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## CFPB: JANUARY ROUNDUP

January was a remarkable month for the CFPB. On January 4, President Obama installed Richard Cordray as the CFPB's first Director. And, just a few short days later, the CFPB announced its supervision program over certain nonbank entities. Additionally, the Bureau continued to conduct its "Know Before You Owe" efforts for mortgage and student loans.

A recap of the Bureau's January efforts follows.

### Director Cordray

#### President's Recess Appointment

Taking the financial industry by surprise, on January 4, before an enthusiastic crowd in Shaker Heights, Ohio, President Obama announced the appointment of Richard Cordray as Director of the CFPB:

Now, I nominated Richard for this job last summer, so you may be wondering why am I appointing him today. It would be a good question. For almost half a year, Republicans in the Senate have blocked Richard's confirmation. . . . Every day that we waited was another day when millions of Americans were left unprotected. Because without a director in place, the consumer watchdog agency that we've set up doesn't have all the tools it needs to protect consumers against dishonest mortgage brokers or payday lenders and debt collectors who are taking advantage of consumers. And that's inexcusable. It's wrong. And I refuse to take no for an answer.<sup>1</sup>

Because the President made this appointment without the consent of the Senate (even though Congress was in a *pro forma* session) reactions have been varied. Many have questioned both the President's authority to appoint Cordray as a recess appointee as well as Cordray's ability to wield his full power as Director. In light of these questions, Venable has published an analysis of the appointment, which is available here: <http://www.venable.com/president-uses-recess-appointment-authority-to-install-cordray-as-cfpb-director-01-09-2012/>

In response to these concerns and questions raised regarding the appointment, on January 6, the Administration released a memorandum opinion from the Department of Justice analyzing the lawfulness of recess appointments during a *pro forma* session. The memorandum concluded:

In our judgment, the text of the Constitution and precedent and practice thereunder support the conclusion that the convening of



periodic pro forma sessions in which no business is to be conducted does not have the legal effect of interrupting an intrasession recess otherwise long enough to qualify as a 'Recess of the Senate' under the Recess Appointments Clause. In this context, the President therefor has discretion to conclude that the Senate is unavailable to perform its advise-and-consent function and to exercise his power to make recess appointments.

Please let us know if you would like a copy of this Department of Justice memorandum.

### [Director Cordray's Testimony/Speeches](#)

Even though Cordray has been installed as the Director for only one month, he has testified before Congress twice and has given a number of other speeches.

- **Brookings Institution.** Just one day following his installation as Director, Cordray addressed the Brookings Institution. His comments addressed three questions: (i) first, why does the Bureau matter; (ii) second, what has the Bureau been doing for six months; and (iii) what does it mean for the Bureau to have a Director.
- **FDIC Board.** Once Cordray was installed as Director of the CFPB he also became a member of the FDIC Board. Accordingly, on January 17, at his first FDIC Board meeting, Director Cordray thanked FDIC Director Curry and Acting Comptroller Walsh for their warm welcome to the Board and noted that the work of the CFPB complements that of the FDIC. More specifically, the Bureau's supervision function will supplement the supervisory role of the FDIC and the other banking agencies and help provide a more complete picture of bank operations.
- **Remarks Before U.S. Conference of Mayors.** On January 18, Director Cordray addressed the U.S. Conference of Mayors in Columbus, Ohio. Cordray informed the audience that the Bureau wants to partner with mayors to promote responsible behavior by financial institutions and consumers alike; and commended the mayors for the success of their DollarWise campaign to fund and operate financial education and other programs.
- **TARP Subcommittee Testimony.** On January 24, Director Cordray testified before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs. Cordray summarized the Bureau's actions to date including the establishment of their bank and nonbank supervision efforts, their "Know Before You Owe" initiatives, and the establishment of several offices designed to protect certain classes of consumers (the military, the elderly, etc.)
- **Senate Banking Testimony.** On January 31, Director Cordray appeared before the United States Senate Committee on Banking,



Housing and Urban Affairs. The topic of the hearing was “Holding the CFPB Accountable: Review of the First Semi-Annual Report.” At the hearing, Cordray reiterated that the primary objective of the Bureau is to ensure that consumers understand the costs and risks of financial products. Its secondary objective is to ensure that banks and their nonbank competitors receive the evenhanded oversight necessary to promote a fair and open marketplace.

### Nonbank Supervision

As many are aware, the CFPB’s powers were given to it in phases. The CFPB’s first grant of power was effective as of the date that the Dodd-Frank Wall Street Reform and Consumer Protection Act was adopted on July 21, 2010. Those initial powers were limited to mostly administrative tasks such as finding an office building to house staff. As of July 21, 2011 (commonly referred to as the “Transfer Date”), the CFPB received its “transfer authorities,” which authorities included rule writing for the various consumer protection laws and supervision over banks with more than \$10 billion in assets. The final grant of authority occurred on January 4, 2012, the date that President Obama appointed Cordray as Director.

The CFPB defines a “nonbank” lender quite simply as a company that offers or provides consumer financial products or services but does not have a bank, thrift, or credit union charter. Effective January 4, the CFPB has authority to oversee nonbank businesses, regardless of size, in certain markets: mortgage companies (originators, brokers, servicers, and loan modification or foreclosure relief services); payday lenders; and private education lenders. For all other markets – such as debt collection, consumer reporting, auto financing and money services businesses – the CFPB may supervise “larger participants” after defining what “larger participant” means. The CFPB anticipates that it will publish the proposed larger participant rule sometime in the fall of this year (see “Upcoming Regulations” table at the end of this article).

The CFPB’s approach to nonbank examination will be the same as its approach to bank examination; and may include a combination of any of the following tools: requiring nonbanks to file certain reports, reviewing the materials the companies actually use to offer those products and services, reviewing their compliance systems and procedures, and reviewing what they promised consumers.

For those Venable clients that are nonbanks, and who may not be familiar with a banking examination, you will need to ensure that your company is in full compliance with all applicable federal consumer protection laws (i.e., the Equal Credit Opportunity Act, Truth in Lending Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, etc.); and that you have evidence of such compliance. Such evidence includes: policies and procedures (that are adopted by your Board of Directors), training



manuals and audit reports.

Clients also need to ensure that they are fully staffed to respond to the CFPB's oversight initiatives. This includes having personnel who are dedicated to respond to complaints on an ongoing basis and who have the ability to provide the CFPB with complaint logs. Additionally, clients need to ensure they have a representative who can work with CFPB examiners when they come on-site. Clients should be aware that bank examiners often set up residence at a lender's office for weeks at a time while they conduct their review.

Venable is uniquely situated to assist nonbank lenders with compliance efforts. Venable understands the lending industry well and has significant experience assisting mortgage and other lenders become compliant with state and federal law. With this experience, we can assist you with creating policies and procedures and preparing for a CFPB examination. Please contact us if you are interested in learning more about what we can do for you.

## Mortgage Lending

### Know Before You Owe – Closing Disclosures

The CFPB published yet another round of closing disclosure prototypes – this time named “Butternut” and “Hemlock.” The disclosures are both five pages long and describe purchase-money, fixed rate loans. Both forms have dropped the HUD-1 Settlement Statement numbering paradigm in favor of disclosing fees and charges based on categorizations more closely resembling the format on the GFE/early TIL disclosure, and that are more easily translated into calculations for tolerance violations.

Consumer response to the “Sassafras” form (from the last round of prototypes) most likely influenced this approach. By and large, commenters found the Sassafras form to be more consumer-friendly because the closing costs were organized in a format similar to the prototype application disclosure (which prototype is now referred to as “Honeylocust”). Notwithstanding this change, the CFPB did note industry concern that the elimination of HUD-1 line numbers may raise a programming problem for industry software systems.

The CFPB anticipates that February will be the final round of Know Before You Owe testing; and a proposed rule on the integrated form is scheduled for publication in July (see “Upcoming Regulations” table at the end of this article).

### Examination Procedures: Mortgage Origination

Adding on to the procedures the CFPB published in October relating to mortgage servicing, in January, the CFPB released the procedures



applicable to the mortgage origination process. The objectives of the examination procedures are four-fold: (i) to assess the quality of the compliance management systems; (ii) identify acts or practices that materially increase the risk of violations; (iii) gather facts to help determine whether a violation of a federal consumer financial law is likely to occur; and (iv) determine whether a violation has occurred and warrants supervisory action.

Similar to the servicing procedures, the origination procedures are divided into seven “modules.”

- **Module One: Company Business Model.** In this module, the examiner will determine the type of origination channel under examination. More specifically, the examiner will determine whether the entity is acting as a broker or correspondent; lending through a retail, wholesale or correspondent system or some combination of the above.
- **Module Two: Advertising and Marketing.** Examiners will evaluate whether the advertising materials are consistent with applicable federal laws and will determine whether the originator uses a third-party lead generator or other third party to advertise, offer, or provide loans or other products and services.
- **Module Three: Loan Disclosures and Terms.** Examiners will identify acts, practices or materials that indicate potential violations of federal consumer financial laws.
- **Module Four: Underwriting, Appraisals and Terms.** Examiners will review underwriting, appraisals and originator compensation. The underwriting procedures will apply only to mortgage lenders – not mortgage brokers. Examiners will review loan files and originator compensation records to determine if the lender or broker is complying with applicable policies and procedures.
- **Module Five: Closing.** In addition to making sure they comply with the disclosure requirement (Module Three, above), lenders are responsible for the way their closings are conducted by settlement agents. Accordingly, examiners may conduct interviews of consumers and ask questions relating to the closing process. And examiners also may request settlement agent scripts and policies.
- **Module Six: Fair Lending.** Examiners will determine whether any of the creditor’s policies and procedures have an adverse impact on borrowers on a prohibited basis.
- **Module Seven: Privacy.** Examiners are tasked with insuring that customers’ non-public information is protected as required under federal law.



## Student Lending

In response to the CFPB's Know Before You Owe: Student Loans project, which kicked off in November, the CFPB received feedback on almost every aspect of the "financial aid shopping sheet" prototype, and a majority of those who commented said consumers need a standardized way of receiving financial aid information.

Participants ranked the features of the shopping sheet that they thought were most important, as follows:

- Estimated debt at graduation;
- Estimated monthly payment after graduation;
- Likely ability to repay my loans;
- A complete breakdown of cost at the school by category; and
- Whether students at the school have been able to repay loans.

The CFPB has shared these responses with the Department of Education in their development of a financial aid form for schools to use.

## Small-Dollar, Short – Term Lending

### Field Hearing in Birmingham, Alabama

On January 19, the Bureau traveled to Birmingham, Alabama for a field hearing on small-dollar, short-term lending. The goal of the hearing was to listen, learn and gather information to help the CFPB better understand the lending market so that the Bureau can choose the appropriate tools to balance the needs of consumers with the risks they face.

The hearing was held at the Birmingham-Jefferson Convention Complex, and opened with remarks from Joyce White Vance, U.S. Attorney, Representative Terri Sewell (D-AL), and Richard Cordray, Director of the CFPB. Following these opening remarks, four CFPB representatives (Raj Date, Deputy Director of the CFPB; Patrice Ficklin, Assistant Director for the Office of Fair Lending and Equal Opportunity, Gail Hillebrand, Associate Director for Consumer Education and Engagement, and Peggy Twohig, Assistant Director for the Office of Nonbank Supervision) offered expert testimony.

The first panel of the hearing focused on a discussion of consumer experience with small-dollar, short-term loans. Participants on that panel were: (i) Shay Farley, Legal Director, Alabama Appleseed; (ii) Marcella Roberts, CEO, Building Alabama Reinvestment; (iii) Stephen Stetson, Policy Analyst, Alabama Arise; and (iv) Shirley Worthington, VP of



Community Initiatives, United Way of Central Alabama.

The second panel provided the industry perspective on small-dollar, short-term loans. This panel consisted of: (i) Kim Gardner, Cash USA; (ii) Daryl McMinn, Chief Operations Officer, Listerhill Credit Union; (iii) John Owen, Senior Executive Vice President, Head of Consumer Bank, Regions Financial Corp.; and (iv) Ted Saunders, CEO, Community Choice Financial, Inc.

The hearing concluded with testimony from consumers.

### Examination Materials

On the heels of the field hearing in Alabama, the CFPB issued its examination procedures designed for small-dollar, short-term lenders. Each examination will focus on five areas:

- **Marketing.** Examiners must develop a detailed understanding of the lender's marketing program to determine whether its marketing policies, procedures and practices are consistent with the requirements of applicable federal law. This will include a review of advertising materials provided by lead generators.
- **Application and Origination.** Lenders that take applications and originate small-dollar, short-term loans are subject to disclosure and other legal requirements under ECOA, FCRA and TILA. Examiners also need to be sure that lenders are obtaining appropriate authorizations for any recurring debits under the EFTA.
- **Payment Processing and Sustained Use.** Examiners must review a sampling of loans for "sustained use." Sustained use is defined as rollovers or back-to-back loans.
- **Collections, Accounts in Default and Consumer Reporting.** A lender may collect on a short-term, small-dollar loan that is in default on its own behalf without complying with the FDCPA. Nevertheless, the actions protected by that law may constitute unfair, deceptive or abusive acts or practices.
- **Third-Party Relationships.** Lenders who engage third parties to perform services from marketing and origination to servicing and collection must ensure that consumer information is protected in accordance with Gramm-Leach-Bliley. Lenders may be responsible for the activities of third-party service providers.

### "Tell Your Story"

The CFPB is requesting that consumers go to the Bureau's website and "tell their story" via a large teal hyperlink box in the upper right-hand corner. This solicitation, however, unlike the efforts the Bureau has undertaken related to mortgage loans and credit cards is not a solicitation for complaints. Rather, it is a solicitation for customers (or



financial institution employees) to provide a narrative description of their experience with financial products.

If the consumer does have a complaint, however, this page will direct the consumer to another page that asks the consumer to identify the product or service (credit card, mortgage, foreclosure, student loan, etc.) and the type of lender (bank, credit union or nonbank). Once the customer provides this information, he or she is given the name of the appropriate regulator to contact to file the complaint.

### Military Database

The CFPB, in conjunction with state Attorneys General and the Department of Defense announced a new database called the Repeat Offenders Against Military Database (“ROAM”), which is designed to combat scams that are directed at servicemembers, veterans and their families.

ROAM is the first database of its kind because it will contain information on formal actions against perpetrators of financial schemes targeting the military. Existing databases, in contrast, contain information relating to complaints – but not information relating to the resolution of those complaints. Law enforcement officials across the country, including state Attorneys General, United States Attorneys, local officials and Judge Advocates will be able to contribute to and search the ROAM database. Nevertheless, input to the database is not limited to government entities. Anyone can send information about formal actions to add to the database by emailing: [ROAMDatabase@cfpb.gov](mailto:ROAMDatabase@cfpb.gov).

### Regulations

#### Outstanding Federal Register Publications

Topic	Comment Deadline	Status	Effective Date
<b>Regulation F ( Fair Debt Collection)</b>	February 14, 2012	Interim Final Rule	December 30, 2011
<b>Regulation I (Depository Institutions Lacking Insurance)</b>	February 14, 2012	Interim Final Rule	December 30, 2011



<b>Regulation N and O (Mortgage Acts and Practices and Mortgage Assistance Relief Services)</b>	February 14, 2012	Interim Final Rule	December 30, 2011
<b>Regulation B (ECOA)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation C (HMDA)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation G and H (S.A.F.E. Act)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation M (Leasing)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation X (RESPA)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation V (Fair Credit Reporting)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulations J, K, and L (Interstate Land Rules)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation P (Privacy)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation DD (Truth in Savings)</b>	February 17, 2012	Interim Final Rule	December 30, 2011
<b>Regulation Z (Truth in Lending)</b>	February 21, 2012	Interim Final Rule	December 30, 2011
<b>Regulation E (EFTA)</b>	February 27, 2012	Interim Final Rule	December 30, 2011
<b>Streamlining Inherited Regulations</b>	March 5, 2012		N/A
<b>Remittances</b>	60 days from publication on the federal Register (2/7)		N/A
<b>Remittances</b>	N/A	Final Rule	February 7, 2012

## Upcoming Regulations



Topic	Next Regulatory Release	Anticipated Date of Next Activity
<b>Rules of Practice for Adjudication Proceedings</b>	Final Rule	December 2011
<b>Rules Relating to Investigations</b>	Final Rule	December 2011
<b>State Official Notification Rules</b>	Final Rule	December 2011
<b>Disclosure of Records and Information</b>	Final Rule	December 2011
<b>Registration of Certain Nondepository Covered Persons</b>	NPRM	March 2012
<b>Supervision of Certain Nondepository Covered Persons ("Larger Participants")</b>	NPRM	March 2012
<b>TILA Ability to Repay (Regulation Z)</b>	Final Rule	April 2012
<b>TILA/RESPA Mortgage Disclosure Integration (Regulation X; Regulation Z)</b>	NPRM	July 2012
<b>Mortgage Servicing (Regulation X; Regulation Z)</b>	NPRM	July 2012
<b>Mortgage Originator Standards (Regulation Z)</b>	NPRM	July 2012
<b>Disclosure Rules and Substantive Protection for Certain High-Cost Mortgage Loans (Regulation Z)</b>	NPRM	July 2012



<b>Alternative Mortgage Transaction Parity (Regulation D)</b>	NPRM	July 2012
<b>Requirements for Escrow Accounts (Regulation Z)</b>	Final Rule	September 2012
<b>Supervision of Larger Depository Institutions and Affiliates</b>	Pre-Rule Stage	September 2012
<b>Business Lending Data (Regulation B)</b>	Pre-Rule Stage	October 2012
<b>Home Mortgage Disclosure Act (Regulation C)</b>	Pre-Rule Stage	October 2012
<b>Amendments to TILA and FIRREA Concerning Appraisals</b>	Further Action	October 2012

<sup>i</sup> <http://www.whitehouse.gov/the-press-office/2012/01/04/remarks-president-economy>