

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



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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



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How It All Began...

2008 – Financial Crisis

2007 – Elizabeth Warren proposes a "new" Consumer Protection Agency Sept. 2010 – Warren July 2010 – Dodd-Frank Act enacted (@ 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.

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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)]

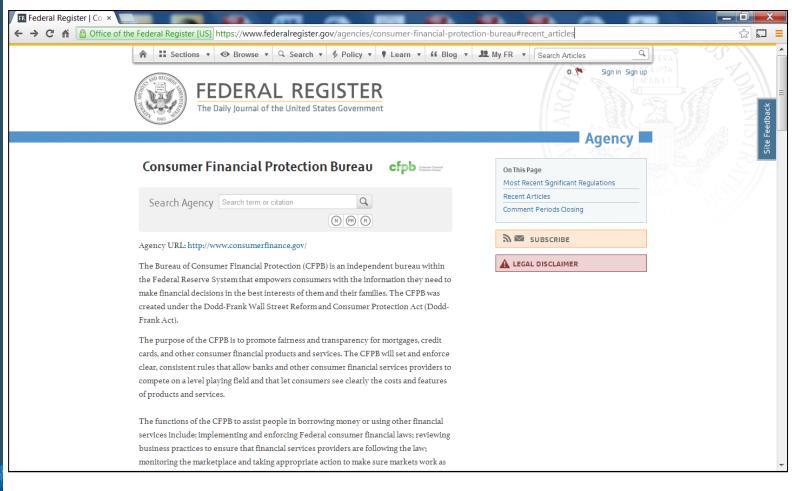
	FY 2013	FY 2014	FY 2015
Office of Director	27	27	28
Operations	221	304	325
Consumer Response	134	191	223
Consumer Education and Engagement	55	73	77
Research, Markets, and Regulations	107	147	156
Supervision, Enforcement, and Fair Lending	527	742	834
Legal	51	70	76
External Affairs	29	44	47
Other Programs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



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Regulatory Updates





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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)



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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?

ct	pb	Consumer Protection	Financial Bureau	

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 depositor 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 In indirect auto financing, the dealer usually collects basic information regarding the applicant and uses an autometal 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 "baya" mate" that establishes a minimum interest rate at which the lender is willing to parchase the retail installment sales construct executed by the consumer for the purchase of the automodie. In some incumstances, the indirect auto lender may exercise of user to 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 rate 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 "reserve" (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



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

auto loans through dealerships are responsible for unlawful, discriminatory pricing. Potentially discriminat markups in auto lending may result in tens of millions of dollars in consumer harm each year, and the bulle ides clear suidance to indirect auto lenders within the CFPB's jurisdiction on how to address fair lending

Auto Loans by the Numbers

5783 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 lengest source of outstanding household debt after mortgages and student

Overview

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

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

Interest rate markups generate compensation for dealers while giving them the dis 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 Constant with the support of discretistic increases the risk of pricing disprisis among constants, proceeding pricing dualars with his type of discretistic increases the risk of pricing disprisis 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 builded, while consume the consumer state of the second secon

Today's Bulletin The CFPB has authority to examine large banks, and credit unions – and their affiliates – that have assets ove \$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 tenseculars justices in the second se





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



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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.

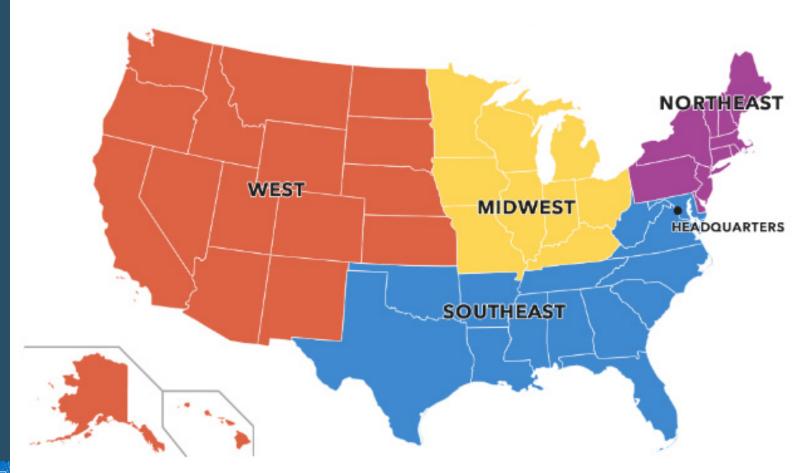
Looking Forward

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

BUREAU OF CONSUMER FINANCIAL PROTECTION	without change to http:// www.regulations.gov. In addition,	Parts II and III of the ANPR principally focus on the quantity an quality of information in the debt
12 CFR Part 1005	comments will be available for public inspection and copying at 1700 G Street	quality of information in the debt collection system. Part II solicits
[Docket No. CFPB-2013-0033]	NW., Washington, DC 20552, on official	information on the transfer of
RIN 3170-AA41	business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can	information and access to informati upon sale or placement of debts. Pa
Debt Collection (Regulation F)	make an appointment to inspect the documents by calling (202) 435-7275.	seeks information regarding validati notices, disputes, investigations, an
AGENCY: Bureau of Consumer Financial	All comments submitted through the	verification of disputes.
Protection. ACTION: Advance notice of proposed	formal means described above, including attachments and other	Parts IV, V, and VI primarily con- the conduct of collectors in interact
rulemaking.	supporting materials, will become part	with consumers in trying to recover
	of the public record and subject to	debts through the collection process
SUMMARY: The Consumer Financial Protection Bureau (the Bureau) is	public disclosure. Sensitive personal information, such as account numbers	Part IV requests information about collector communications seeking
seeking comment, data, and information	or Social Security numbers, should not	location information about consume
from the public about debt collection	be included. Comments will not be	interacting with consumers themsel
practices. Debt collection affects a	edited to remove any identifying or	disclosing debts to third parties, an
significant number of consumers and the Bureau is considering proposing	contact information.	newer technologies. This part inclu- issues concerning sections 804 and
rules relating to debt collection.	E-Ralemaking Initiative: The Bureau is working with the Cornell	of the FDCPA. Part V asks for
Therefore, the Bureau is interested in	e-Rulemaking Initiative (CeRI) on a pilot	information about unfair, deceptive
learning through responses to this advance notice of proposed rulemaking	project, RegulationRoom	abusive acts and practices, includin
advance notice of proposed rulemaking [ANPR] about the debt collection	(www.RegulationRoom.org), that uses web technologies and approaches to	issues concerning sections 805, 807 808 of the FDCPA. Part VI addresse
system, about consumer experiences	web technologies and approaches to enhance public understanding and	issues relating to the collection of d
with the debt collection system, and	effective participation. This ANPR on	that are beyond the statute of
about how rules for debt collectors	debt collection is a focus of the project.	limitations.
might protect consumers without imposing unnecessary burdens on	RegulationRoom is set up to make it	Parts VII and VIII predominantly address debt collection activities th
industry.	easier for consumers and others to understand what the Bureau is	implicate issues relating to State lay
The Fair Debt Collection Practices Act	considering, to share their information,	Part VII requests information about
(FDCPA) was passed in 1977 and the Bureau is the first Federal agency to	experiences, and concerns, and to	collection litigation, most of which occurs in State courts. Part VIII rais
nossess the authority to issue	discuss possible ideas and solutions.	occurs in State courts. Part VIII rais questions about exemptions under
substantive rules for debt collection	Note that RegulationRoom is not an official United States Government Web	Federal law for State debt collection
under this statute. The Bureau may also	site. Although comments made on that	systems under section 817 of the
address concerns related to debt	site are not formal comments like those	FDCPA, as well as for private entitie
collection using its authority under the Dodd-Frank Act to issue regulations	submitted through the means identified	that operate bad check diversion programs under contracts with State
concerning unfair, deceptive, and	above, the discussion on RegulationRoom will be captured	programs under contracts with Stab local district attorneys under sectio
abusive acts or practices and to establish	through a detailed summary, which	818 of the FDCPA.
disclosures to assist consumers in understanding the costs, benefits, and	participants will have the chance to	Finally, Part IX solicits informatic
understanding the costs, benefits, and risks associated with consumer financial	review and suggest revisions. This	concerning recordkeeping, monitori and compliance.
products and services.	summary will be filed as a formal comment on Regulations.gov. For	while the Bureau encourages all
DATES: Comments on this ANPR must be	questions about this project, please	commenters to read and respond to
received by February 10, 2014.	contact Whitney Patross, Counsel,	entire ANPR, we provide the outlin
ADDRESSES: You may submit comments, identified by Docket No. CFPB-2013-	Office of Regulations, at (202) 435-7700.	above to assist commenters in identifying the sections most releva
0033 or Regulatory Identification	FOR FURTHER INFORMATION CONTACT:	their interests and knowledge. The
Number (RIN) 3170-AA41, by any of the	Krista Ayoub and Pavneet Singh, Senior Counsels: or Kristin McPartland, Lauren	Bureau also invites consumers.
following methods:	Weldon, and Evan White, Counsels;	consumer service organizations,
 Electronic: http:// www.regulations.gov, Follow the 	Bureau of Consumer Financial	creditors, collectors, or other intere- parties to file comments describing
instructions for submitting comments.	Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435-	parties to the comments describing practical experiences that they have
 Mail/Hand Delivery: Monica 	Washington, DC 20552, at (202) 435- 7700.	or observed in the area of consumer
Jackson, Office of the Executive		collection, even if it is not apparent
Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW.,	SUPPLEMENTARY INFORMATION: This ANPR seeks data and other information	which particular question those experiences are closely related. In
Pinancial Protection, 1700 G Street NW., Washington, DC 20552.	ANPK seeks data and other information to assist the Bureau in developing	experiences are closely related. In particular, Parts III and VII may be
Instructions: All submissions must	proposed rules for debt collection. Part	most interest to consumers, who may
include the agency name and docket	I provides a general overview of debt	able to offer insight on their experie
number or RIN. Please include the	collection, consumer protection	and expectations with respect to del
question number(s) to which your comment pertains. In general, all	problems in debt collection, and government authority and activities to	collection communications and interactions with debt collection
comments received will be posted	address these problems.	litigation.



CFPB Supervision by Regions





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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



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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

Pre-examination / Scoping

Review and analyze available information to identify risks, areas of inquiry, and focus

Request and review documents and information needed to begin examination (e.g., internal policies, audit reports, training materials, recent data)

Make initial plan for on-site testing and review

Monitoring

Nonbank: Product / market analysis

Bank: Periodic checks on institution activities; calls and meetings

Both:

Risk Assessment Review reports and information Review status of corrective actions Scoping for the next exam

Examination (offsite and onsite)

Interview senior managers, loan officers, compliance officers, and account personnel as appropriate

Observe operations (e.g., call center, branches)

Compare policies and procedures to actual practices by reviewing a sample of transactions

Compare conduct to legal requirements and policy guidance

Communicate conclusions and required corrective action

Communicate findings and expected corrective actions to management and Board of Directors

Pursue appropriate supervisory agreement or formal enforcement action as needed

CFPB Supervisory Guidance Highlights and Trends

- Routine updates and New
 <u>Examination Procedures</u> and
 <u>Guidance</u>
- 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

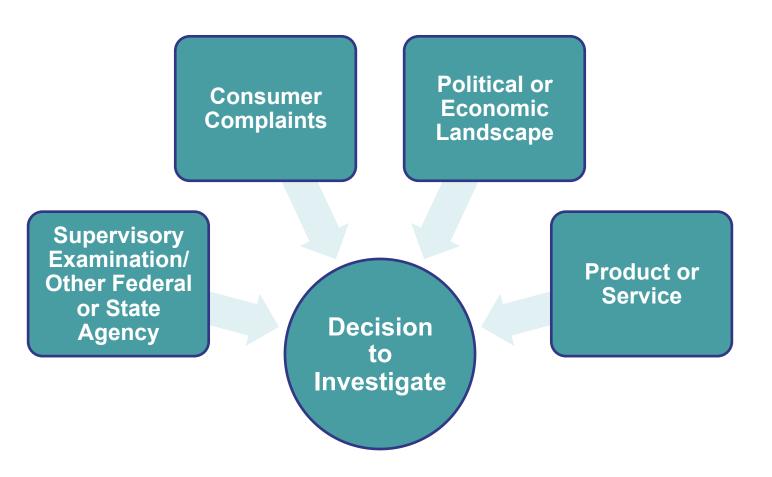




CFPB Enforcement Authority

- 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

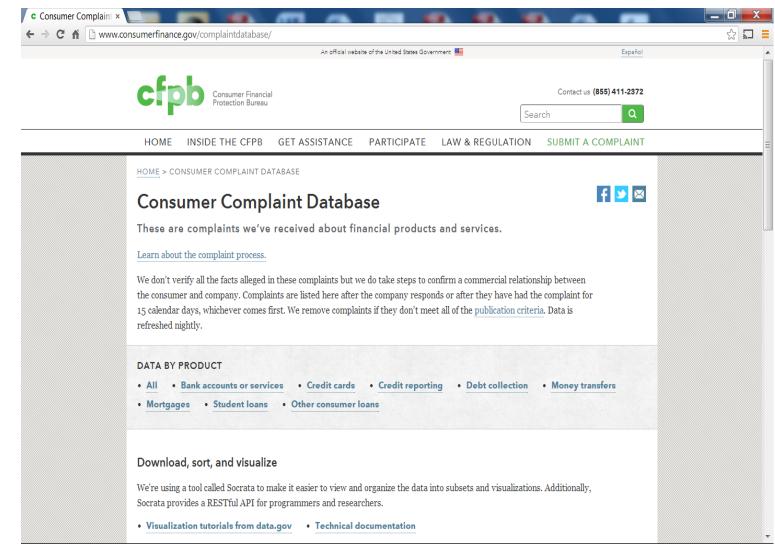
Launch of an Investigation





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Consumer Complaint Database



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)





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CFPB Enforcement Highlights

- Mortgage LoanServicer
- Mortgage Lenders
- Mortgage Reinsurance
- Mortgage Assistance
 Relief Services
- Credit Card Billing and Credit Card Add-on
 Products

- Student Lending
- UDAAPs in Debt
 Collection (by creditors and servicers)
- Debt Relief Services / Payment Processing
- Robosigning of Court
 Documents in Debt
 Collection



Auto Lending

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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

	CEDD Consumer Filandal Protection Bureau	Contact us (855) 411-2372 Search Q
e > Consume Financial Protection Bureau - Hicrosoft latenet Explorer provided by Yenable LLP	HOME INSIDE THE GET PARTICIPATE	LAW & SUBMIT A REGULATION COMPLAINT
8> Consumer Francisk	Everyone has a story	deline of
ge • [} Feck [] • ⊡ Read nal # Pyrt • Bage • Setty • Typk • () Heb • CFIPD Consume Francial Francisco Francial	Did you know that your stories and complaints help inform the work we do to create a fairer marketplace? We're sharing a few of the thousands of stories we've heard over the years from people looking for help. Check them out and learn why your story matters.	
Aboxt How do L Lem	Live from El Paso! Today, we held a field hearing on consumer complaints in El Paso, Texas. The event featured remarks from Director Richard Cordray, as well as testimony from consumer groups, industry representatives, and members of the public. The live event has now ended, but a mecording will be available here soon.	JUL 17 Everyone has a story—what's yours? JUL 10 Save the date, El Paon! JUL 8 Ensuring equal treatment for same-sex married couples Read more in the blog ◆
submit a mortgage complaint submit a credit card complaint sign up & tell your story	GET ASSISTANCE	PAY FOR COLLEGE
Know Before You Owe credit cards	If you've experienced difficulties with a financial product, we want to hear from you. We'll forward your issue to the company and provide you status updates. Submit a complaint ↔	From choosing a loan and comparing costs
We're tyjing to mele gour orealt card agreement more undestandable - and only too pages long. Tell us what you thin of an offe	OUR WORK	REGULATIONS
Time to simplify motgage disclosure TROUBLE PAYING YOUR TROUBLE PAYING YOUR	Review the reports we write to shed light on the financial landscape and keep the materials we issue to inform industry an the public about a variety of topics, including how we supervise financial institutions and enforce the law.	Provide feedback on our proposed nd regulations and other documents, or view our proposed and final rules. Notice and comment + Our regulations +
	STAY CONNECTED	
1,75% · ,	V TWITTER FACEBOOK	STAY INFORMED I want to learn more about how the CFPB is working for me.

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Observations and Q & A



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