



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 at 202.344.8046.

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CFPB: NOVEMBER ROUNDUP

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In November the CFPB again turned its focus to mortgage lenders, this time with respect to their advertisements, which were the focus of a joint CFPB/FTC investigation. The CFPB also launched "Project Catalyst," encouraging innovators to open up a dialogue with the agency about the best way to promote product innovation while still protecting consumers. And, "specialty" consumer reporting agencies received notice of their obligations to provide free annual consumer reports to consumers.

MORTGAGES

[Disclosures Delayed](#)

Mortgage lenders waiting for proposed rules relating to Title XIV disclosure requirements will need to wait a little longer.

As the industry is aware, the Dodd-Frank Act required that the CFPB integrate certain disclosures from the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). In keeping with this requirement, in July, following months of testing, the CFPB proposed a new Loan Estimate and Closing Disclosure forms.

In addition to requiring the integration of TILA/RESPA disclosures, the Dodd-Frank Act also establishes additional new mortgage disclosure requirements, which would automatically take effect on January 21, 2013 unless the CFPB adopted regulations specifying a different effective date. These new requirements include a number of servicing-related disclosures



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on cancellation of escrow accounts, on a consumers' liability for debt payment after foreclosure, and on the creditor's policy for accepting partial payment. To relieve some of the compliance burden on mortgage lenders, the CFPB incorporated many of these Title XIV disclosure requirements into the TILA/RESPA integrated Loan Estimate and Closing Disclosure forms. Thus, the Bureau issued a final rule providing the mortgage industry with a temporary exemption from providing the Title XIV disclosures that would have automatically gone into effect.

The Bureau believes that this approach will benefit the industry and consumers in two ways. First, it provides for a single compliance date for the TILA/RESPA integrated forms as well as the other required mortgage disclosures. Second, consumers will receive a well-tested, easily understood comprehensive mortgage disclosure.

The Bureau anticipates that the TILA/RESPA integration will be finalized next year (likely mid-year).

The final rule providing this temporary exemption for certain Dodd-Frank disclosures can be found by [clicking here](#).

Advertising "Sting"

In cooperation with the Federal Trade Commission ("FTC"), the CFPB scoured nationwide mortgage advertisements, including Internet, direct mail, and newspaper solicitations, for potential violations of the Mortgage Acts and Practices Advertising Rule. [Click here](#) for a copy of the rule. The FTC originally promulgated this Rule in 2011 to prohibit misleading mortgage advertising claims, and now shares jurisdiction of enforcement of the Rule along with the CFPB. Following its creation, the CFPB obtained enforcement authority over mortgage lenders while the FTC retained jurisdiction over builders, realtors, lead generators, and other non-creditors involved in the solicitation of mortgage loans.

As a result of this investigation, the FTC and the CFPB's Office of Enforcement sent warning letters to a number of mortgage lenders and initiated a formal investigation of six mortgage lenders that may have violated the Rule. The warning letters advise the recipients that their advertisements may violate federal laws, and that they should review all their advertising. The CFPB provided sample warning letters for advertisements targeting [older Americans](#), as well as for [servicemembers](#).

To ensure that consumers, and especially consumers who are older Americans or servicemembers, are not misled, the CFPB advises consumers to be wary of mortgage advertisements containing the following:

- Official-looking seals or logos that imply some kind of government status;
- Extremely low rates, which may apply for only a brief period of time (*i.e.*, one month) and that will increase to a significantly higher amount;
- Reverse mortgages that are payment-free (tax and insurance payments generally still apply even though the borrower will not make the regular principal and interest payments that are associated with forward mortgage loans);
- "Pre-approval" for a significant amount of credit. Generally, unless the creditor is making a firm offer of credit, the creditor cannot guarantee that you will be approved for a specific loan amount.

This announcement serves as a reminder for mortgage lenders and other entities involved



in the mortgage origination process to review their advertising for misleading claims. It is also a good opportunity to review advertisements for fair lending and other compliance issues. Venable's [advertising team](#) is available to assist you with these reviews.

Integrated Database

In keeping with the Bureau's emphasis on data and research, the Bureau announced its partnership with another federal agency to create a national mortgage depository. Unlike the NMLS (Nationwide Mortgage Licensing System), which maintains information about loan officers and mortgage brokers, the proposed partnership would be a groundbreaking repository of detailed mortgage loan information. The database would collect and maintain information spanning the lifecycle of a mortgage loan (from origination, through servicing and, if applicable, foreclosure). Specifically, the database will include loan-level data including: (i) the borrower's financial and credit profile; (ii) the mortgage product and terms; (iii) the property purchased or refinanced; and (iv) the ongoing payment history of the loan. Notwithstanding the detailed information collected, the database will **not** contain personally identifiable consumer information and the Bureau will undertake all appropriate precautions to ensure that individual consumers cannot be identified through the database or through any datasets that may be made available to researchers or the public. Data will be updated on a monthly basis and track as far back as 1998.

Primarily, the Bureau would utilize the database to further its policymaking and research efforts related to the mortgage industry and to identify mortgage and housing trends. More specifically, the Bureau envisions the database as including the following:

- **Health of Mortgage Markets and Consumers.** Providing detailed mortgage loan performance information including whether borrowers make on-time payments, as well as information regarding loan modifications, foreclosures, and bankruptcies.
- **Consumer Decision-Making.** Conducting surveys to better understand consumer decision-making and experiences from mortgage shopping to distressed homeownership experiences.
- **New and Emerging Mortgage Products in the Mortgage Market.** Monitoring volume and performance of mortgage products to identify potential problems or new risks.
- **First and Second Lien Mortgages.** Analyzing how many mortgages consumers may have and how those mortgages are performing.
- **Debt Burden.** Understanding emerging borrowing trends and overall consumer debt burden.

The Bureau hopes to complete an early version of the database in 2013.

CREDIT CARDS

College Credit Card Database and Report

Mortgage loans are not the only product that is the subject of a CFPB database and analysis. College credit cards also are the subject of a CFPB database and scrutiny. [Click here](#) to read Venable's article the Bureau's Affinity Credit Card Report.



PRIVATE EDUCATION LOANS

More than 500 colleges and universities, which will enroll more than 2.5 million undergraduate students, have committed to use the “Financial Aid Shopping Sheet” that the Bureau debuted in July for their 2013 – 2014 school-year. The Shopping Sheet will standardize award letters, making it easier to comparison shop and provide students with key information including:

- How much one year of school will cost;
- Financial aid options to pay this cost, with a clear differentiation between grants and scholarships, which do not have to be repaid, and loans, which do;
- The net costs after grants and scholarships are taken into account;
- Vital information about student results, including comparative information about default rates, graduation rates, and median debt levels for the school; and
- Potential monthly payments for the federal student loans the typical student would owe after graduation.

A list of participating schools is available by [clicking here](#).

Schools with questions about using the shopping sheet can [click here](#), or they can contact the Department of Education by emailing ShoppingSheet@ed.gov.

MISCELLANEOUS

Project Catalyst

Those Venable attorneys who work closely with the CFPB are well aware that the Bureau considers itself much like a start-up business. So it came as little surprise to see the Bureau launch “Project Catalyst,” a program designed to solicit innovative ideas from the institutions and people that the CFPB regulates.

Recognizing that government and regulations can sometimes impede innovation in the financial services market, the Bureau is soliciting input from financial services providers about how to create an environment that brings new products to consumers and that is consistent with the Bureau’s overarching goal of consumer protection. With that in mind, the Bureau hopes to work closely with companies and entrepreneurs under the umbrella of Project Catalyst to foster innovation and communication. As examples of the types of companies with which the Bureau hopes to do business, the Bureau announced it is working with: (i) a company that alerts consumers to questionable charges on their debit and credit cards and helps them resolve billing disputes quickly; (ii) a company that has designed a program to explore how consumers can gain insight into their spending habits and help the Bureau understand what tools can encourage saving; and (iii) a company that is working on how analytics-driven answers can decrease consumer confusion and call volume.

In addition to these collaborative efforts with industry, the Bureau is considering the relationship between innovation and consumer disclosure. Per its mission, the Bureau places a high importance on empowering consumers to make better-informed choices about the purchase and use of financial products. And the Bureau admits that it has much to learn about the best ways to provide consumer disclosures. Venable is working with clients to provide information to the Bureau such that the agency can create a regulatory framework that is friendly toward innovation and that contemplates providing disclosures in



a world that is filled with consumers who want mobile access to financial products.

If anyone is interested in submitting a proposal to Project Catalyst, please contact a Venable attorney for our assistance.

Consumer Reports

Anyone with a television (who watches live TV – admittedly a rarity) is familiar with the catchy songs designed to prompt consumers to check their credit score/report. In keeping with the importance of understanding your financial worth, the CFPB released an announcement determining that “specialty” consumer reporting agencies are required to provide one free annual credit report per year.

A “specialty” consumer reporting agency is generally understood to refer to a credit bureau that services a particular segment of the financial services market. Compare this to the national credit reporting agencies that are common household names that provide services to many banks, credit unions, and other entities in the consumer financial services marketplace.

The CFPB expects each specialty consumer reporting agency to:

- Enable consumers to request annual file disclosures by a toll-free telephone number that: (i) is published, in conjunction with all other published numbers for the reporting agency, in any telephone directory in which any telephone number for the agency is published; and (ii) is clearly and prominently posted on any website owned or maintained by the credit reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods;
- Ensure that its streamlined process for obtaining an annual file disclosure has adequate capacity to accept requests from a reasonably anticipated volume of consumers;
- Collect only as much personal information from a consumer requesting a disclosure as is reasonably necessary to identify the consumer properly;
- Provide clear and easily understandable information and instruction to consumers, including but not limited to: providing information on the status of a request, providing a “help” or “frequently asked questions” page for web-based requests, and providing a statement when the identity of the consumer requesting an annual file disclosure cannot properly be verified and directions on how to complete the request;
- Use or disclose personally identifiable information collected from a consumer because of the consumer’s request for an annual or other disclosure required by the FCRA from the entity that the consumer made through the streamlined process only in ways permitted by the FRCA; and
- Accept consumer requests for annual file disclosures from consumers who use methods other than the streamlined process or instructing such consumers on how to use the streamlined process.

Any consumer reporting agency not currently providing a process that meets the above requirements should take immediate steps to comply. These requirements are contained in Bulletin No. 2012-09, which is available by [clicking here](#).

With the new year coming up, it is a good time to get a copy of your credit report to review



for any discrepancies or other issues that may be affecting your credit score or ability to obtain credit.

In addition to this announcement relating to specialty credit reports, the CFPB created a complaint database to solicit complaints regarding credit reporting. Generally speaking, the Bureau anticipates that consumers will first seek to work with their credit reporting agencies to resolve any issues reflected on their credit reports. However, if those negotiations are unsuccessful, then the Bureau is providing the complaint database to assist with resolving those issues.

The complaint database for credit reporting issues is available by [clicking here](#).

Financial Audit

The CFPB has issued its second “clean” financial audit. The report contains two primary parts. Part one includes a narrative description of the Bureau, including its mission, operating units, main activities, performance, and results. Part two includes financial statements, analysis, notes, and the auditor’s report.

For the second year in a row, the Government Accountability Office (the government’s auditor) rendered an unqualified (“clean”) audit opinion of the CFPB’s financial statements. This means that the CFPB has: (i) presented the agency’s financial statements in accordance with GAAP; (ii) applied those principles in a consistent basis; and (iii) included all information to present the statements fairly.

Advisory Board Meetings

In September the CFPB’s Consumer Advisory Board held its first meeting in St. Louis, Missouri. Then, in October, the CFPB met with its newly-formed Community Bank Advisory Council and the Credit Union Advisory Council. One theme that emerged from the CFPB’s discussion with these advisors is the need for the CFPB to level the playing field for smaller institutions providing financial services to consumers. In particular, the CFPB heard the following

- **Mortgage Servicing Relationships.** The Community Bank Advisory Council provided considerable detail about why small community banks retain mortgage servicing rights and how their direct and continuous contact with their customer base results in successful loss mitigation outcomes for their troubled borrowers.
- **Non-Profit Mission.** In a lively discussion about the role of credit unions in leveling the playing field for consumers, Credit Union Advisory Council members debated whether their role as institutions is to provide cash-crunched consumers with viable and more cost-efficient alternatives to high-interest small dollar loans or to provide education and services designed to help their members become less reliant on short-term small-dollar loans.
- **Cost.** The advisors emphasized that the presence of a new regulator can challenge smaller financial institutions and the Bureau should work to make sure that the cost of complying with new regulations is not overly burdensome on small institutions.
- **Elementary School.** Both the Credit Union and Community Bank Advisory Councils agreed that financial education should be integrated into the K-12 curriculum so that young adults enter the marketplace empowered to make smart financial choices.



REGULATIONS

Remittances

Once again the CFPB is tinkering with the remittance regulation finalized earlier this year and set to go into effect in February of next year.

Conceding to concerns regarding implementation of the law, the CFPB issued Bulletin 2012-08 addressing three remittance-related topics, which the Bureau will address via a formal rule proposal early next year:

- **Incorrect Account Numbers.** If the provider can demonstrate that the consumer provided incorrect information, the provider would be required to attempt to recover the funds but would not be liable for the funds if those efforts are unsuccessful.
- **Third-Party Fees and Foreign Taxes.** Permit providers to base fee disclosures on published bank fee schedules and provide further guidance on foreign tax disclosures where certain variables may affect tax rates.
- **Regional and Local Taxes.** The obligation for providers to disclose foreign taxes imposed on remittance transfers is limited to taxes imposed at the national level, and does not encompass taxes that may be imposed by foreign, sub-national jurisdictions.

The CFPB expects to issue a notice of proposed rulemaking in January to explain the changes in detail and to seek public comment. The Bureau anticipates proposing to extend the effective date on the original rule until 90 days after it finalizes the proposal. Based on current expectations, this would mean that the effective date for the remittance transfer rule will be during the spring.

This bulletin and other information related to the remittance transfer rule are available on the CFPB's website, by [clicking here](#).

Threshold Changes for Regulations Z and M

The Federal Reserve Board ("Board") and the Consumer Financial Protection Bureau announced increases in the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) for exempt consumer credit and lease transactions. These increases are consistent with amendments to the Truth in Lending Act and the Consumer Leasing Act to adjust these thresholds annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Transactions at or below the thresholds are subject to the protections of the regulations.

The adjustments to the thresholds reflect the annual percentage increase in the consumer price index as of June 1, 2012 and will take effect on January 1, 2013.

Based on these adjustments, the protections of the Truth in Lending Act and the Consumer Leasing Act generally will apply to consumer credit transactions and consumer leases of \$53,000 or less in 2013.

In addition, the CFPB is separately adjusting the dollar amount that triggers additional protections for certain home mortgages under the Home Ownership and Equity Protection Act of 1994, as required by statute. Consistent with the increase in the consumer price index, the dollar amount of the HOEPA fee trigger will increase to \$625 for 2013.

**OUTSTANDING FEDERAL REGISTER PUBLICATIONS**

Topic	Comment Deadline	Status	Effective Date
Remittances	N/A	Final Rule	February 7, 2013 (will be delayed)
Delayed Implementation of Mortgage Disclosures	N/A	Final Rule	November 23, 2012
Independent Ability to Repay Credit Cards for Individuals Over 21	January 7, 2013	Proposed Rule	N/A

UPCOMING REGULATIONS

Topic	Next Regulatory Release	Anticipated Date of Next Activity
Requirements for Escrow Accounts (Regulation Z)	Final Rule	September 2012
Supervision of Larger Depository Institutions and Affiliates	Pre-Rule Stage	September 2012
Restatement of Regulations	Further Action	September 2012
Amendments to TILA and FIRREA Concerning Appraisals	Further Action	October 2012
Business Lending Data (Regulation B)	Pre-Rule Stage	October 2012
TILA Ability to Repay (Regulation Z)	Final Rule	December 2012
Disclosure of Records	Final Rule	December 2012
Registration of Certain Nondepository Covered Persons	NPRM	January 2013
Home Mortgage Disclosure Act (Regulation C)	Pre-Rule Stage	April 2013
Alternative Mortgage Transaction Parity (Regulation D)	NPRM	June 2013
TILA Amendments (i.e., rescission)	TBD	TBD

Please do not hesitate to contact the attorneys in our CFPB Task Force if you have

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Venable CFPB Watch

DEVELOPMENTS AND UPDATES ON THE CONSUMER FINANCIAL PROTECTION BUREAU

any questions or concern regarding this update and the potential impacts of CFPB activities on your business.

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