

**ISSUE EDITOR**

Suzanne Fay Garwood  
[sgarwood@Venable.com](mailto:sgarwood@Venable.com)  
 202.344.8046

**MEMBERS OF THE CFPB TASK FORCE**

Allyson B. Baker  
 John B. Beaty  
 John E. Bowman  
 Emilio W. Civitanes  
 William J. Donovan  
 Suzanne Fay Garwood  
 Thomas E. Gilbertsen  
 Ronald R. Glancz  
 David W. Goeway  
 Leonard L. Gordon  
 Gary D. Hailey  
 Stuart P. Ingis  
 Ronald M. Jacobs  
 Jeffrey D. Knowles  
 Amy Ralph Mudge  
 Andrew Olmem  
 Jonathan L. Pompan  
 Tara Sugiyama Potashnik  
 Randal M. Shaheen  
 Ralph E. Sharpe  
 Robert L. Smith, II  
 Jeffrey S. Tenenbaum  
 Katherine Whelan  
 D.E. Wilson, Jr.

**RELATED SERVICES**

Advertising and Marketing  
 Banking and Financial  
 Services Regulation  
 Consumer Finance  
 Consumer Products and  
 Services  
 Credit Counseling and Debt  
 Services  
 Financial Services  
 Privacy and Data Security

## CFPB: JULY ROUNDUP

Happy Second Birthday, CFPB! In July, the Bureau turned two years old. In that time, the Bureau has held field hearings in over 12 cities, received over 175,000 consumer complaints, and returned over \$430 million to consumers. And, as the Bureau promises...they are just getting started.

Below are the highlights of the CFPB's activities on its second birthday.

### MORTGAGES

#### “Steering” Violation

The CFPB filed a complaint in federal district court against a Utah-based mortgage company and two of its officers for allegedly illegally giving bonuses to loan officers who steered consumers into mortgages with higher interest rates. Specifically, the CFPB alleges that the company paid its loan officers quarterly bonuses that were based on the interest rates of loans closed. Thus, the higher the interest rate on the loans closed, the higher the compensation, which arguably incentivized the loan officers to steer consumers into mortgages with less favorable terms in violation of the law.

In its complaint, the CFPB seeks to:

- **End Unlawful Compensation Practices:** Prohibit the company from continuing its practice of incentivizing loan officers to upcharge consumers by distributing quarterly bonuses based on the interest rates of loans sold.
- **Record Retention:** Retain evidence of compliance with the law regarding compensation paid to loan officers.
- **Restitution:** Provide restitution for consumers who may have been upsold.
- **Civil Money Penalties:** Obtain civil penalties in amounts to be determined under a three-tiered framework: up to \$5,000 for any violation; up to \$25,000 for reckless violations; and up to \$1,000,000 for knowing violations.

A copy of the complaint is available on the CFPB's website.

#### Defining “Rural” and “Underserved”

To assist creditors with the implementation of several mortgage regulations, the CFPB has adopted a final rule defining “rural” and “underserved” communities.

Generally speaking, the Bureau will define “rural” counties annually by using the USDA Economic Research Service's urban influence codes. The Bureau will also annually define “underserved” counties using data collected under the Home Mortgage Disclosure Act (HMDA).

The list for 2013 is [available here](#), and the list for 2014 is [available here](#).

The following regulations are affected by the lists:

- **Escrow:** Certain small creditors that operate predominantly in rural or underserved



communities are exempt from the requirement in the Escrow Regulation that requires lenders that originate higher-priced mortgage loans to maintain escrow accounts on such loans for a minimum of five years.

- **Balloon QM and High Cost Loans:** Certain small creditors that operate predominantly in rural or underserved counties are eligible to originate qualified mortgage loans that contain balloon payments. These same small creditors also are exempt, when making those balloon-payment QMs, from restrictions on balloon payments for high-cost mortgages.
- **Higher Priced Mortgage Loans:** Higher priced mortgage loans that are originated in rural counties are exempt from the second appraisal requirement.

## DEBT COLLECTION

The CFPB issued two bulletins last month relating to debt collection practices, addressing the prohibition of unfair and deceptive acts and practices generally and addressing representations related to the effect of debt on credit reports and scores.

Bulletin No. 2013-07 addresses the “Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts.” The Bulletin applies to all persons falling under the CFPB’s jurisdiction (“Covered Persons”), which means that the guidance applies to debt buyers and creditors as well as debt collectors.

The Bulletin reminds Covered Persons that they may not engage in any actions that are unfair, deceptive or abusive during the course of attempting to collect on a debt. The Bulletin identifies the following as examples of what types of activities could fall into the above categories:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law;
- Failing to post payments timely or properly or to credit a consumer’s account with payments that the consumer submitted on time and then charging late fees to that consumer;
- Taking possession of property without the legal right to do so;
- Revealing the consumer’s debt, without the consumer’s consent, to the consumer’s employer and/or co-workers;
- Falsely representing the character, amount, or legal status of the debt;
- Misrepresenting that a debt collection communication is from an attorney;
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government;
- Misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency;
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt; and
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.

The full text of the Bulletin is [available here](#).

Bulletin 2013-08 provides guidance to creditors, debt buyers, and third party collectors (together, “Covered Persons”) with respect to making representations related to the impact that payments on debts in collection may have on credit reports and credit scores.



The Bulletin identifies a number of representations that may be deceptive in nature. For example, the CFPB has become aware that Covered Persons may suggest to consumers that their credit reports may reflect “obsolete” debt. The CFPB found this to be happening even though FCRA imposes time limits on including tradelines in most credit reports. Thus, the CFPB would consider any suggestion by a Covered Person that a credit report may include obsolete debt to be deceptive.

Another example is the effect that payments may have on a credit score. In light of the myriad factors that are part of the algorithm behind credit scores, it may be unclear what effect payments will have on the calculation of the score. Accordingly, all Covered Persons should expect the CFPB to request and review all consumer-facing materials that include representations relating to debt collection to ensure that any claims relating to the repayment of debt are not misleading.

In addition to the bulletins, to assist consumers with corresponding with debt collectors, the CFPB has published five sample action letters to address the following circumstances: (i) the consumer needs more information; (ii) the consumer wants to dispute the debt and wants the debt collector to prove responsibility or stop communication; (iii) the consumer wants to restrict how and when the debt collector will contact him; (iv) the consumer hired a lawyer; and (v) the consumer wants the debt collector to stop any and all contact. All five letters are [available here](#).

## CFPB REPORTS

### Plain Language Report

Under the supervision of Gail Hillebrand, Associate Director, Division of Consumer Education and Engagement and Dan Rutherford, Senior Content Specialist, Office of Financial Education, the CFPB issued its compliance report on “plain writing” on July 22.

The report explains that the Bureau’s plain language requirements apply to the various types of communications issued, including those to consumers as well as to industry. With respect to consumer communications, the Bureau follows guidelines that ensures that its materials: (i) help consumers make financial decisions; (ii) provide information to consumers about their rights under federal consumer protection laws; and (iii) inform consumers about the Bureau’s activities. Technical documents that are directed to an audience with subject matter expertise, however, will be more detailed and complex.

The Bureau’s regulations, which are not subject to plain writing requirements, are not written in plain language. Nevertheless, to assist the industry with its compliance efforts, the Bureau often provides plain language summaries of the rules. For an example, see the Bureau’s [Mortgage Rules Readiness Guide](#), which provides a high-level overview of the mortgage rules the Bureau finalized in January 2013.

A full copy of the report is [available here](#).

### Snapshot of Complaints

At present, the CFPB is accepting complaints for the following:

- Bank Accounts or Services;
- Credit Cards;
- Credit Reporting;
- Debt Collection;
- Money Transfer;
- Mortgage;
- Student Loan; and
- Vehicle or Consumer Loan.



Consumers can [submit their complaints here](#) and [access that complaint data here](#).

From time to time, the CFPB publishes a report on the complaints received to provide insight to both consumers and the industry about customer concerns and issues. The report published in July provides an analysis of complaints received from July 21, 2011 to June 30, 2013.

During that timeframe, the Bureau received 176,700 consumer complaints, broken down as follows:

- Mortgages – 85,200 (48%)
- Credit Cards – 36,300 (21%)
- Bank Accounts – 25,700 (15%)
- Credit Reports – 14,200 (8%)
- Private Student Loans – 6,000 (3%)
- Consumer Loan – 5,700 (3%)
- Money Transfer – 300 (<1%)

Of those complaints, the most common complaints for credit cards related to billing disputes and APR; and for mortgages, nearly 90 percent of the complaints related to an inability with or concerns related to making payments.

Most of the complaints were processed through the CFPB’s complaint process; however, the Bureau has referred a small percentage to other regulatory agencies.

A copy of the full report with a breakdown of each of the identified complaint categories is [available here](#).

### Financial Literacy

The mission of the CFPB is to make markets for consumer financial products and services more effective. To achieve that goal, the Bureau is, among other things, empowering consumers to take more control over their economic lives.

There are three primary aspects to the Bureau’s strategy to improve financial literacy. First, the Bureau is seeking to provide assistance to consumers at specific important points in their financial lives. Second, the Bureau is engaged in research to identify effective approaches to financial education to better define the metrics for success in financial education. Third, the Bureau is engaged in significant ongoing outreach to a broad range of stakeholders who can assist with reaching the public.

In its first two years, the Bureau has launched a range of tools and initiatives, including: [Ask CFPB](#), [Paying for College](#), and [Know Before You Owe](#) designed to provide consumers with information, resources, and opportunities to develop the knowledge and skills they need to manage their finances. The CFPB is committed to continuing to work side-by-side with governmental agencies, the public, and private and non-profit enterprises to continue to assist consumers become more knowledgeable about financial products and services.

A full copy of the CFPB’s report on its financial literacy efforts is [available here](#).

### OUTSTANDING FEDERAL REGISTER PUBLICATIONS

Topic	Comment Deadline	Status	Effective Date
Supervision of Risky NonBanks	N/A	Final Rule	August 2, 2013



Remittance	N/A	Final Rule	October 28, 2013
Appraisals (ECOA)	N/A	Final Rule	January 18, 2014
Servicing (Regulation X)	N/A	Final Rule	January 10, 2014
Servicing (Regulation Z)	N/A	Final Rule	January 10, 2014
Ability to Repay/ Qualified Mortgage	N/A	Final Rule	January 10, 2014
High Cost Mortgage	N/A	Final Rule	January 10, 2014
Loan Originator Compensation	N/A	Final Rule	January 10, 2014 (portions effective June 1, 2013)

## UPCOMING REGULATIONS

Topic	Next Regulatory Release	Anticipated Date of Next Activity
Home Mortgage Disclosure Act	Pre-rule Activities	September 2013
TILA/RESPA Integration	Final Rule	October 2013
Expedited Funds Availability	Final Rule	December 2013
Business Lending Data (Regulation B)	Pre-Rule Stage	TBD

If you would like assistance preparing for a CFPB examination or determining whether your existing documents, policies, and procedures are compliant with federal consumer protection laws, please contact [Suzanne Garwood](mailto:Suzanne.Garwood@venable.com) at 202.344.8046.

Please do not hesitate to contact the attorneys in our [CFPB Task Force](#) if you have any questions or concerns regarding this update and the potential impacts of CFPB activities on your business.

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at [www.Venable.com/subscriptioncenter](http://www.Venable.com/subscriptioncenter).