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CFPB: DECEMBER ROUNDUP

Mortgages and credit cards again were the top priorities for CFPB staff in December, but the Bureau also made time to engage in several other important initiatives, such as creating an Ombudsman's Office and establishing contact information for whistleblowers. Additionally, the Bureau undertook the enormous task of transferring and recodifying the alphabet soup of consumer protection regulations, making mostly technical changes, but also making modifications that will require lenders to update their systems and disclosures.

Mortgage Loans

Mortgage Complaint Database

As promised, on December 1, the Bureau launched its mortgage complaint database. Similar to the credit card complaint database, which the Bureau launched on July 21, 2011, the mortgage database is a repository for complaints submitted by aggrieved borrowers to the CFPB.

When a consumer submits a complaint, he is asked to provide information about himself (or the complainant) as well as basic information about the nature of the complaint. Additionally, the consumer is expressly prompted to indicate whether he believes the lender has discriminated against him and must indicate whether that discrimination was on the basis of: age, marital status, national origin, race, exercise of rights under the Consumer Credit Protection Act (*i.e.*, Truth in Lending Act, etc.), receipt of public assistance, religion or sex.

Within 15 calendar days of receiving the complaint, the lender must provide the CFPB with:

- Steps it has taken to respond to the complaint;
- Communications received from the consumer in response to the steps taken to respond;
- A description of any follow up actions the lender is taking or will take in continuing response to the complaint; and
- A selection of the category that describes the response: "Closed With Relief;" "Closed Without Relief;" "In Progress;" "Incorrect Company;" "Misdirected;" and "Alerted CFPB."

For purposes of the above, the categories are defined as follows:

- **Closed With Relief.** This category is for action taken that has



objective, measurable, and verifiable monetary value to the consumer as a direct result of the steps taken by the lender (or by steps that the lender will take).

- **Closed Without Relief.** This category is for action taken that does not include “relief” as defined above.
- **In Progress.** This category indicates that the complaint cannot be closed within 15 days; however, the lender will provide a final responsive explanation at a later date (not to exceed 60 calendar days from the date of receipt of the complaint).
- **Alerted CFPB.** This category is appropriate when the lender cannot take action to resolve the complaint because of reasons such as suspected fraud, a pending legal matter, or the complaint is filed by an unauthorized legal party.
- **Incorrect Company.** This describes when a lender cannot take action because the complaint is not related to that lender’s company.
- **Misdirected.** This applies when a complaint needs alternative routing or is duplicative of a complaint to which the lender has already responded.

The CFPB will turn its attention next to creating a database for deposit products. The CFPB hopes to have a database for each consumer lending product by the end of this year.

Know Before You Owe – Closing Disclosures

Beginning last May, the Bureau began its efforts to integrate the mortgage disclosure requirements arising under the Truth in Lending Act and the Real Estate Settlement Procedures Act. At first, the CFPB focused its efforts on the early disclosure, culminating with the presentation provided for in its “Yucca” and “Pinyon” forms.

In November, the Bureau turned its focus to integrating the closing disclosure; and, accordingly, the CFPB unveiled two new prototypes for a single mortgage disclosure to replace the HUD-1 Settlement Statement and final Truth-in-Lending disclosure (Hornbeam and Ironwood).

After receiving input on the Hornbeam and Ironwood models, in December, the Bureau offered two new prototypes (Sassafras and Mimosa). Both of these models are five page disclosures for fixed-rate, purchase money loans. The Mimosa prototype retains the format used in Hornbeam and Ironwood, which contains the line-numbered settlement statement in the middle of the disclosure. In contrast, the Sassafras model steps outside of the HUD-1 disclosure paradigm, instead providing the fee disclosures according to groupings of the type of fee charged (*i.e.*, origination charges, services borrower shopped for, services borrower did not shop for, taxes, etc.).



The Bureau is carefully considering the feedback to all of these prototypes to determine how best to convey to the consumer the costs of the loan at closing. Please contact Venable if you would like copies of any of these prototypes.

Tips for Avoiding Modification Scams

The Bureau, in conjunction with SIGTARP (Special Inspector General for the Troubled Asset Relief Program), warned homeowners who are struggling to make their mortgage payments to beware of con artists and scams that promise to save homes and lower mortgage debt or payments by offering the following tips:

- **HAMP.** Borrowers can apply to the federal Home Affordable Modification Program (HAMP) on their own or with free help from a housing counselor approved by the U.S. Department of Housing and Urban Development (HUD). Applying to the program is always free. For more information on how to apply, call the Homeowner's HOPE Hotline at 1-888-995-HOPE (1-888-995-4673) or visit www.MakingHomeAffordable.gov.
- **Servicer Discretion.** Only the mortgage servicer has discretion to grant a loan modification. Therefore, no third party can guarantee or preapprove a HAMP mortgage modification application.
- **Fees.** Beware of anyone seeking to charge borrowers in advance for mortgage modification services – in most cases, charging fees in advance for a mortgage modification is illegal. Paying a third party to assist with a HAMP application does not improve the likelihood of receiving a mortgage modification. Accordingly, beware of individuals or companies that ask for payment and tout success rates or claim to be “experts” in HAMP.
- **Logos.** If an individual or company claims to be affiliated with HAMP or displays a seal or logo representing the U.S. government in correspondence or on the Web, borrowers should check the connection by calling the Homeowner's HOPE Hotline.
- **Money-Back Guarantees.** Beware of individuals or companies that offer money-back guarantees.
- **Defaults.** Beware of individuals or companies that advise homeowners to stop making mortgage payments or to not contact the mortgage servicer.

A copy of this consumer fraud alert is available at: www.SIGTARP.gov/pdf/Consumer_Fraud_Alert.pdf.



Credit Cards

Know Before You Owe

In addition to expanding its “Know Before You Owe” initiative in the mortgage industry to the closing disclosures, the CFPB also began a new “Know Before You Owe” initiative relating to credit cards.

The Bureau’s stated purpose with respect to this initiative is to make credit card agreements less complicated so that consumers can better understand their credit card’s terms. Nevertheless, the Bureau does not want to stifle innovation in the credit card market. Accordingly, the Bureau published for the public’s review and comment, a two-page prototype credit card agreement.

Stylistically, the prototype is far different from existing credit card agreements. A typical credit card agreement has approximately 5,000 words. The prototype has 1,100. Additionally, the prototype uses a larger font and other formatting styles (such as boxes and shading) that are not currently used by the industry. If adopted as proposed, the amount of detailed shading and formatting will be difficult for lenders to implement on existing systems (a lesson learned by the Federal Reserve Board when it undertook its overhaul of mortgage disclosures). In addition to the prototype, the Bureau also published a separate glossary of key definitions used in the disclosure.

The CFPB along with Pentagon Federal Credit Union are launching a test of this prototype disclosure to determine consumer reaction to the new presentation.

Shopping for a Credit Card

The Bureau offers the following four steps to finding the right credit card:

- 1. Do you pay off the balance each month?** Borrowers can avoid or minimize interest charges if they pay their entire balance each month by the payment due date. Borrowers who have carried balances in the past or think they are likely to do so, should consider credit cards that have the lowest APRs. These cards typically do not offer rewards and do not charge an annual fee.
- 2. Know what to compare.** Many credit card offers will contain the following information: (i) APR; (ii) APR for Balance Transfers; (iii) Penalty APR; and (iv) Fees.
- 3. Shop around.** Borrowers should start the search for a new card at their bank or credit union. An existing relationship may qualify you for a better offer.
- 4. Ask your current card issuer to match or beat the offer.** Borrowers who are happy with their service but think they are



paying too much in interest and fees, should examine whether their credit card issuer will match or beat the terms and rate on the new card. However, borrowers should not close the old account right away. Instead borrowers should wait for a zero balance before closing the account.

CFPB Initiatives

Financial Fitness Forum

On December 13, the Office of Servicemember Affairs hosted a Financial Fitness Forum in Washington, DC. The day-long forum included remarks from Holly Petraeus and Raj Date, as well as insight from representatives from all branches of the military.

Much of the discussion focused on financial literacy and how best to prepare troops for their financial future. The panelists discussed the challenges of helping servicemembers make good financial choices in the Internet age.

An archived video of the Forum's morning panel is available on the CFPB website: <http://www.consumerfinance.gov/live-holly-petraeus-kicks-off-our-financial-fitness-forum/>

Whistleblowers

The CFPB welcomes information about potential violators from financial service providers' current or former employees, contractors, vendors and competitor companies. Employee whistleblowers are protected by the Dodd-Frank Act and may not be terminated or discriminated against for: (i) providing information to the employer, the Bureau or any other state, local or federal government authority or law enforcement agency relating to a violation of federal consumer financial law; (ii) testifying about a potential violation; (iii) filing any lawsuit or other proceeding under any federal consumer financial law; or (iv) objecting to or refusing to participate in violations of federal consumer financial laws.

Whistleblowers are invited to contact the CFPB via a toll free "tips hotline" at (855) 695-7974 or whistleblower@cfpb.gov. The CFPB also plans to create a "tips" portal so that tips can be submitted online.

Persons submitting tips may request confidentiality or anonymity to the extent provided by law.

You can access a copy of Venable's analysis of the whistleblower announcement, "Consumer Financial Protection Bureau Opens Whistleblower Complaint Hotline" here:



<http://www.venable.com/consumer-financial-protection-bureau-opens-whistleblower-complaint-hotline-12-27-2011/>

Credit Discrimination

Patrice Ficklin, Assistant Director of the Office of Fair Lending, reminded consumers that the CFPB is the first federal agency with the primary mission of making consumer financial markets work for consumers. In keeping with this overarching mission, Congress created the Office of Fair Lending and Equal Opportunity (the "Office") to focus on these issues.

To accomplish its goals, the Office may:

- Review lenders' policies, procedures and lending activity to detect and address potential discriminatory practices;
- Bring enforcement actions to stop discriminatory practices and remedy harm to consumers;
- Develop new policies, including rules about loan data collection required by Congress;
- Partner with private industry and fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education;
- Help ensure that consumers have the tools they need to make sound financial decisions and protect themselves from discriminatory practices;
- Assist in reviewing consumer complaints of unlawful discrimination;
- Conduct research and analysis on equitable access to credit; and
- Work with the Department of Justice, Department of Housing and Urban Development, Federal Trade Commission, and other federal and state agencies to make sure that fair lending enforcement efforts are consistent, efficient and effective.

Ombudsman's Office

The CFPB has created an Ombudsman's Office under the direction of Acting Ombudsman, Wendy Kamenshine. The Office will assist in the resolution of individual and systemic issues that a depository entity, non-depository entity, or consumer has with the CFPB. People may use the Ombudsman's Office when they have not had success with the existing CFPB processes, or to achieve an informal resolution. Others may contact the Ombudsman to keep their concerns confidential.



Regulations

Outstanding Federal Register Publications

Note below that the CFPB published a number of interim final rules in December. For the most part, these interim final rules did not contain any substantive changes. Rather, the rules made technical corrections to reflect the CFPB as the new regulatory body for many lenders. Nevertheless, in several instances, lenders will need to substitute references to the Office of Thrift Supervision or another regulatory agency with a reference to the CFPB. For example, lenders' adverse action notices, certain disclosures arising under the Fair Credit Reporting Act and certain disclosures arising under the Truth in Lending Act will need to reflect the new agency. Thus, even though the interim final rules went into effect as of December 30, 2011, lenders have until January 1, 2013 to make the systems changes necessary to update their forms.

Topic	Comment Deadline	Status	Effective Date
OMB Review (periodic statements; interest rate adjustments; force-place insurance)	January 3, 2012	Notice and request for comment	N/A
Notification of State Officials	January 17, 2012	Notice and request for comment	N/A
Private Education Loans	January 12, 2012	Notice and request for comment	N/A
Credit Card Complaints	January 30, 2012	Notice and request for comment	N/A
Regulation F (Fair Debt Collection)	February 14, 2012	Interim Final Rule	December 30, 2011
Regulation I (Depository Institutions Lacking Insurance)	February 14, 2012	Interim Final Rule	December 30, 2011



Topic	Comment Deadline	Status	Effective Date
Regulation N and O (Mortgage Acts and Practices and Mortgage Assistance Relief Services)	February 14, 2012	Interim Final Rule	December 30, 2011
Regulation B (ECOA)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation C (HMDA)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation G and H (S.A.F.E. Act)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation M (Leasing)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation X (RESPA)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation V (Fair Credit Reporting)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulations J, K, and L (Interstate Land Rules)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation P (Privacy)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation DD (Truth in Savings)	February 17, 2012	Interim Final Rule	December 30, 2011
Regulation Z (Truth in Lending)	February 21, 2012	Interim Final Rule	December 30, 2011
Regulation E (EFTA)	February 27, 2012	Interim Final Rule	December 30, 2011
Streamlining Inherited Regulations	March 5, 2012	Notice and request for comment	N/A