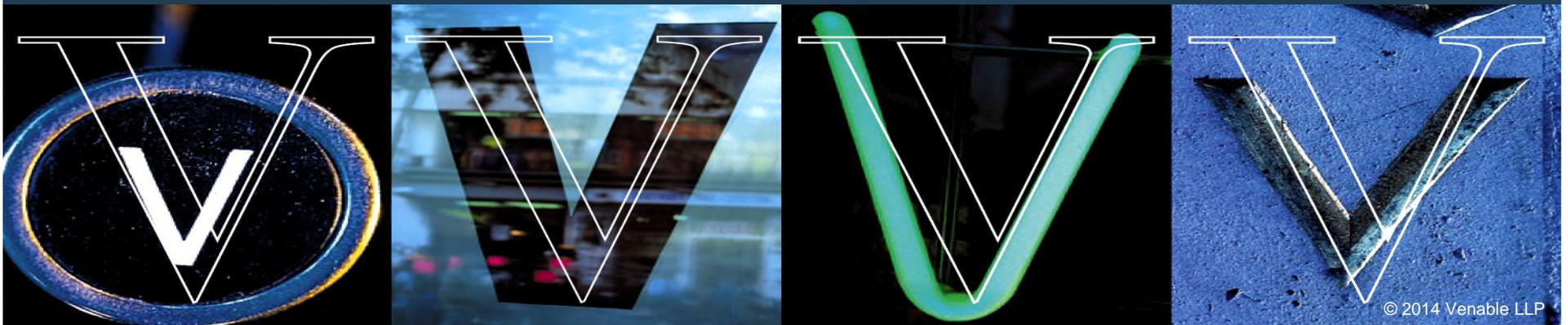


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# Consumer Financial Protection Bureau (CFPB) Turns Three: Three Years, Big Impact

**Webinar**  
**ThomsonReuters West LegalEdcenter**  
**September 10, 2014, 12:00 – 1:00 pm ET**

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# Welcome to Today's Webinar

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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**



## How It All Began...

2007 – Elizabeth Warren proposes a “new” Consumer Protection Agency

2008 – Financial Crisis

July 2010 - Dodd-Frank Act Enacted

Sept. 2010 – Warren Appointed to Oversee initial Development (@ Treas.)

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 CFPB as an independent entity within, but autonomous from, the Federal Reserve System.
- The Dodd-Frank Act provided CFPB with the authority to implement and, as applicable, enforce federal consumer financial law 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.



# July 21, 2011 – A New Sheriff

## Transferred Authority

- Issue rules, orders and guidance related to the federal consumer financial laws that were within the authority of the Fed, OCC, OTS, FDIC, NCUA, and HUD;
- Conduct examinations (for federal consumer financial law purposes), and enforce orders , of banks, savings associations, and credit unions with total assets > \$10 bil, and any affiliates;
- Replace the Fed, OCC, OTS, FDIC, NCUA, and HUD in certain lawsuits or proceeding.

## 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 disclosures 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** – S. Ct. 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** – S. Ct. 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 United States Constitution when the United States 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
<b>Total (58 in FY 2011)</b>	<b>1,162</b>	<b>1,624</b>	<b>1,796</b>



# REGULATORY UPDATES

The screenshot shows a web browser window displaying the Federal Register website. The address bar shows the URL: [https://www.federalregister.gov/agencies/consumer-financial-protection-bureau#recent\\_articles](https://www.federalregister.gov/agencies/consumer-financial-protection-bureau#recent_articles). The page features the Federal Register logo and the text "The Daily Journal of the United States Government". Below this, there is a blue navigation bar with the word "Agency" and a dropdown menu. The main content area is titled "Consumer Financial Protection Bureau" with the CFPB logo. A search bar is present with the text "Search Agency" and "Search term or citation". Below the search bar, the agency URL is listed as <http://www.consumerfinance.gov/>. The text describes the CFPB as an independent bureau within the Federal Reserve System that empowers consumers with information. It also states the purpose of the CFPB is to promote fairness and transparency for mortgages, credit cards, and other consumer financial products and services. Finally, it lists the functions of the CFPB, including implementing and enforcing Federal consumer financial laws, reviewing business practices, and monitoring the marketplace.



# 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)



# 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?
- Announcement expected: September 18



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 regulations. Regulations 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 may facilitate indirect financing by a third party, such as a depository institution, a nonbank affiliate of a depository institution, an independent nonbank, or a "captive" nonbank 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 and uses an automated 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 "buy rate" that establishes a minimum interest rate at which the lender is willing to purchase the retail installment sales contract executed by the consumer for the purchase of the automobile. In some circumstances, the indirect auto lender may exercise discretion 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 "rescue" (or "participation") compensation based upon the difference in interest revenue between the buy rate and the actual rate charged to the consumer in the retail installment contract executed with the dealer. Dealer rescue 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 MARKUP

The Consumer Financial Protection Bureau (CFPB) released a bulletin explaining that certain lenders that offer auto loans through dealerships are responsible for unlawful, discriminatory pricing. Potentially discriminatory markups in auto lending may result in tens of millions of dollars in consumer harm each year, and the bulletin provides clear guidance to indirect auto lenders within the CFPB's jurisdiction on how to address fair lending risk.

**Auto Loans by the Numbers**

- \$70 billion: approximate amount of outstanding auto loan debt in 2012
- 15.7 million: estimated total number of consumer auto loan originations in 2012
- 2nd auto loans are the third largest source of outstanding household debt after mortgage and student loans

**Overview**

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

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

**Issues**

Interest rate markups generate compensation for dealers while giving them the discretion to charge consumers different rates regardless of consumer circumstances. Pricing differentials based on creditworthiness and collateral are allowed, but markups that increase the rate offered to the dealer by the lender, lender policies that provide dealers with the type of discretion increase the risk of pricing disparities 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 situated, white consumers.

**CFPB's Bulletin**

The CFPB has authority to examine large banks and credit unions – and their affiliates – that have assets over \$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 for a creditor to discriminate in any aspect of a credit transaction on loans including race, color, religion, national origin, sex, marital status, and age. Today's bulletin provides guidance for indirect auto lenders within the CFPB's jurisdiction on ways to meet fair lending risk under the ECOA.

## GETTING AN AUTO LOAN?

Shop for a car loan before shopping for a car



## CAR SALES ARE ON THE RISE



Auto loans vs. credit card and student loans



The average amount of auto loans has risen



AMERICAN AUTO LOAN DEBT IS OVER \$783 BILLION

THE AVERAGE AUTO LOAN IS NOW \$27,800

Learn more at [consumerfinance.gov](http://consumerfinance.gov)

# Credit Card

## Looking Back

- Add On Products – regulation by enforcement
- Bulletin 2014-02 – provides guidance on marketing grace periods and promotional rates for credit cards

## Looking Forward

- Unlikely to be the subject of rulemaking
- But “Add On Products” continue to be concern
- Vendor relationships
- Disclosures



# Debt Collection

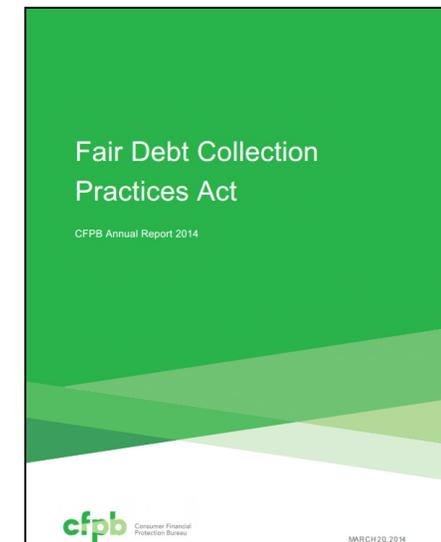
## Looking Back

- 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



## Additional Items on the Regulatory Agenda

- International Remittance Rules
- Prepaid Cards
  - Testing Disclosures
- Streamline and Modernize Annual Privacy Notices
- Civil Penalty Fund and Consumer Education and Financial Literacy Programs



## Supervision

*Ensuring compliance with federal consumer financial laws and regulations and assessing financial risks to consumers.*

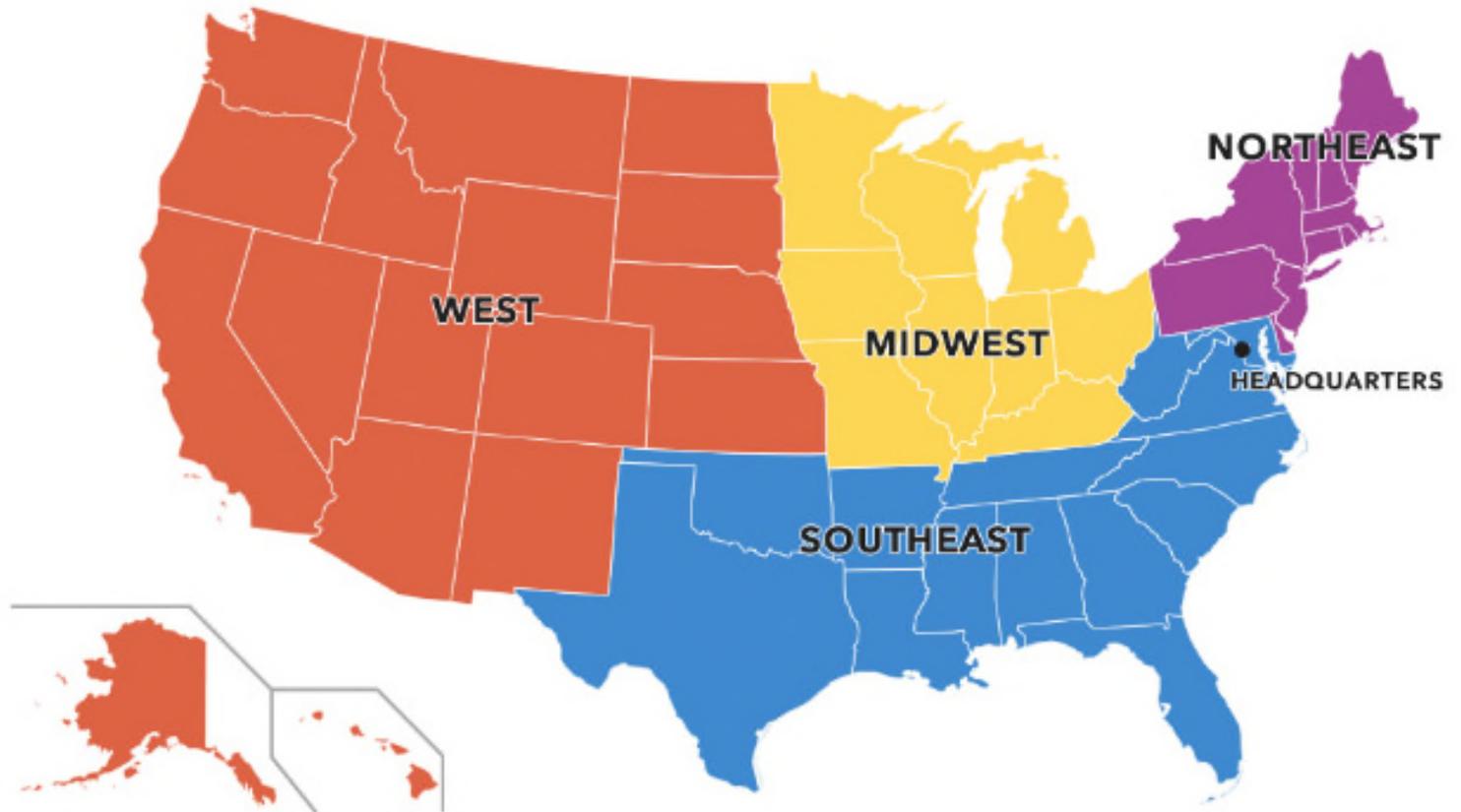
"A chance to be in on the ground level of creating a new agency, a chance to start from scratch, not having to try to change things in the culture but to create one, in my view was a once in a lifetime opportunity."

— *Steve Antonakes, Assistant Director of Large Bank Supervision*

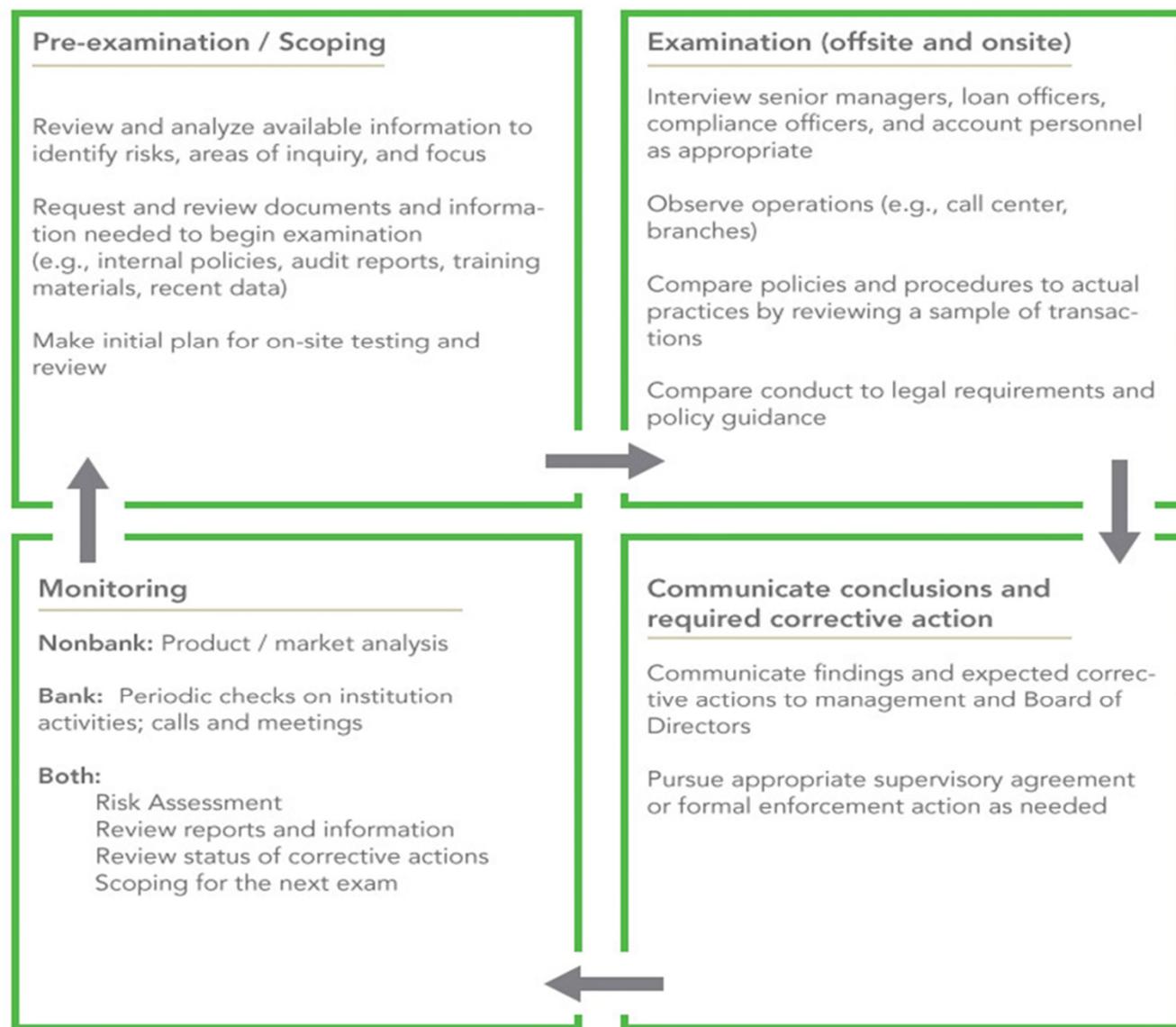
(Source: CFPB Website (July 21, 2014) (<http://www.consumerfinance.gov/jobs/supervision/>)).



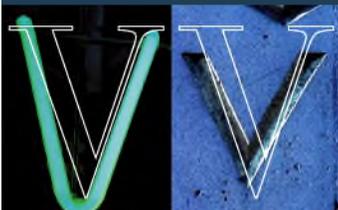
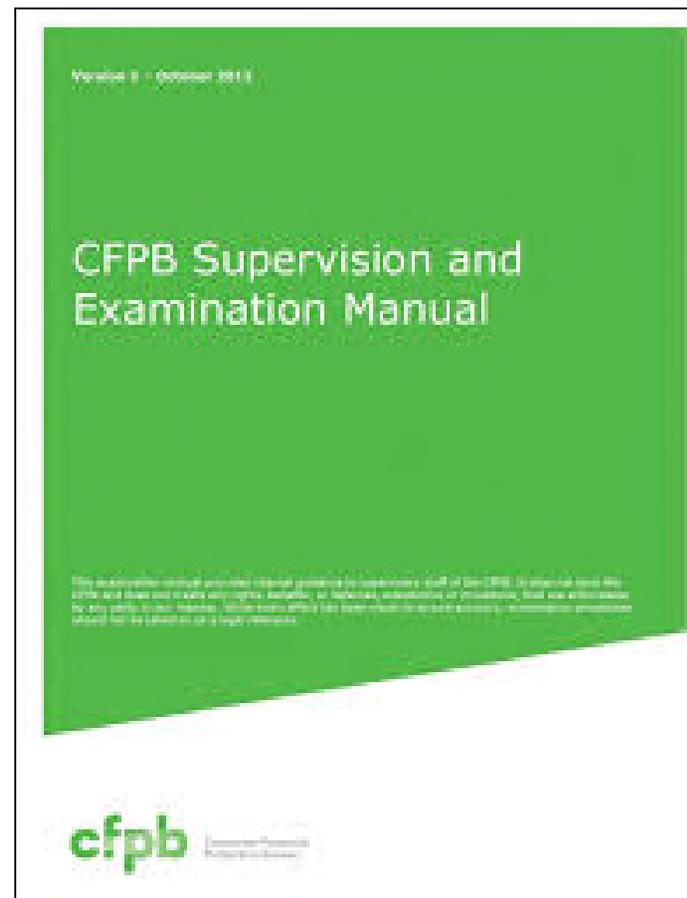
# CFPB Supervision by Regions



# The CFPB Examination Process



# Supervision and Examination Manual



# CFPB Supervision and Examination: A Look Back

- July 2011 – Supervision Launched for Banks, Thrifts, Credit Unions > \$10 bil.
- July 2012 – Supervision Launched Nonbanks
  - mortgage companies (originators, brokers, and servicers, and loan modification or foreclosure relief services);
  - payday lenders; and
  - 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
- Sept. 18, 2014 – Auto Lending
- Possibly Fall 2014 - International Money Transfer, Remittance Market



# CFPB Supervisory Guidance Highlights and Trends

- Routine Updates and New [Examination Procedures and Guidance](#)
- 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 re 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

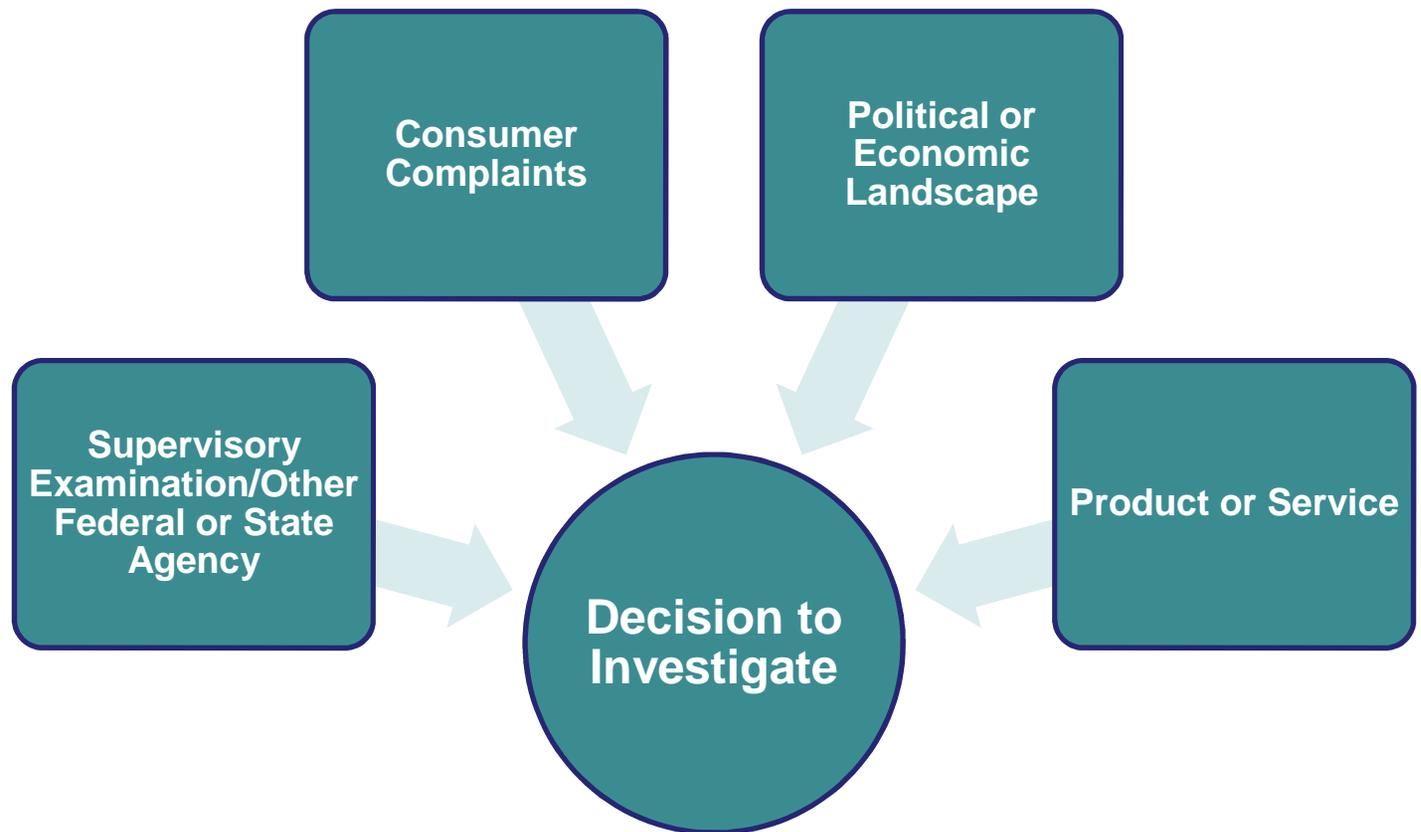


# CFPB Enforcement Power

- CFPB may investigate, issue subpoenas and civil investigative demands, and compel testimony
- CFPB may conduct hearings and adjudications to enforce compliance, including issuing cease-and-desist orders
- CFPB may initiate actions for civil penalties or injunctive relief
- Penalties up to \$1M per day for knowing violations
- No exemplary or punitive damages
- Criminal referrals to DOJ
- Whistleblower protection
- State attorneys general may also enforce the CFPA with notice to the CFPB
- May enforce rules issued by the FTC to the extent such rules apply to a covered a person or service provider
- No express private right of action under the CFPA



# Launch of an Investigation



# Consumer Complaint Database

The screenshot shows a web browser window displaying the Consumer Financial Protection Bureau's (CFPB) Consumer Complaint Database. The browser's address bar shows the URL [www.consumerfinance.gov/complaintdatabase/](http://www.consumerfinance.gov/complaintdatabase/). The page features the CFPB logo, a search bar, and a navigation menu with links for HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and SUBMIT A COMPLAINT. The main content area includes a breadcrumb trail (HOME > CONSUMER COMPLAINT DATABASE), the title "Consumer Complaint Database", and social media icons for Facebook, Twitter, and Email. A descriptive paragraph explains that the database contains complaints received about financial products and services, noting that the bureau does not verify all facts but takes steps to confirm commercial relationships. Below this, a "DATA BY PRODUCT" section lists various categories such as All, Bank accounts or services, Credit cards, Credit reporting, Debt collection, Money transfers, Mortgages, Student loans, and Other consumer loans. A "Download, sort, and visualize" section mentions the use of the Socrata tool and provides links to visualization tutorials and technical documentation.



# 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 37 public enforcement actions
- Civil Money Penalties
  - 1Q – 2Q FY 2014 - \$37,137,000 mil. (13 defendants)
  - FY 2013 – \$49. mil. (2 defendants)
  - FY 2012 – \$32 mil. (11 defendants)



## CFPB Enforcement Highlights

- Mortgage Loan Servicer
- Mortgage Lenders
- Mortgage Reinsurance
- Mortgage Assistance Relief Services
- Credit Card Billing and Credit Card Add-on Products
- Auto Lending
- Student Lending
- UDAAPs in Debt Collection (by creditors and servicers)
- Debt Relief Services / Payment Processing
- Robosigning of court documents in Debt Collection

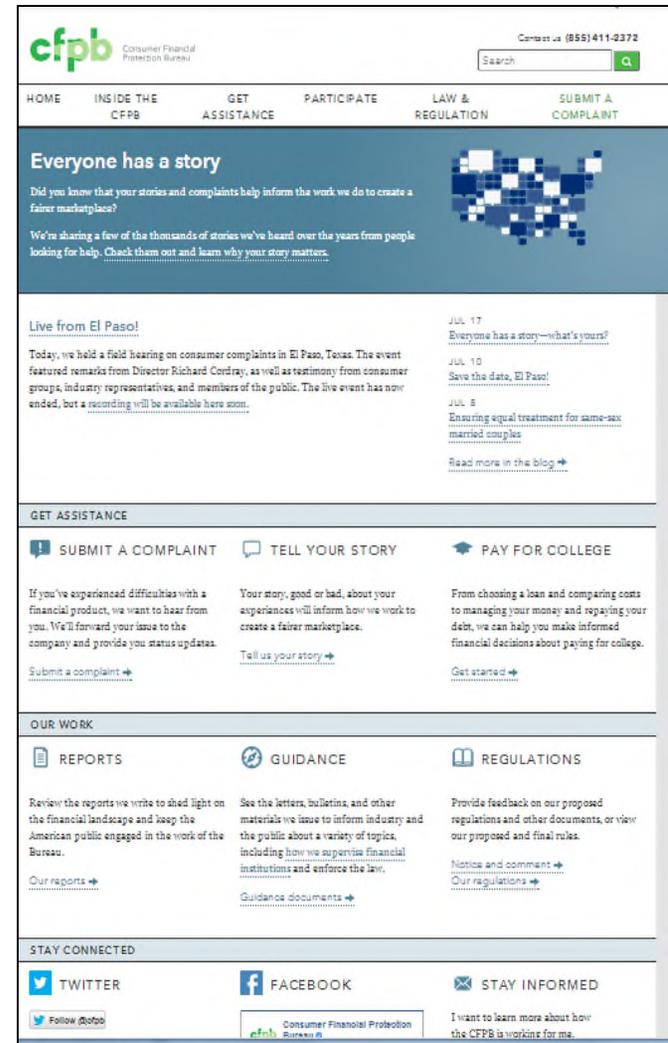
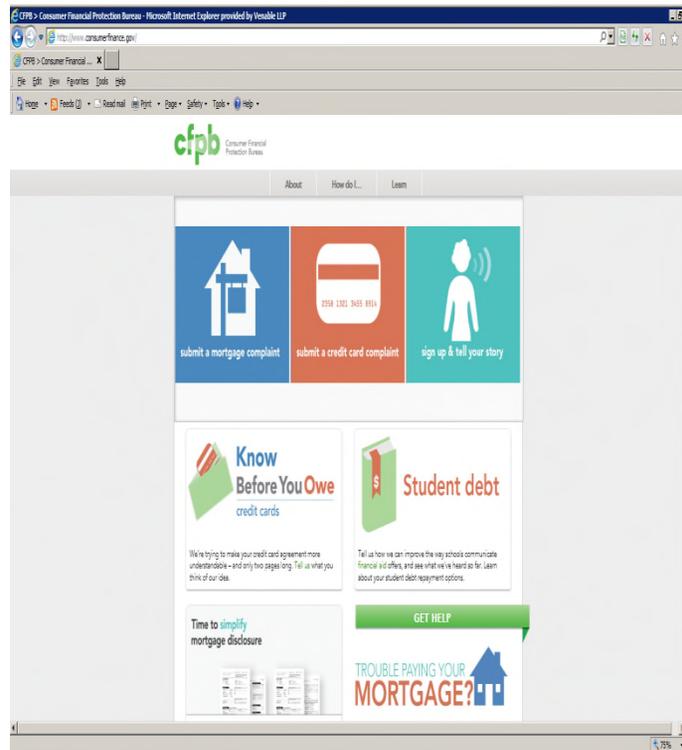


## Enforcement: A Look Forward

- 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 and State AGs:
  - 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



# Observations and Q & A



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