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CFPB Complaints, Compliance, and Enforcement: Trends and Tips

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VENABLE is an *American Lawyer* 100 law firm. With more than 600 attorneys in nine offices across the country, we are strategically positioned to advance our clients' business objectives in the U.S. and abroad. Our clients rely on Venable's proven capabilities in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs.

The screenshot shows the Venable LLP website homepage. At the top left is the Venable logo. To the right is a search bar with the text "search Venable.com" and a "Professional QuickSearch" button. Below the logo is a navigation menu with links for "about venable", "alumni", "international", "professionals", "services", "news & insights", "careers", and "pro bono". The main banner features a large image of the U.S. Capitol building with the text "Washington Know-How." and a sub-headline: "We help our clients navigate legislative and regulatory mazes by providing creative approaches that help their businesses." Below this is a "Learn More" link. Underneath the banner is a content slider with the instruction "Use the content slider below to browse highlights" and a "View by category" dropdown menu set to "All". The slider displays four featured articles:

- Advertising News & Analysis:** Lifewatch battles the FTC's Consumer Sentinel database, state attorneys general urge Senate to HANGUP on robocalls, and more in this issue of Advertising Law News & Analysis.
- Same-Sex Harassment Decisions Go Both Ways:** (Accompanied by a photo of a crowd).
- SEC looks at CCD outsourcing, pay-to-play pitfalls to avoid during election season, and more in the February 2016 edition of Fund Forum:** (Accompanied by a photo of a hand pointing at a screen).
- The importance of expert in IPR petitions, art appro in the news, and more in February 2016 issue of IP:** (Accompanied by a world map).

The B

CFPB Task Force.

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For decades, Venable has helped companies navigate Federal consumer financial protection laws and related state laws. Our CFPB Task Force attorneys have the experience to guide clients through this evolving legal and regulatory landscape.

< [Learn More](#)

- A team of over 30 attorneys who have substantial experience with consumer financial laws.
- We have represented dozens of clients in connection with CFPB regulatory, examination, and enforcement matters. We counsel and advise banks, credit unions, credit card issuers, money transmitters, mortgage originators and lenders, small dollar lenders, auto lenders, student loan originators and marketers, credit reporting agencies, consumer credit counseling agencies, debt relief services providers, debt buyers and collectors, prepaid card providers, and innovative payments providers on all aspects of consumer finance law.
- Our attorneys also have extensive experience representing consumer financial product and service providers, and their vendors, before the federal banking agencies, the FTC, Department of Justice, United States Attorneys' offices, United States Congress, state regulators, and state Attorneys General.
- Many of our attorneys formerly served as government regulators, including at the CFPB, FTC, banking regulators, and DOJ, and their experience enables us to help our clients understand and comply with the evolving expectations of the CFPB.
- www.venable.com/cfpb

About PerformLine

- Founded in 2008 and solely focused on marketing compliance
- Team of industry and technology experts
- PerformMatch is the SaaS Compliance Monitoring Platform
- Real-time automated monitoring of marketing content on the web and in contact centers
- Discovering, monitoring, and scoring billions of potential violations for clients everyday

Solutions for Enterprise Compliance

MONITOR

risk with always-on,
scalable technology



performmatch
discover. monitor. act.



DISCOVER

potential
violations
automatically



ACT

with real-time data,
world-class workflow
& remediation tools



Presenting to you today



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CFPB Consumer Complaints

CFPB Consumer Complaint Database

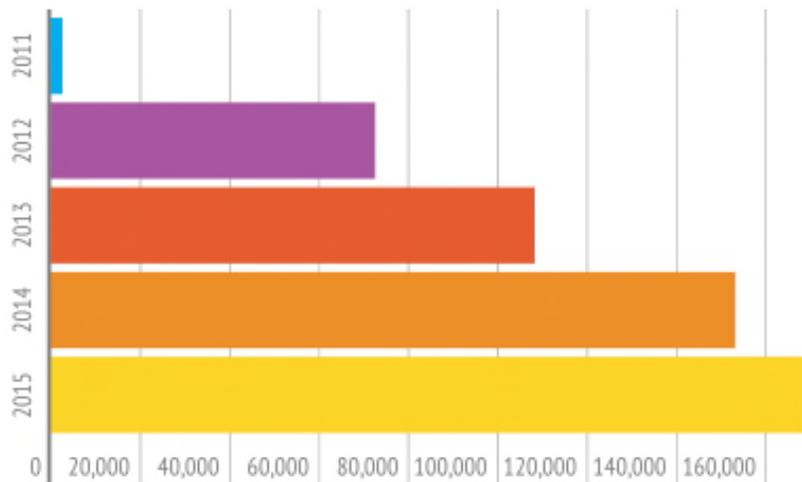


Consumer Financial
Protection Bureau

- July 2011: Began receiving consumer complaints
- June 2012: Began publishing select information from consumer complaints online
- January 2016: Database is a collection of over 505,000 complaints, sent to nearly 3,000 companies for response
- Complaints are published after the company responds or after 15 days (whichever comes first)

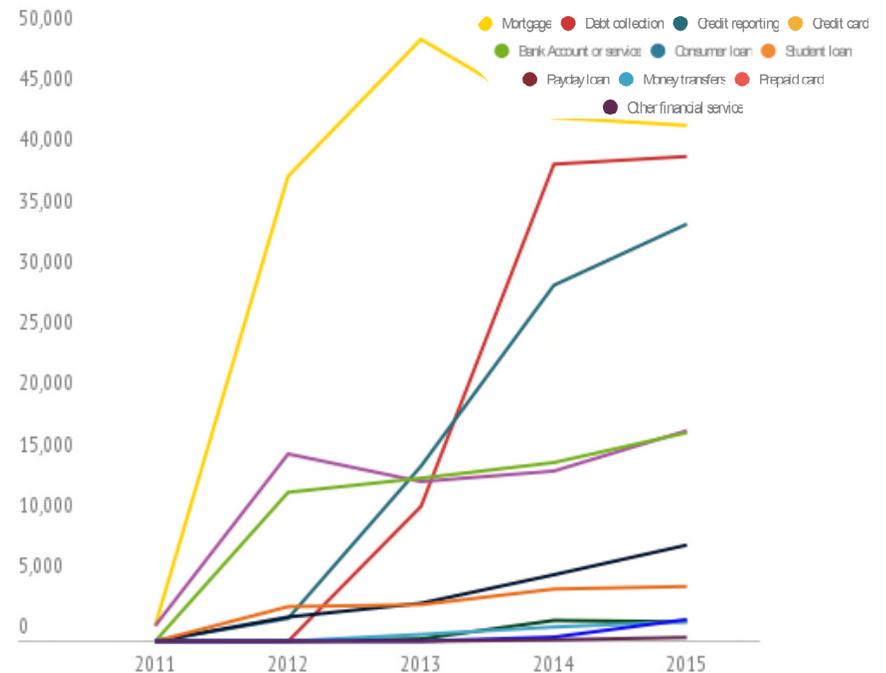
Consumer Complaints on the Rise

Consumer Complaints to CFPB



The number of complaints recorded by the CFPB has increased by an average of 33% year-to-year since 2012.

Complaint Trend by Industry



Complaints vs Probability of Being Fined

Consumer Complaint Scale

	100-2,000 complaints	2,000 - 10K complaints	10,000+ complaints
Probability of Being Fined	7%	* 55%	60%
Avg. Fine	\$48 Million	\$125 Million	\$758 Million

Risk Signals For Companies

When is a Company at Risk?

 **>2,000 complaints**

When a company hits the 2,000+ complaint threshold, the probability of being fined by the CFPB jumps from 7% to 55%!

 **125 Million**

Avg. fine for companies with 2,000 - 10,000 complaints

What's the Potential Liability?

 **758 Million**

Avg. fine for companies with >10,000 consumer complaints



60% Probability for Fines

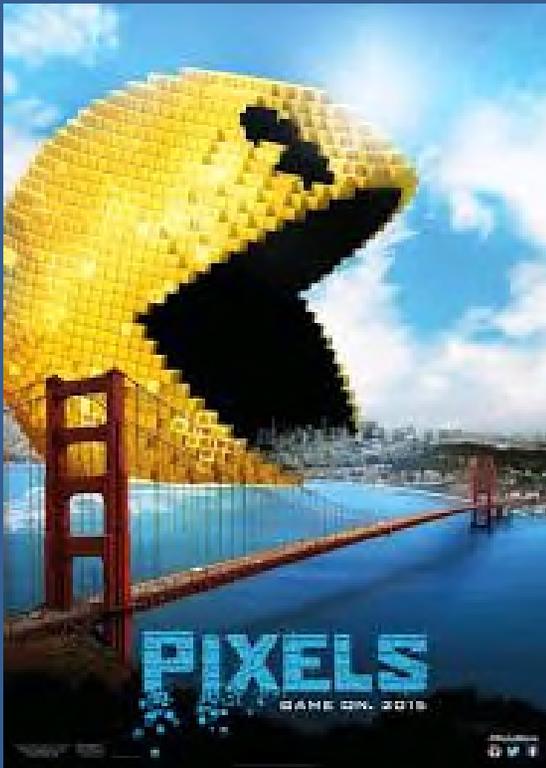
issued by the CFPB if company has >10,000 consumer complaints

Key Takeaways

- ✔ If the CFPB has received over 2,000 complaints about your company, the probability of your company being fined could be as high as 55%.
- ✔ If your company has over 10,000+ complaints in the CFPB database, your company has a chance of facing an average fine of \$758 million.
- ✔ Proactively addressing potentially misleading or deceptive marketing is a *critical* component of protecting your company.
- ✔ Abiding by CFPB guidance and monitoring the consumer complaint database is key to staying on top of consumer issues (great ref doc: Bulletin on “Responsible Business Conduct”).

Compliance and Enforcement: Trends and Tips

CFPB Aggressive Use of UDAAP



How to Decode UDAAP

- UDAAP in Enforcement
 - Dozens of Consent Orders
- UDAAP in Supervision Exams
- UDAAP in Rulemaking
 - Debt Collection
 - Small Dollar Lending
- Bulletins

Lead Generation and Advertising

- The “squeeze” is being felt by all participants—publishers, aggregators, and buyers—and, notably, the lines of legal responsibility and accountability continue to blur. All told, the viability of online lead generation is at stake.
- FTC Enforcement and the FTC Workshop on Lead Generation
- Government agencies are targeting a broad set of business practices, from the representations made to consumers about the products, services, and merchants they are being connected to and how their data is being used, to the collection and security of personal information, and even whether the products or services ultimately sold to consumers comply with applicable (and some cases potentially inapplicable) laws.

Debt Collection and Debt Buying

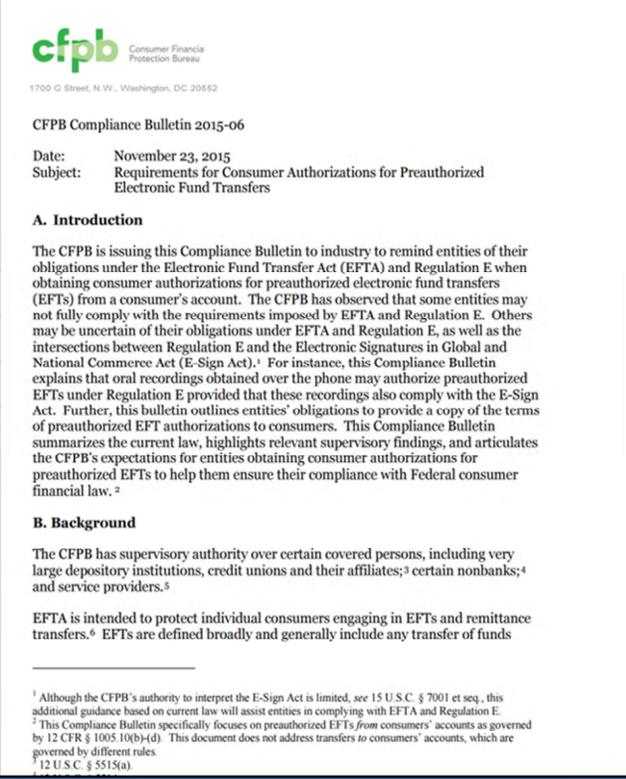
- The CFPB (teaming with the FTC) has taken aim at first-party and third-party debt collection activities, including in enforcement settlements with lenders and collectors. In November, federal, state, and local regulators and enforcement agencies announced a national initiative targeting debt collectors, branded Operation Collection Protection.
- Operation Collection Protection complements recent CFPB [enforcement](#), [supervisory](#), and [rulemaking](#) efforts focused on the debt collection industry, including [first-party creditors and billing services](#), and on the intersection of [data furnishing and debt collection](#). In addition, the CFPB continues to work on developing proposed rules for debt collection following publication of its [advanced notice of proposed rulemaking](#) in November 2013.
- What's next?
 - Additional supervisory exams and enforcement focused on debt collection.
 - Reasonable basis to collect and sue
 - Credit Furnishing and Disputes
 - Disclosures concerning time-barred debt
 - More
 - Debt Collection NPRM
 - First Party Debt Collection, Third Party, Service Providers
 - Continued coordination with state regulators and AGs

Data Furnishing

- Recent CFPB and FTC activity reflects an increase in scrutiny of companies that supply or “furnish” information to consumer reporting agencies (CRAs) as required by the Fair Credit Reporting Act (FCRA).
- Data furnishers, including merchants, debt collectors, and lenders, [can reduce supervision and enforcement risk](#) by avoiding the common mistakes the FTC and CFPB have identified in their recent enforcement announcements.
- In November, Venable attorneys conducted a webinar, “[Minimizing Legal and Compliance Risk for Credit Furnishers](#),” that focused on compliance tips and best practices.

Recurring Payments

- The CFPB recently issued guidance on how companies obtain consumer authorization for [recurring auto debits](#). Although the CFPB does not have authority over all companies with regard to payments, the guidance provided reflects compliance issues relating to preauthorized electronic funds transfers in CFPB examinations, and is also an area in which the FTC has jurisdiction.



cfpb Consumer Financial Protection Bureau
1700 G Street, N.W., Washington, DC 20552

CFPB Compliance Bulletin 2015-06

Date: November 23, 2015
Subject: Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers

A. Introduction

The CFPB is issuing this Compliance Bulletin to industry to remind entities of their obligations under the Electronic Fund Transfer Act (EFTA) and Regulation E when obtaining consumer authorizations for preauthorized electronic fund transfers (EFTs) from a consumer's account. The CFPB has observed that some entities may not fully comply with the requirements imposed by EFTA and Regulation E. Others may be uncertain of their obligations under EFTA and Regulation E, as well as the intersections between Regulation E and the Electronic Signatures in Global and National Commerce Act (E-Sign Act).¹ For instance, this Compliance Bulletin explains that oral recordings obtained over the phone may authorize preauthorized EFTs under Regulation E provided that these recordings also comply with the E-Sign Act. Further, this bulletin outlines entities' obligations to provide a copy of the terms of preauthorized EFT authorizations to consumers. This Compliance Bulletin summarizes the current law, highlights relevant supervisory findings, and articulates the CFPB's expectations for entities obtaining consumer authorizations for preauthorized EFTs to help them ensure their compliance with Federal consumer financial law.²

B. Background

The CFPB has supervisory authority over certain covered persons, including very large depository institutions, credit unions and their affiliates;³ certain nonbanks;⁴ and service providers.⁵

EFTA is intended to protect individual consumers engaging in EFTs and remittance transfers.⁶ EFTs are defined broadly and generally include any transfer of funds

¹ Although the CFPB's authority to interpret the E-Sign Act is limited, see 15 U.S.C. § 7001 et seq., this additional guidance based on current law will assist entities in complying with EFTA and Regulation E.
² This Compliance Bulletin specifically focuses on preauthorized EFTs from consumers' accounts as governed by 12 CFR § 1005.10(b)-(d). This document does not address transfers to consumers' accounts, which are governed by different rules.
³ 12 U.S.C. § 5515(a).

Sweeping Enforcement Actions w/ Service Provider Liability

- The CFPB has actively pursued not only active participants in alleged violations of consumer protection law, but also companies that provide services to the companies, including those involved in marketing the services.
- The CFPB has been using its “substantial assistance” authority, which makes it possible for it to attack any person it believes knowingly or recklessly provided substantial assistance to actors that fall under the CFPB’s jurisdiction.

Financial Services For Students

- Increased scrutiny of student lending practices, and investigations into advertising and marketing of private student loans.
- Over the past several years, the CFPB and the U.S. Department of Education (DOE) have taken a number of steps to increase regulatory requirements for schools and financial institutions that offer financial products and services to students, such as credit, debit, and prepaid cards, as well specific actions related to student loans, including [servicing guidance](#).
- Lessons for all consumer financial product and service providers, as well as vendors and advertisers.

Have you experienced roadblocks on the path to pay off your student debt?

Share your #StudentDebtStress story with us.

Share your story



We know the symptoms. What should we do?

Framework for Use of CMS	
Foundation	<ul style="list-style-type: none">Understand and capture the requirements that govern the business provides foundation for compliance
Traceability	<ul style="list-style-type: none">Link requirements to impacted areas (policies, procedures, controls, systems, etc.) to provide evidence that requirements are addressed or will be addressed
Transparency	<ul style="list-style-type: none">Test to identify areas of weaknesses or gaps – both in design and effectiveness
Collaboration	<ul style="list-style-type: none">Cross department collaboration between legal, risk, compliance, and the business is key to getting the desired results
Maintain and Communicate	<ul style="list-style-type: none">Implement a process to capture new and revised regulatory requirementsCommunicate with parties and business units to update impacted areas



Questions and Answers

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Learn More About your Company's Risk Signals *from the* CFPB Consumer Complaint Database

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<http://lp.performline.com/cfpb-risk-signal-report>

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