following the law; monitoring the marketplace and taking appropriate action to make sure markets work as

On This Page
Most Recent Significant Regulations
Recent Articles
Comment Periods Closing

  SUBSCRIBE

 LEGAL DISCLAIMER



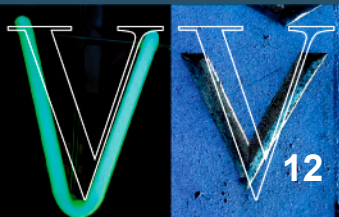
Mortgage Lending

■ Looking Back

- Title XIV “Finalized”
 - Ability to Repay/QM
 - Mortgage Servicing
 - Loan Originator Compensation
 - Appraisals
 - High Cost

■ Looking Forward

- Title XIV Amendments
- TILA/RESPA Integration (August 2015)



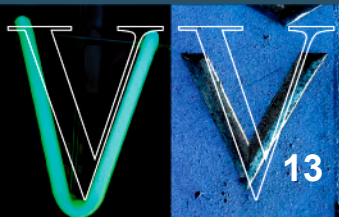
Small Dollar Lending

■ Looking Back

- White Papers
- Hearings
- “Regulation by Enforcement”

■ Looking Forward

- Small Dollar Lending Rules
 - Not “payday” specific
 - No usury ceiling
 - Loan amount as percentage of income
 - Limitations on renewals, refinances
 - Mandatory pay-down of principal
 - Timing?



Auto Lending

- Looking Back
 - Fair Lending
- Looking Forward
 - Larger Participant Rulemaking
 - How to define the market?
 - Timing?

cfpb Consumer Financial Protection Bureau
1100 G Street NW, Washington, DC 20002

CFPB Bulletin 2013-02
Date: March 21, 2013
Subject: Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act

This bulletin provides guidance about compliance with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, for indirect auto lenders that permit dealers to increase consumer interest rates and that compensate dealers with a share of the increased interest revenues. This guidance applies to all indirect auto lenders within the jurisdiction of the Consumer Financial Protection Bureau (CFPB), including both depository institutions and nonbank institutions.

Background
While consumers may seek financing for automobile purchases directly from a financial institution, many seek financing from the auto dealer. The auto dealer may provide that financing directly or it may facilitate indirect financing by a third party such as a depository institution, a nonbank affiliate of a depository institution, an independent nonbank, or a "captive" nonbank (an auto lender whose primary business is to finance the purchase of a specific manufacturer's automobiles).

In indirect auto financing, the dealer usually collects basic information regarding the applicant and uses an automated system to forward that information to several prospective indirect auto lenders. After evaluating the applicant, indirect auto lenders may choose not to become involved in the transaction or they may choose to provide the dealer with a risk-based "buy rate" that establishes a minimum interest rate at which the lender is willing to purchase the retail installment sales contract executed by the consumer for the purchase of the automobile. In some circumstances, the indirect auto lender may exercise discretion in adjusting the buy rate, making underwriting exceptions, or modifying other terms and conditions of the financing as a result of additional negotiation between the indirect auto lender and the dealer.

The indirect auto lender may also have a policy that allows the dealer to mark up the interest above the indirect auto lender's buy rate. In the event that the dealer charges the consumer an interest rate that is higher than the lender's buy rate, the lender may pay the dealer what is typically referred to as "excess" or "participation", compensation based upon the difference in interest revenues between the buy rate and the actual note rate charged to the consumer in the retail installment contract executed with the dealer. Dealer reserve is one method lenders use to compensate dealers for the value they add by originating loans and finding financing sources. The exact computation of compensation based on dealer markup varies across lenders and may vary between programs at the same lender. After the deal is consummated with the consumer, the

cfpb Consumer Financial Protection Bureau

CONSUMER FINANCIAL PROTECTION BUREAU TO HOLD AUTO LENDERS ACCOUNTABLE FOR ILLEGAL, DISCRIMINATORY MARKUP

The Consumer Financial Protection Bureau (CFPB) released a bulletin explaining that certain lenders that offer auto loans through dealerships are responsible for unlawful, discriminatory pricing. Potentially discriminatory markups in auto lending may result in tens of millions of dollars in consumer harm each year, and the bulletin provides clear guidance to indirect auto lenders within the CFPB's jurisdiction on how to address fair lending risk.

Auto Loans by the Numbers

- \$783 billion: approximate amount of outstanding auto loan debt in 2012
- 15.7 million: estimated total number of consumer auto loan originations in 2012
- 3rd: auto loans are the third largest source of outstanding household debt after mortgages and student loans

Overview
When consumers purchase an automobile, they may receive financing from an auto dealership rather than directly from a financial institution, a practice known as "indirect auto lending." In this process, the dealer often facilitates indirect financing through a third party lender, such as a bank, credit union, or other financial institution and the lender provides the dealer with an interest rate that the lender will accept for a given consumer.

Often, indirect auto lenders allow the dealer to charge the consumer an interest rate that is costlier for the consumer than the rate the lender gave the dealer. This increase in rate is typically called "dealer markup." The lender shares part of the revenue from that increased interest rate with the dealer.

Impact
Interest rate markup generates compensation for dealers while giving them the discretion to charge consumers different rates regardless of consumer creditworthiness. Pricing differentials based on creditworthiness and collateral are already factored into the rate offered to the dealer by the lender. Lender policies that provide dealers with this type of discretion increase the risk of pricing disparities among consumers based on race, national origin, and potentially other prohibited bases. Research indicates that markup practices may lead to African Americans and Hispanics being charged higher markups than other, similarly situated, white consumers.

Lender's Bulletin
The CFPB has authority to examine large banks, and credit unions – and their affiliates – that have assets over \$10 billion. The CFPB supervises more than 150 of the nation's largest financial institutions. The CFPB also has enforcement jurisdiction over many types of lenders. The Equal Credit Opportunity Act (ECOA) makes it illegal for a creditor to discriminate in any aspect of a credit transaction on bases including race, color, religion, national origin, sex, marital status, and age. Today's bulletin provides guidance for indirect auto lenders within the CFPB's jurisdiction on ways to limit fair lending risk under the ECOA.

GETTING AN AUTO LOAN?

Shop for a car loan before shopping for a car

DO YOUR HOMEWORK

Check with credit unions, banks, or other lenders to get pre-approved for a loan.

SHOP AROUND

Go shop for a car. The dealer may offer loans as well.

COMPARE OFFERS

Compare all the terms of the competing loan offers.

CAR SALES ARE ON THE RISE

Year	Car Sales (Millions)
2007	10.6
2010	11.7
2011	13.24
2013	14.8

Car sales in millions

Auto loans vs. credit card and student loans

- 🚗 \$783
- 💳 \$679
- 🎓 \$1,100

(in billions of dollars)

The average amount of auto loans has risen

\$26,691

AMERICAN AUTO LOAN DEBT IS OVER **\$783 BILLION**

Source: Federal Reserve Bank of NY | Source: Venable LLP

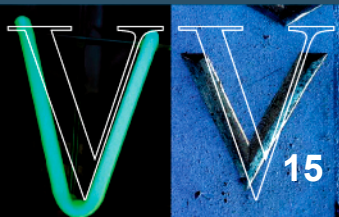
Learn more at consumerfinance.gov



Credit Card

- **Looking Back**
 - Add-on Products – regulation by enforcement

- **Looking Forward**
 - Unlikely to be the subject of rulemaking
 - But “Add-on Products” continue to be concern
 - Vendor relationships
 - Disclosures



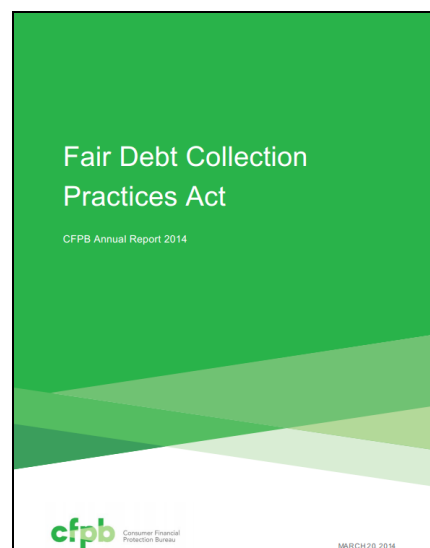
Debt Collection

■ Looking Back

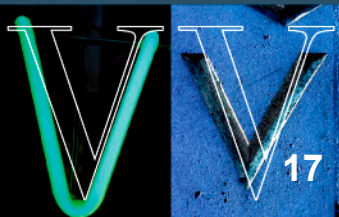
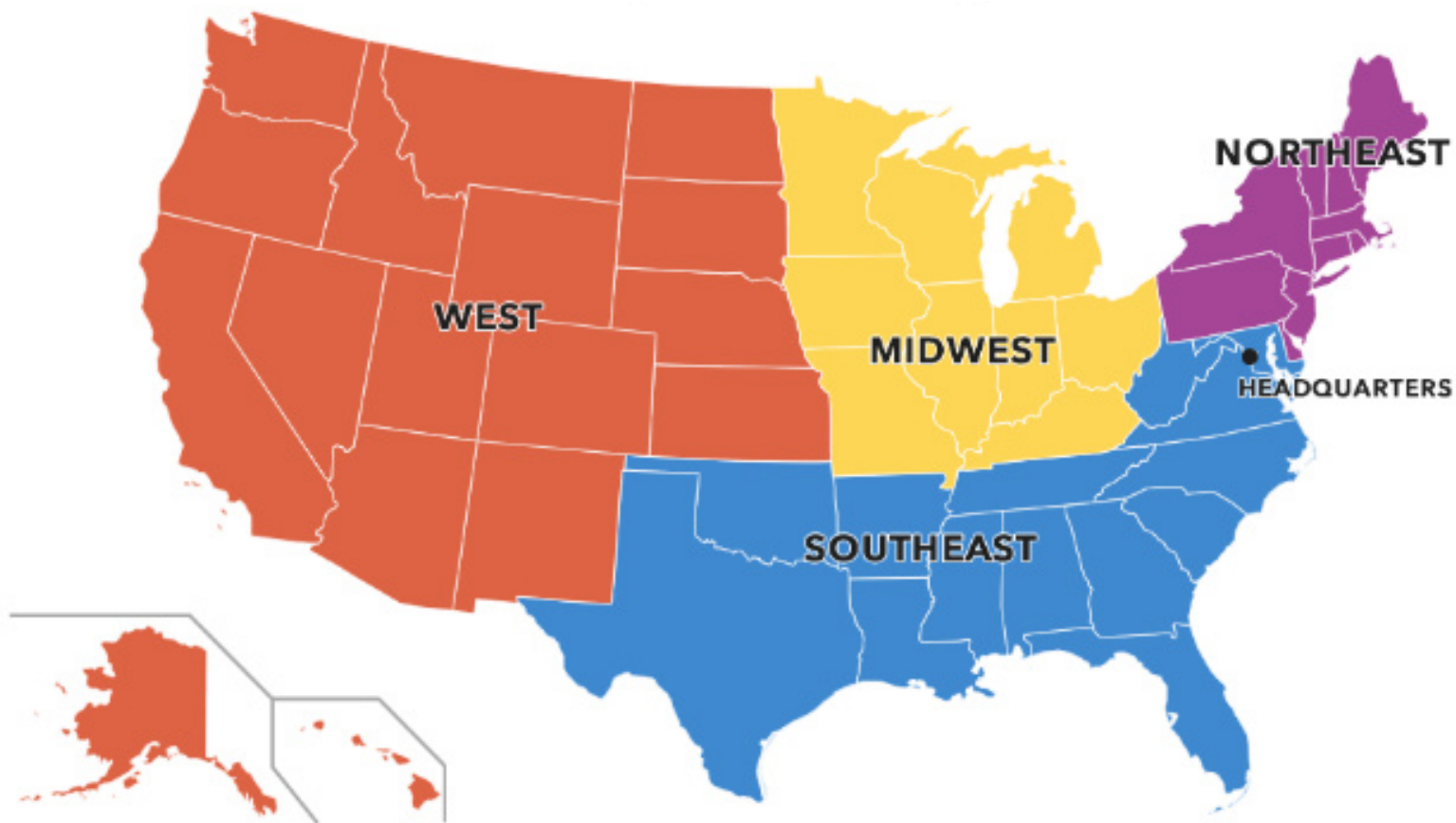
- November 2013 – Advance Notice of Proposed Rulemaking seeking comment, data, and information from the public about debt collection.
- CFPB indicated that the rules could encompass parties that collect their own debts – entities that are, under most circumstances, not subject to the Fair Debt Collection Practices Act (FDCPA). The comment period closed in February 2014.

■ Looking Forward

- The CFPB indicates that it expects to advance to the next stage in December 2014.
- Supervision and Enforcement Activity

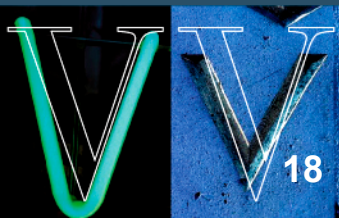


CFPB Supervision by Regions



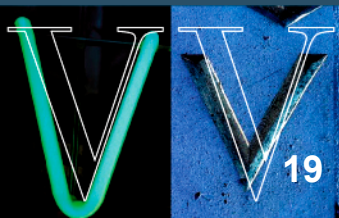
CFPB Supervision and Examination: A Look Back...

- **July 2011** – Supervision launched for banks, thrifts, credit unions > \$10B.
- **July 2012** – Supervision launched nonbanks
 - Mortgage companies (originators, brokers, and servicers; and loan modification or foreclosure relief services)
 - Payday lenders
 - Private education lenders
- **Sept. 2012** – Consumer reporting market
- **Jan. 2013** – Debt collection market
- **Aug. 2013** – Nonbanks that pose risks to consumers (regardless of size or market)
- **March 2014** – Student loan servicing
- **Possibly Sept. 2014** – International money transfer, remittance market

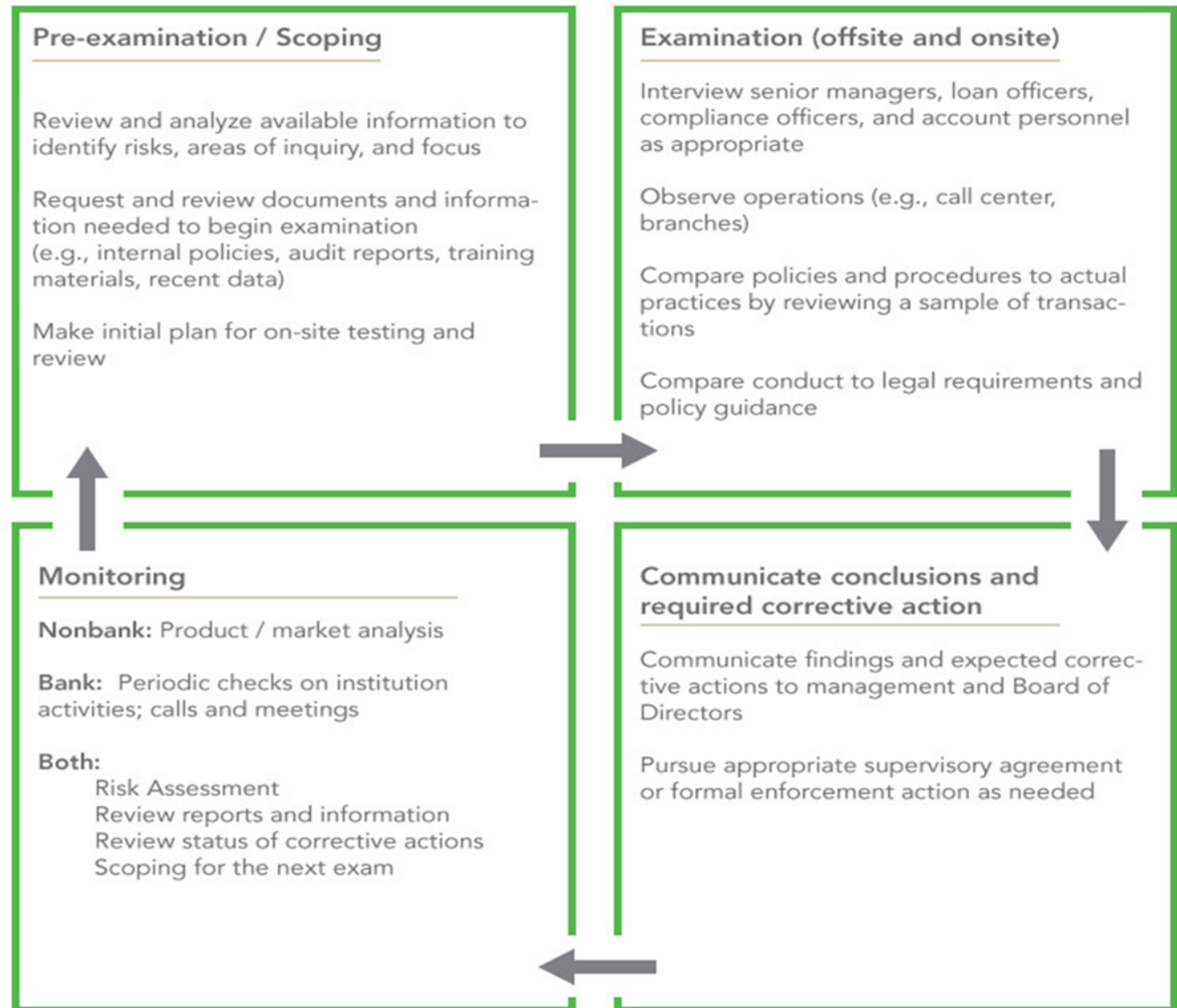


CFPB Supervisory Highlights

- Periodically releases *Supervisory Highlights Reports* (4 to date)
- General Observations
 - Focus on Compliance Management Systems (CMS)
 - Third-Party Service Providers – high compliance expectations (potential for legal liability)
 - Fair Lending
- Remedial Actions
 - Public Enforcement Actions
 - Nonpublic Supervisory Actions
- Market Focus
 - Depository Institutions
 - Mortgage – servicing transfers, payment processing, loss mit.
 - Consumer Reporting – dispute handling
 - Debt Collection – furnisher obligations (dispute investigations), recurring electronic transfer of funds, FDCPA limitations on phone calls and false and misleading statements
 - Short-term, small dollar lending – debt collection practices, ACH practices
 - Fair Lending – exception documentation, adverse action notices

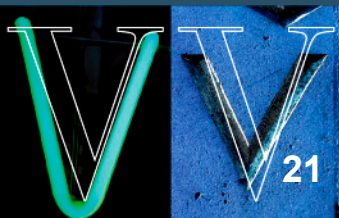


The CFPB Examination Process



CFPB Supervisory Guidance Highlights and Trends

- Routine updates and New [Examination Procedures](#) and [Guidance](#)
- **Feb. 2013** – Mortgage Servicing Transfers (RESPA, FCRA, FDCPA, and UDAAPs)
- **April 2012** – Third Party Service Providers
- **July 2012** – Credit Card Add-on Products
- **March 2013** – Auto Lending
- **July 2013** – FDCPA and UDAAP representations about impact of payment of debt on credit score and reports
- **July 2013** – UDAAPs in collection of consumer debts
- **Sept. 2013** – FCRA and Furnisher Obligations
- **Sept. 2013** – Payroll Card Bulletin (EFTA and Reg. E).
- **Feb. 2014** – FCRA and Reg. V provisions that apply to debt buyers, debt collectors, and other furnishers
- **Dec. 2013** – Social Media: Consumer Compliance Risk Management Guidance (w/FFIEC)

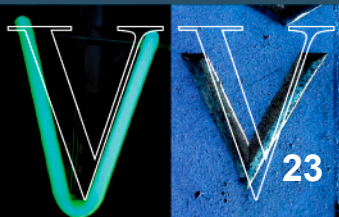


Enforcement Actions

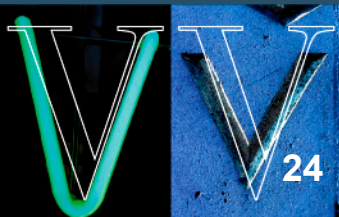
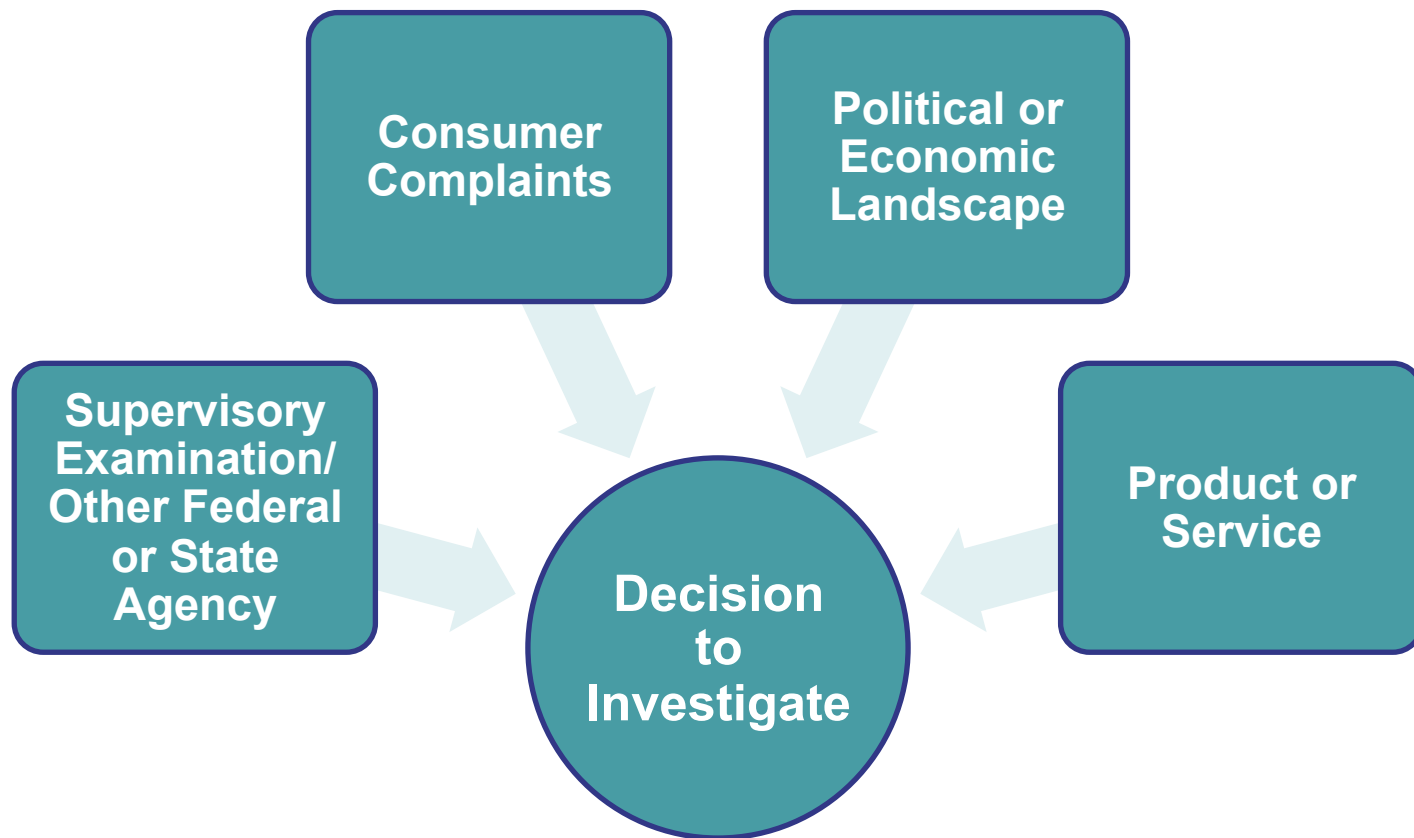


CFPB Enforcement Authority

- CFPB is authorized to conduct investigations to determine whether any person is, or has, engage in conduct that violates federal consumer financial law.
- Investigations may be conducted jointly with other regulators, and may include:
 - Subpoenas or civil investigative demands for testimony
 - Responses to written questions
 - Documents
 - Other materials

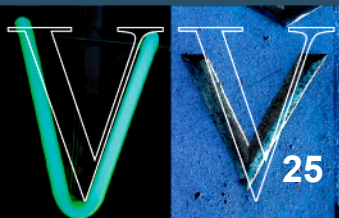


Launch of an Investigation



Consumer Complaint Database

The screenshot shows a web browser window displaying the Consumer Financial Protection Bureau's (CFPB) Consumer Complaint Database. The browser's address bar shows the URL www.consumerfinance.gov/complaintdatabase/. The page features the CFPB logo and a search bar with a magnifying glass icon. A navigation menu includes links for HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and SUBMIT A COMPLAINT. The main content area has a breadcrumb trail: HOME > CONSUMER COMPLAINT DATABASE. The title is "Consumer Complaint Database" with social media icons for Facebook, Twitter, and Email. Below the title is a sub-header: "These are complaints we've received about financial products and services." A link for "Learn about the complaint process." is provided. A paragraph explains that the bureau does not verify all facts but takes steps to confirm a commercial relationship between the consumer and company. It notes that complaints are listed after the company responds or after 15 calendar days, whichever comes first, and that data is refreshed nightly. A section titled "DATA BY PRODUCT" lists various categories: All, Bank accounts or services, Credit cards, Credit reporting, Debt collection, Money transfers, Mortgages, Student loans, and Other consumer loans. A section titled "Download, sort, and visualize" states that the bureau uses a tool called Socrata and provides a RESTful API. It includes links for "Visualization tutorials from data.gov" and "Technical documentation".



CFPB Enforcement: A Look Back

- Overview
 - Transferred investigations by Prudential regulators and HUD
 - New investigations that “span the full breadth of the Bureau’s enforcement jurisdiction.”

- Over 35 public enforcement actions

- Civil Money Penalties
 - 1Q – 2Q FY 2014: \$37, 137, 000 (13 defendants)
 - FY 2013: \$49M (2 defendants)
 - FY 2012: \$32M (11 defendants)



CFPB Enforcement Highlights

- Mortgage Loan Servicer
- Mortgage Lenders
- Mortgage Reinsurance
- Mortgage Assistance Relief Services
- Credit Card Billing and Credit Card Add-on Products
- Auto Lending
- Student Lending
- UDAAPs in Debt Collection (by creditors and servicers)
- Debt Relief Services / Payment Processing
- Robosigning of Court Documents in Debt Collection

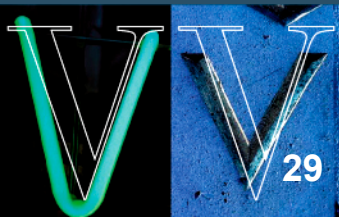
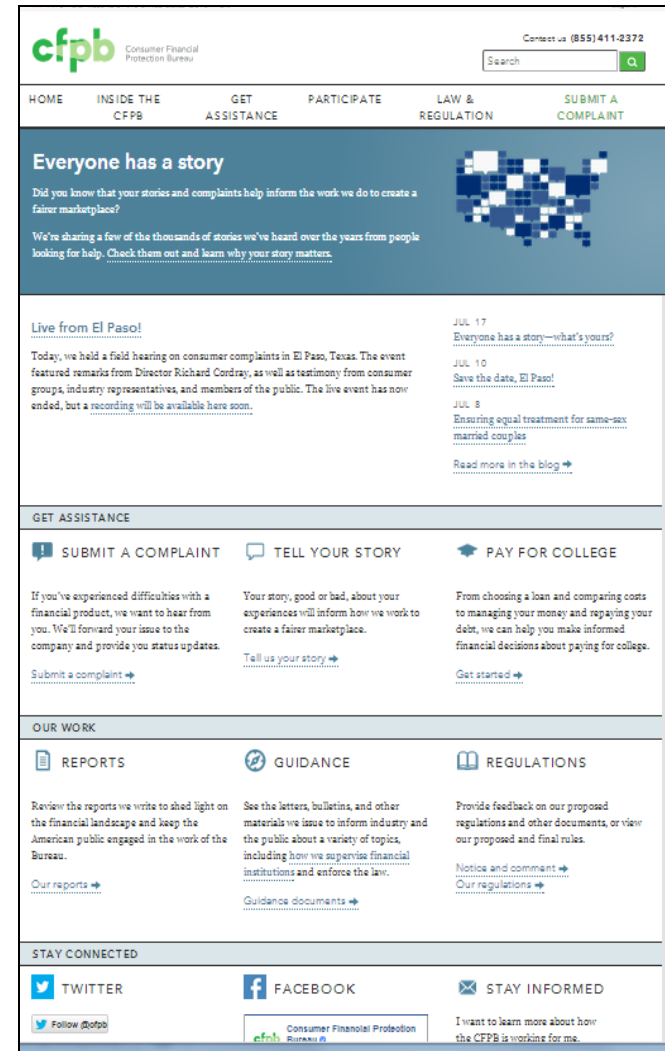
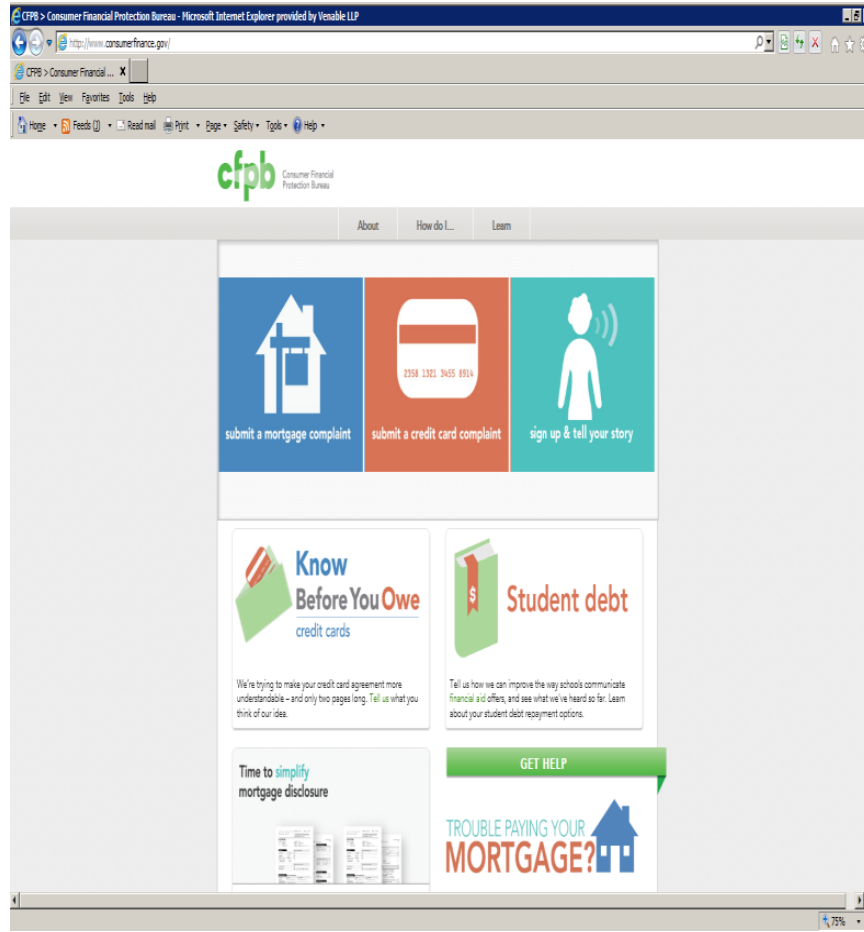


Enforcement: A Look Forward...

- More litigated cases as the CFPB continues to push the envelope on policy and process matters, including scope of authority pre-July 2011.
- More joint enforcement actions with other banking regulators.
- More joint enforcement actions with the Department of Justice:
 - Criminal Referrals, Joint Civil Actions, Fair Lending
- More enforcement actions that grow out of supervisory activities.
- More enforcement actions that rely on “Related Person” and “Substantial Assistance,” as well as state law compliance and other aggressive theories of liability.
- More enforcement actions with larger dollar numbers.
 - Restitution and civil money penalties



The CFPB Continues to Evolve



Observations and Q & A



Jonathan L. Pompan
jlpompan@Venable.com

Suzanne F. Garwood
sfgarwood@Venable.com

Allyson B. Baker
abbaker@Venable.com

Alexandra Megaris
amegaris@Venable.com

For a copy of this presentation and articles on related topics visit:
[www.venable.com/cfpb/publications.](http://www.venable.com/cfpb/publications)

www.Venable.com

