

# Consumer Financial Protection Bureau 2016 Outlook

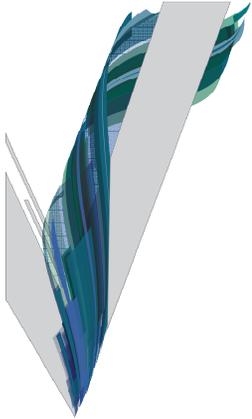
Tuesday, January 12, 2016  
2:00 – 3:30pm ET  
Webinar

## **Moderator & Panelist**

Jonathan L. Pompan, Esq., Partner, Venable LLP

## **Panelists**

Allyson B. Baker, Esq., Partner, Venable LLP  
Leonard L. Gordon, Esq., Partner, Venable LLP  
Alexandra Megaris, Esq., Associate, Venable LLP  
Andrew E. Bigart, Esq., Counsel, Venable LLP  
R. Andrew Arculin, Esq., Counsel, Venable LLP



# Welcome to Today's Webinar

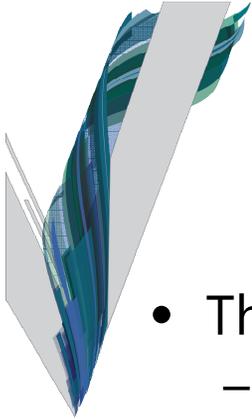
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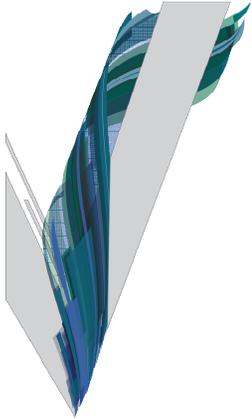
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## Today's Topics Include

- The CFPB in 2016....
  - The CFPB Today
  - Consumer Complaint Portal/Consumer Response
  - Rulemaking Agenda
- Markets & Key Legal Areas
  - Mortgage Lending
  - Payday, Other Small Dollar, Auto Lending
  - Prepaid Accounts & Overdraft Programs
  - Debt Collection
  - Credit Reporting
  - Payments
  - Arbitration
- Enforcement and Examination Trends
- Election Year Outlook
- Questions & Answers



## Today's Panelists



**Jonathan Pompan**



**Alexandra Megaris**



**Allyson Baker**



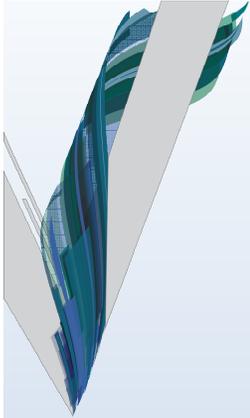
**Andy Arculin**



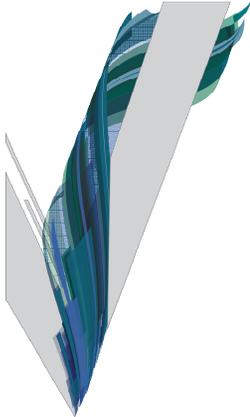
**Andrew Bigart**



**Leonard Gordon**



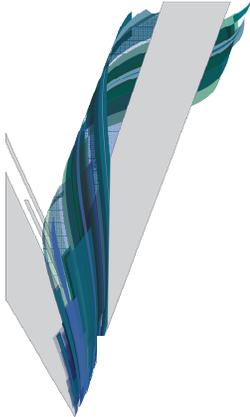
# The CFPB in 2016...



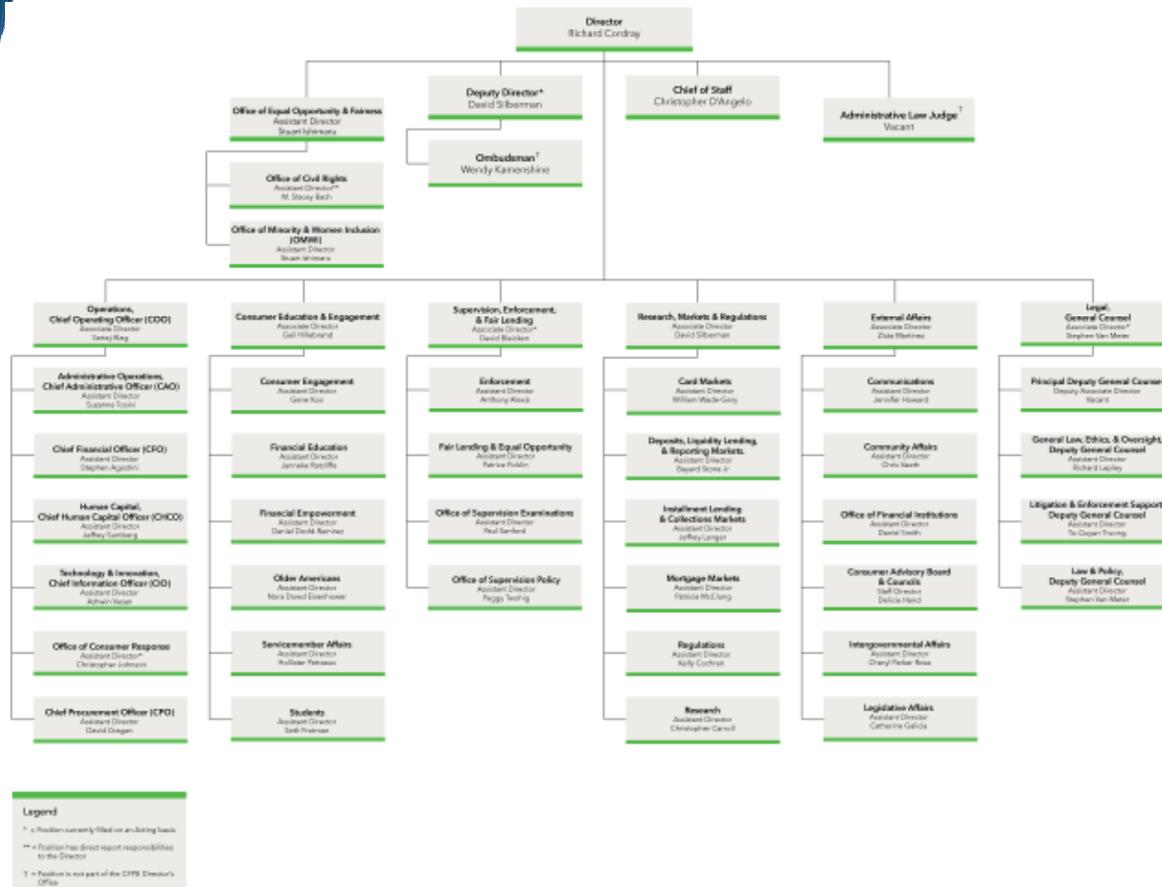
# CFPB FY2015 Spending

Division/Program Area	Fiscal Year 2015
Office of the Director <sup>2</sup>	7,965,000
Operations	108,201,000
Consumer Education & Engagement	26,327,000
Research, Markets & Regulations	34,380,000
Supervision, Enforcement, Fair Lending	140,792,000
Legal Division	13,396,000
External Affairs	6,979,000
Other Programs <sup>3</sup>	2,781,000
Centralized Services <sup>4</sup>	183,586,000
<b>Total (as of 9/30/15)</b>	<b>\$524,407,000</b>

Expense Category	Fiscal Year 2015
Personnel Compensation	192,274,000
Benefit Compensation	73,654,000
Travel	17,809,000
Transportation of Things	115,000
Rents, Communications, Utilities & Misc.	16,875,000
Printing and Reproduction	2,478,000
Other Contractual Services	191,740,000
Supplies & Materials	5,513,000
Equipment	21,415,000
Land and Structures	2,534,000
Interest and Dividends	0
<b>Total (as of 9/30/15)</b>	<b>\$524,407,000</b>



# CFPB Continues to Grow



**Legend**  
 \* = Position currently filled on an acting basis  
 \*\* = Position has direct report responsibilities to the Director  
 † = Position is not part of the CFPB Director's Office

Last updated: January 11, 2016

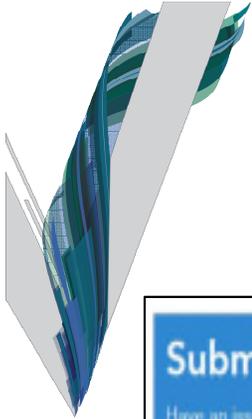
## FY 2015 Stats

- Total costs \$524M
  - \$266M on compensation/1,529 employees
  - \$4.7m for consumer contact center
  - \$2.4M on compliance tools for loan file exams
  - \$1M on expert witnesses



## CFPB Rulemaking Agenda (Issued Fall 2015)

Agenda Stage of Rulemaking	Title	RIN
Prerule Stage	Supervision of Larger Participants in Installment Loan and Vehicle Title Loan Markets	3170-AA07
Prerule Stage	Business Lending Data (Regulation B)	3170-AA09
Prerule Stage	Debt Collection Rule	3170-AA41
Prerule Stage	Overdraft	3170-AA42
Prerule Stage	Arbitration	3170-AA51
Proposed Rule Stage	Payday Loans and Deposit Advance Products	3170-AA40
Proposed Rule Stage	Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)	3170-AA57
Final Rule Stage	Restatement of Federal Consumer Financial Law Regulations	3170-AA06
Final Rule Stage	Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)	3170-AA22
Final Rule Stage	The Expedited Funds Availability Act (Regulation CC)	3170-AA31
Final Rule Stage	Consumer Financial Civil Penalty Fund	3170-AA38
Final Rule Stage	Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	3170-AA49
Final Rule Stage	Procedure Governing Submissions Under the Interstate Land Sales Full Disclosure Act	3170-AA53



# CFPB Complaint Portal / Consumer Response

## Submit a complaint

Have an issue with a financial product or service? We'll forward your complaint to the company and work to get a response from them.

Check your complaint status [Check status](#) [Find help!](#)

Para presentar una queja en español, llamar al (855) 411-2372

### Choose a product or service to get started

If you don't want to submit a complaint, you can [tell your story](#).

**MOST COMMON**

- [Mortgage](#)
- [Debt collection](#)
- [Credit reporting](#)

**OTHER PRODUCTS AND SERVICES**

- [Bank account or service](#)
- [Credit card](#)
- [Money transfer](#)
- [Payday loan](#)
- [Student loan](#)
- [Vehicle or other consumer loan](#)

[consumerfinance.gov/complaint](http://consumerfinance.gov/complaint)

## Consumer Complaint Database

These are complaints we've received about financial products and services.

[Learn about the complaint process.](#)

We don't verify all the facts alleged in these complaints but we do take steps to confirm a commercial relationship between the consumer and company. Complaints are listed here after the company responds or after they have had the complaint for 15 calendar days, whichever comes first. We reserve complaints if they don't meet all of the [publication criteria](#). Data is refreshed nightly.

**DATA BY PRODUCT**

- All
- Bank accounts or services
- Credit cards
- Credit reporting
- Debt collection
- Money transfers
- Mortgages
- Student loans
- Other consumer loans

**Download, sort, and visualize**

We've using a tool called [Socrata](#) to make it easier to view and organize the data into subsets and visualizations. Additionally, Socrata provides a [RESTful API](#) for programmers and researchers.

- [Visualization tutorials from data.gov](#)
- [Technical documentation](#)

**Example visualizations**

- [COMPLAINTS BY CHANNEL](#)
- [CREDIT CARD COMPLAINT RESPONSES BY ISSUE](#)
- [COMPLAINTS BY PRODUCT](#)

[consumerfinance.gov/complaintdatabase](http://consumerfinance.gov/complaintdatabase)



Complaint submitted



Review and route



Company response



Consumer review



Review and investigate



Analyze and report

# Complaints Received by the CFPB and Monetary Relief Obtained for Consumers

(Sept. 2014-Sept. 2015)

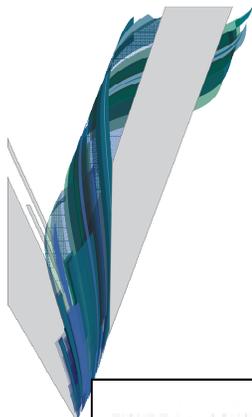


FIGURE 1: CONSUMER COMPLAINTS BY PRODUCT

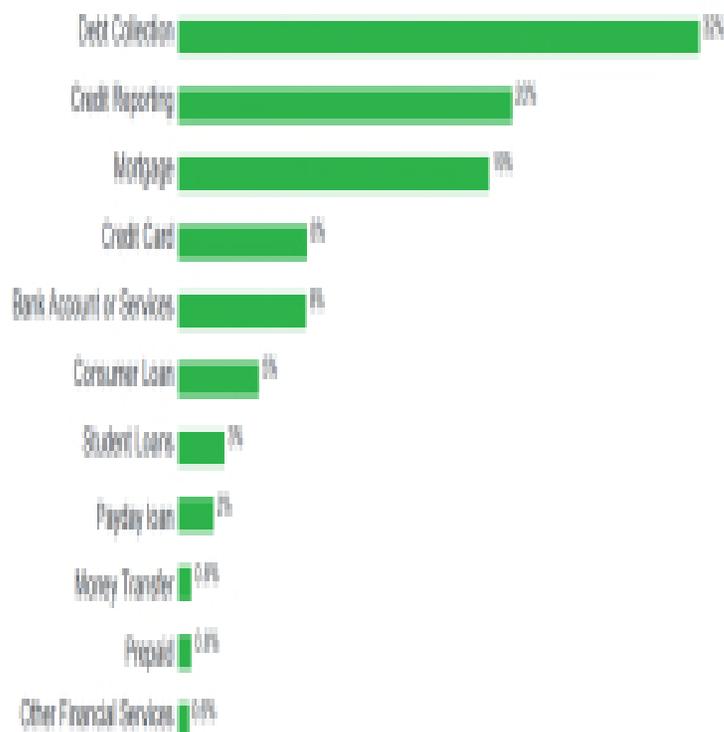
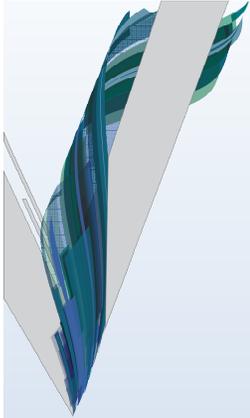
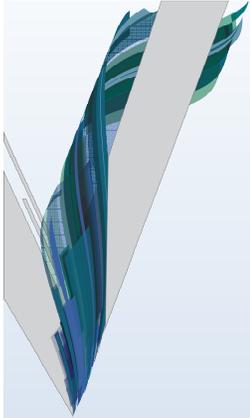


TABLE 22: MONETARY RELIEF REPORTED BY COMPANIES

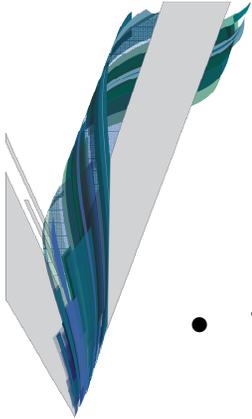
Product	Number of complaints	Median amount
Debt collection	420	\$347
Credit reporting	200	\$23
Mortgage	1,210	\$500
Credit card	3,200	\$100
Bank account or service	3,090	\$105
Consumer loan	480	\$278
Student loans	250	\$176
Payday loan	80	\$319
Money transfers	180	\$100
Prepaid	270	\$200
Other financial services	30	\$186
<b>Overall</b>	<b>9,420</b>	<b>\$140</b>



# Markets and Key Legal Areas

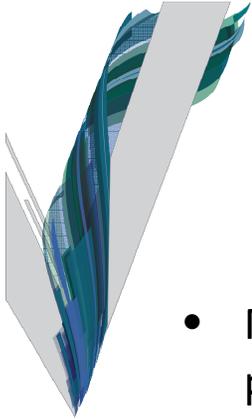


# Mortgage Loans



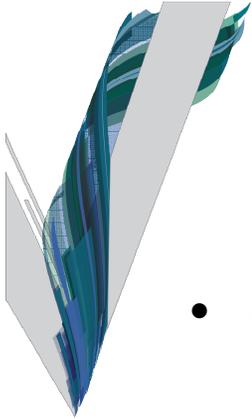
## Major Events in 2015 Will Impact 2016 Priorities

- TILA-RESPA Integrated Disclosures (“TRID”) took effect 10/3/2015
  - Affects nearly all mortgage loans and parties to mortgage transactions.
  - Highly complicated set of legal requirements that integrate two statutory disclosure regimes; complete overhaul of origination systems.
  - New liability paradigm and uncharted territory for secondary market purchasers.
- Marketing Services Agreements (“MSAs”) were the subject of enforcement activity plus formal written guidance issued 10/8/2015
  - CFPB skeptical of MSA business practices and ability to comply with RESPA.
  - Enforcement activity.
  - Written guidance.
- New rule on data reporting under the Home Mortgage Disclosure Act (“HMDA”) and Regulation C issued 10/15/2015
  - New coverage and reporting requirements phased in over next three years.
  - Privacy and fair lending concerns.



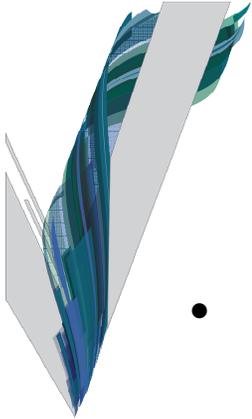
## TILA-RESPA Integrated Disclosures (TRID)

- Major change to mortgage origination— “re-do” of origination systems and process, from technical disclosures down to timing and delivery.
- Uncertainty over disclosure requirements
  - Competing legal interpretations on issues have not been resolved by CFPB.
  - Application of rule proving difficult for certain loan products.
  - Logistics between various parties still a challenge.
- Investor diligence uncovering rampant technical errors
  - High percentage of loans technically unsaleable.
  - Concerns over access to credit or effect on interest rates.
- Concerns over liability exposure and enforcement/supervision
  - CFPB looking for “good faith efforts” at compliance, but TILA liability unclear.
  - CFPB has downplayed liability exposure by pointing out provisions not subject to statutory damages, but overlooked new disclosures that do provide for statutory damages, plus actual damages.



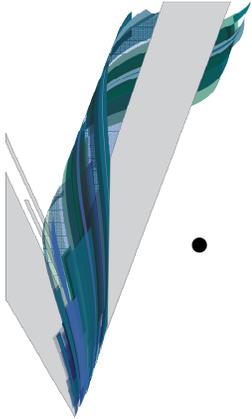
## MSAs and RESPA

- CFPB has made clear that it is skeptical whether MSAs can comply with RESPA.
  - Enforcement actions (Lighthouse Title)
- Guidance Bulletin from October 2015 reinforced skepticism and declined to offer specific guidance for RESPA compliance.
  - Reinforced theory that a contract for marketing services given in exchange for referrals can violate RESPA's anti-kickback provision and may not be saved by the statutory safe harbor.
  - Stated that third-party valuations of marketing services are not a silver bullet that removes liability exposure.
  - Many industry participants cancelled or severely limited MSAs, but still used.
- Look for examinations to focus on MSAs still being used.
- PHH Mortgage: RESPA case that involved captive mortgage reinsurance but involves many of same issues before DC Circuit.
  - Could provide clarity as well as limitations on RESPA liability.



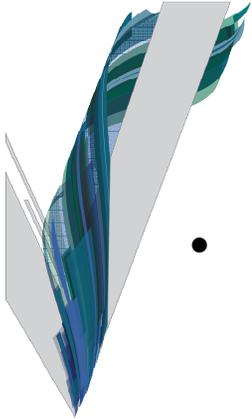
## Other Issues for Enforcement and Supervision

- Loan Originator Rule: Two enforcement actions in 2015 and renewed interest
  - CFPB examiners have promised close scrutiny of loan officer compensation schemes that may base compensation, bonuses, or incentives on loan terms or proxies.
  - Compliance with SAFE Act and licensing/certification requirements for individuals who perform LO duties also will be focus.
- ATR/QM and Servicing: CFPB remains aggressive on enforcement front for mortgage servicing, with focus still heavily on loss mitigation and dual tracking concerns.
  - CFPB looks to finalize proposed amendments to mortgage servicing rules in 2016 that relate to loss mitigation and bankruptcy servicing.
- Other areas of interest: Mortgage marketing
  - Study released on marketing of reverse mortgages to seniors in June 2015.
  - Previous proposed amendments to Regulation Z advertising rules regarding reverse mortgages could be revisited.



# HMDA Implementation

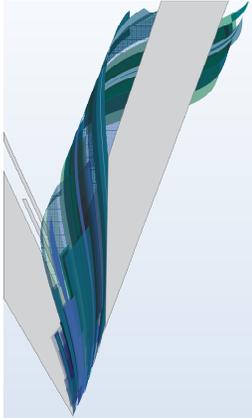
- CFPB finalized amendments to Regulation C, which requires many lenders to report information about the home loans that they originate or purchase, or home loans for which the lenders receive applications.
- The new HMDA rule changes:
  - The types of covered institutions and transactions subject to HMDA reporting requirements;
  - The specific information that covered institutions are required to collect, record, and report; and
  - The process for reporting and disclosing data.
- Implementation will be phased, with different components of the rule taking effect at different times between 2017 and 2020.
- Major implications: Privacy protection and fair lending
  - Another technical build to implement.
  - Rule expands reporting of sensitive data like credit score, age, etc. but left privacy protection issues open and unresolved.
  - CFPB will be able to use expanded data to scrutinize or target lenders for fair lending violations.



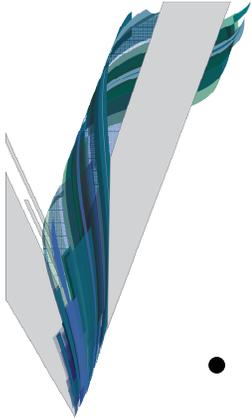
## Other Mortgage Rulemakings

- Likely that CFPB will make amendments or add clarifying commentary to address TRID challenges.
  - CFPB has done so in the past (Title XIV Rules, QM cure provision, etc.).
  - Need is there for various TRID components.
- Mortgage servicing
  - Proposed amendments regarding loss mitigation and bankruptcy servicing issued December 15, 2014 with comment period closing in March 2015.
  - Final rule anticipated in spring 2016.
- Potential rulemakings regarding reverse mortgage marketing and disclosures, HELOC disclosures, and rescission.



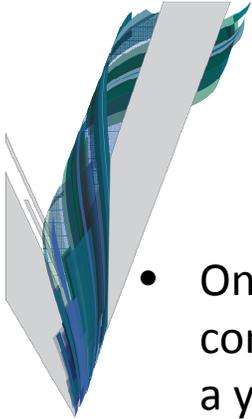


# **Payday, Other Small Dollar, & Auto Lending**



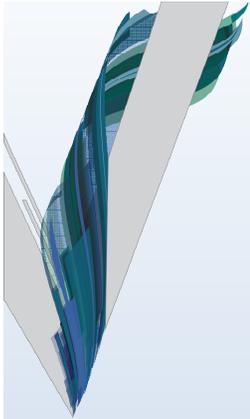
## Payday, Auto Title, and Other Small-dollar Installment Loans

- CFPB is in the process of developing a rulemaking to address concerns that lenders are offering payday, auto title, and similar lending products without assessing the consumer's ability to repay, thereby forcing consumers to choose between reborrowing, defaulting, or falling behind on other obligations.
- Also concerned about certain payment collection practices that can subject consumers to substantial fees and increase risk of account closure.
- The rulemaking will build on feedback received from small businesses and other stakeholders following release last spring of an outline of proposals.
- CFPB will also publish results of further research it has been conducting into these markets in connection with the rulemaking proposal.
- The proposed rule is expected in first quarter 2016.

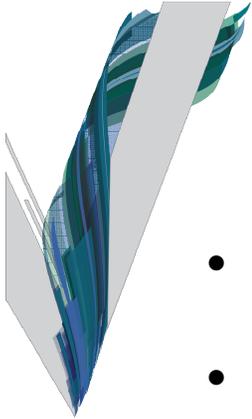


## Auto Lending

- On June 10, 2015, CFPB issued a rule to regulate nonbank automobile finance companies that makes, acquires, or refinances 10,000 or more loans or leases in a year.
- The rule covers roughly 34 of the largest finance companies, finance subsidiaries owned by auto manufacturers, and specialty finance companies. In combination, these companies originate around 90 percent of nonbank auto loans and leases.
- CFPB released the examination procedures that examiners will use in reviewing bank and non-bank auto finance companies.
- Examinations: Look for heavy focus on fair lending and also on marketing.
- Enforcement: CFPB and DOJ have pursued fair lending actions that focus heavily on dealer markup discretion.
  - Multiple actions in 2015 (Fifth Third, etc.).
  - Trend will continue; examinations will give CFPB more an opportunity to scrutinize pricing.

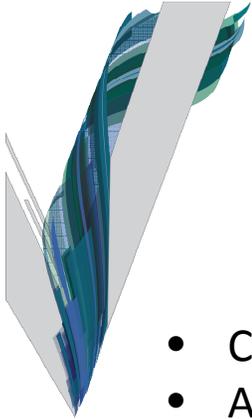


# Prepaid Accounts & Overdraft Programs



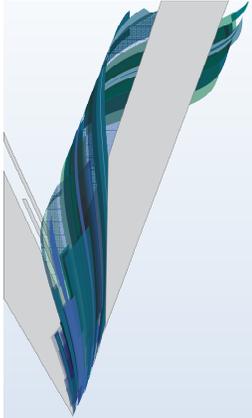
## Prepaid Cards and Accounts

- CFPB is finalizing a proposed rule requiring prepaid accounts to receive certain protections that are similar to those that exist now for debit and payroll cards.
- The proposed rule also required general credit card protections for prepaid accounts that access overdraft services or offer certain credit features
  - Easy and free access to account information;
  - Error resolution rights;
  - Fraud and lost-card protection; and
  - “Know Before You Owe” prepaid disclosures that would provide consumers with standard, easy-to-understand information about the prepaid account.
- If consumers have access to credit in connection with a prepaid account, they would be entitled to the same protections that credit card consumers receive today
- The final rule is expected in spring 2016.

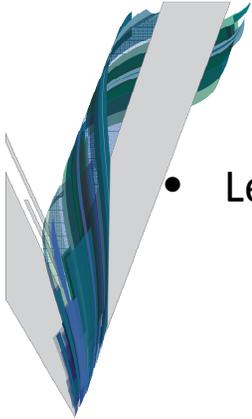


# Overdraft Protection

- CFPB is preparing a rulemaking for overdraft programs on checking accounts.
- A prior white paper (2013) and report by the CFPB highlighted a number concerns, including how consumers consent (or “opt in”) to overdraft coverage for certain electronic transactions, overdraft coverage limits, transaction posting order practices, overdraft and insufficient funds fee structures, and involuntary account closures.
  - Describes overdraft as a costly service.
  - Notes that a small percentage of consumers incur a substantial number of overdrafts.
  - Variety in the policies for when banks charge overdrafts.

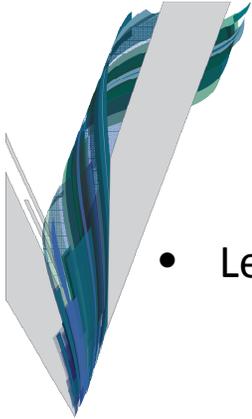


# Debt Collection



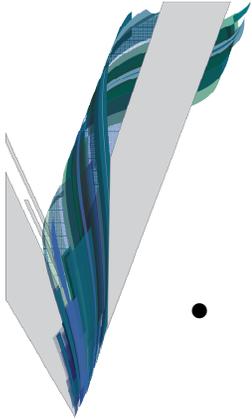
# Basis to Collect & File Collection Lawsuits

- Legal Framework
  - Picking up where FTC left off, CFPB has imposed—through enforcement—a heightened standard of “substantiation” for debt buyers and third party collectors.
  - Emphasis on need for original account level documentation, especially in litigation context.
- Recent Enforcement
  - *CFPB v. Hanna & Associates* (Dec. 2015)
    - Allegations that collections law firm filed suit without meaningful involvement of attorneys. CFPB alleged the firm used sworn statements from its clients attesting to details about consumer debts when the signers could not have known the details.
  - In the Matters of Encore/Portfolio Recovery Services (Sept. 2015)
    - Consent order requires firms to review account level documentation in order to continue collections under specific circumstances and to possess documentation in order to file suit.
  - In the Matter of Chase Bank (July 2015)
    - CFPB alleged that Chase, among other things, sold bad debts to buyers and filed suit directly based on inaccurate or unverified information.
    - Imposed requirements on litigation and debt sale practices.



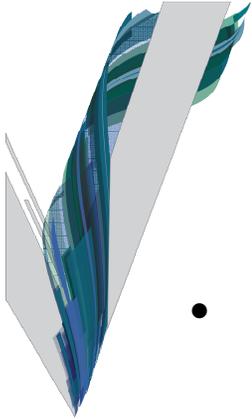
## UDAAP & Debt Collection

- Legal Framework
  - FDCPA and CFPB prohibit harassment or abuse, as well as false or misleading representations in connection with collection of debts.
  - The FDCPA also prohibits debt collectors from threatening actions (such as lawsuits) when they cannot be legally taken or are not intended to be taken.
- Recent Enforcement
  - *CFPB v. Hanna & Associates* (Dec. 2015)
  - In the Matters of Encore/Portfolio Recovery Services (Sept. 2015)
    - CFPB alleged companies deceived consumers by:
      - Suggesting consumers have the burden of proof in litigation.
      - Failing to disclose to consumers that their accounts are time barred.
      - Implying that debts that are not disputed are presumed valid by the court.
      - Misrepresenting that account had been reviewed by an attorney and litigation was imminent or under way.
      - Suggesting that only way to prevent calls on cell phones was to consent to receive calls from an auto dialer.



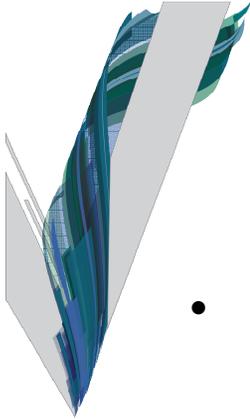
## UDAAP & Debt Collection Cont'd

- Recent Enforcement
  - *CFPB v. Security National Automotive Acceptance Company, LLC* (June 2015)
    - CFPB alleged that auto loan company engaged in unlawful debt collection as to service members, including threatening to contact commanding officers to pressure repayment and falsely threatened to garnish wages.
    - Alleged that company threatened to take legal action against customers when, in fact, it had not determined whether to take such action
  - *CFPB v. NDG Financial Corp.* (July 2015)
    - Alleged that an off-shore payday lender falsely represented that non-payment of debt would result in lawsuit, arrest, imprisonment, or wage garnishment.
- CFPB Guidance
  - CFPB Compliance Bulletin 2015-07, In-Person Collection of Consumer Debt
    - Highlights the various risks that debt collectors face when conducting in-person debt collection visits to a consumer's workplace or home.



# Debt Collection Communications

- Legal Framework
  - FDCPA sets forth requirements and prohibitions that govern communication with consumers, whether by phone, writing, or in person.
- Recent Enforcement
  - In the Matter of Discover Bank (July 2015)
    - Student loan servicer allegedly placed 150,000 calls at inappropriate times – before 8 a.m. and after 9 p.m. in the borrower’s time zone.
  - In the Matter of Syndicated Office Systems, LLC (June 2015)
    - Medical collection company failed to send validation notices to more than 10,000 consumers but continued to collect over \$2 million from the consumers who did not receive the notices.
- CFPB Guidance
  - Supervisory Highlights, Winter 2015
    - Collections calls, scripts, and letters overstating the impact of federal student loan rehabilitation on credit reports and scores.
    - Inadequate systems to comply with FDCPA prohibition on communications with consumers represented by attorney or at work.



# Debt Collection Rulemaking

- Building on the Advance Notice of Proposed Rulemaking, issued in November 2013, the CFPB is continuing to engage in research for a proposed rulemaking on debt collection.
- The CFPB has indicated that future rules could encompass parties that collect their own debts—entities that are, under most circumstances, not subject to the FDCPA. The FDCPA generally applies to third-party debt collectors, such as collection agencies, debt purchasers, and attorneys who are regularly engaged in debt collection.
- CFPB has not yet announced the Small Business Advocacy Review (SBAR) panel.

**VENABLE**<sup>LLP</sup>

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**RELATED INDUSTRIES**  
Financial Services  
Consumer Financial Protection Bureau Task Force  
Credit Counseling and Debt Services

**ARCHIVES**  
2016 2012 2008  
2015 2011 2007  
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2013 2009

**ARTICLES**  
**September 4, 2015**  
**CFPB DEBT COLLECTION (REGULATION F) RULEMAKING FAQS 2.0: PREDICTING THE CFPB'S TIMELINE FOR RULEMAKING**

While Consumer Financial Protection Bureau (CFPB or Bureau) enforcement and supervision activity deservedly receives a lot of attention, the CFPB's timeline for formally regulating the debt collection practices of consumer financial services providers need not be a complete mystery.

In November 2013, the CFPB issued an **Advanced Notice of Proposed Rulemaking (ANPR)** that requested comment on all manner of debt collection practices. Although recent enforcement announcements and supervisory highlights have touched on the **debt collection practices** of a wide range of financial services providers, the CFPB has yet to make an announcement on the timeline for rulemaking following the ANPR.

**What's the latest CFPB announcement on the rulemaking?**

The CFPB last indicated its pro-rule activities would last until December 2015. But there's been no definite announcement on the publication of a Notice of Proposed Rulemaking (NPRM), so it may or may not end up being in December 2015.

**How will we know if the CFPB is close to an announcement on the NPRM?**

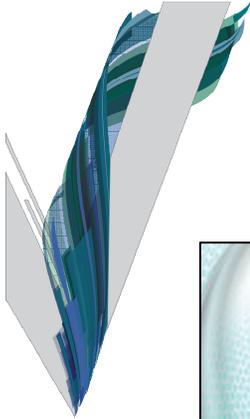
Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the CFPB must conduct a **Small Business Advocacy Review (SBAR) panel**, and CFPB staff has indicated that an SBAR panel would be used for the debt collection rulemaking. Therefore, the most useful method for predicting the timing of the next rulemaking announcement is to watch the SBREFA process that will precede an NPRM.

**What is the timeline for the SBREFA process?**

The Bureau publishes a SBREFA outline of issues roughly a month before a SBAR panel meets. The Bureau then must publish a SBREFA report within 60 days of the SBAR panel meeting, and the SBAR report often is published with the NPRM. So, while there are no guarantees on NPRM timing, monitoring the progress of the SBREFA process likely will provide the best insight into CFPB's timing of publishing an NPRM.

**What is the timeline for the NPRM process?**

When an NPRM is published in the Federal Register it will typically have a public comment period of 60 days or more. The notice and comment process is used to obtain feedback on proposed rules, and may be used by proponents and opponents to set the stage for challenges to new regulations. Depending on the number and substance of comments received, and the decisions the Bureau may make on the proposed rule, there could be another round of rulemaking or eventually a Final Rule would be announced.



# More on Debt Collection on Venable.com

**Navigating CFPB Investigations and Enforcement**

Jonathan L. Pompan, Esq.  
Partner and Co-Chair CFPB Task Force, Venable LLP

Alexandra Megaris, Esq.  
Associate, Venable LLP

Monday, July 20, 2015  
Boston, MA

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January 22, 2015

**CFPB Shines Debt Collection Spotlight on Creditors and First-Party Collections**

This article also appeared on [creditorcollectionnews.com](http://creditorcollectionnews.com) on January 23, 2015.

Two recent Consumer Financial Protection Bureau (CFPB or Bureau) enforcement actions – **CFPB v. Freedom Stores, Inc.**, and **In re DriveTime** – suggest that the CFPB is turning its attention to original lender or “first-party” collection practices to collect debt, including those used by retail merchants and other lenders. Although first-party collections are largely exempt from the Fair Debt Collections Practices Act (FDCPA), the CFPB challenged the allegedly unlawful practices in the two actions using its general unfair, deceptive, and abusive practices (UDAP) authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). We highlight below how the CFPB applied this authority to lenders, and address how these two actions may signal the CFPB’s intentions with respect to first-party collections in its pending debt collection rulemaking.

**Freedom Stores and DriveTime – CFPB Spotlight on First-Party Collections**

In *Freedom Stores*, the CFPB and the attorneys general of North Carolina and Virginia challenged the collection practices of a Virginia-based retailer that operates near military bases nationwide. The company provided credit to consumers who purchased goods, and then subsequently transferred the credit contracts to an affiliated company for servicing and collecting (when delinquent). According to the CFPB, Freedom Stores and its affiliated companies violated the Consumer Financial Protection Act (CFPA) (part of Dodd-Frank), the Electronic Fund Transfer Act, the Truth in Lending Act, and state laws by using illegal tactics to collect debts, including filing legal lawsuits in distant forums, debiting consumers’ accounts without authorization, and contacting service members’ commanding officers. The consent order settling the complaint requires Freedom Stores to provide partial refunds to affected consumers (in total, over \$2.5 million), update information previously reported to credit reporting agencies, and implement compliance policies and procedures.

Similarly, in *DriveTime*, the CFPB brought an administrative action against a “buy-here, pay-here” dealer, e.g., a dealer that both sells cars and originates loans for such sales. According to the CFPB, the company engaged in the following unlawful collection practices:

- Placing harassing calls to borrowers at work or to borrowers’ references;
- Making excessive, repeated calls to wrong numbers;
- Providing inaccurate repossession information to credit reporting agencies;
- Failing to properly handle credit information furnishing disputes; and
- Failing to implement reasonable procedures to ensure the accuracy of consumers’ credit information.

To settle the matter, DriveTime agreed to pay an \$8 million civil money penalty, and its unfair collection tactics, fix its credit reporting practices, and arrange for harmed consumers to obtain free credit reports.

**Does Enforcement Show the Path for Regulation?**

Home / News & Insights / Publications / Articles / CFPB Debt Collection (Regulation F) Rulemaking FAQs

**Articles**

July 2014

**CFPB Debt Collection (Regulation F) Rulemaking FAQs**

On November 12, 2013, the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) issued an **Advance Notice of Proposed Rulemaking (“ANPR”)** seeking comment, data, and information from the public about debt collection practices, and in January 2014, the CFPB extended the comment period to February 26, 2014. The CFPB has indicated that it will move to the next stage in rulemaking in December 2014. While the ANPR is far from a final rule, the ANPR included a number of policy statements and questions that provide insight into the direction the CFPB may be headed when it releases a proposed rule.

**Why is the CFPB engaged in a rulemaking?**

For the last several years, the Federal Trade Commission (“FTC”) and now the CFPB have reportedly received more consumer complaints about debt collectors than about any other single industry.

**What Federal rules presently apply to debt collection?**

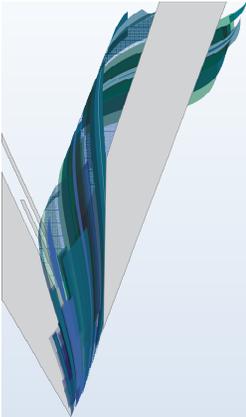
The Fair Debt Collection Practices Act (“FDCPA”) prohibits debt collectors from engaging in unfair, deceptive, abusive, and other unlawful collection practices, but no federal agency was vested with authority to issue general implementing regulations prior to the creation of the CFPB. In addition, generally consumer financial services providers are subject to restrictions on unfair, deceptive, or abusive acts and practices (“UDAAPs”) under the Consumer Financial Protection Act (“CFPA”), and, for the most part, restrictions on unfair and deceptive trade practices under the Federal Trade Commission Act.

From 1977 to 2010, the primary enforcement authority on the federal level for the FDCPA was the FTC. Under the Dodd-Frank Act, the CFPB has primary government responsibility for administering the FDCPA. The Bureau has the authority to prescribe rules with respect to debt collection, issue guidance concerning compliance with the law, collect complaint data, educate consumers and collectors, and undertake research and policy initiatives related to consumer debt collection. The Bureau now shares federal enforcement responsibility for the FDCPA with the FTC and other federal agencies. In January 2012, the CFPB and the FTC entered into a **Memorandum of Understanding (“MOU”)** to coordinate efforts to protect consumers and avoid duplication of federal law enforcement and regulatory efforts. The MOU allows the FTC and CFPB to share enforcement information and coordinate activities.

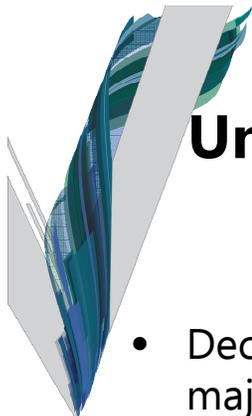
**What are the highlights of the rulemaking?**

The CFPB is considering whether rules governing the collection of debts are warranted under the FDCPA or other CFPB authorities, including the CFPA, and, if so, what types of rules would be appropriate. Among the highlights:

- **Scope of Rulemaking** – Significantly, the CFPB indicated that future rules could encompass parties that collect their own debts—entities that are, under most circumstances, not subject to the FDCPA. The FDCPA currently applies to third-party debt collectors, such as collection agencies, debt purchasers, and attorneys.



# Credit Reporting and Data Furnishing



# Unfolding CFPB Furnisher Accountability Initiative (2014)

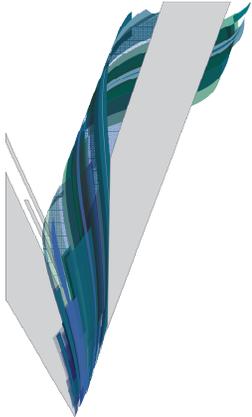
- Dec. 2014 CFPB announced it is requiring major CRAs to provide **regular accuracy reports** as part of ongoing examinations.
- Reports will highlight key risk areas for consumers, including disputes filed with the CRAs.
  - CFPB expects the credit reporting agency to investigate, identify if there is a problem, and take appropriate action if furnisher has outsized number of disputes.
  - Industries with the most disputes: CRAs have to list the top industries they are reporting on, the volume of information received from those industries, and the total number of disputes generated by those industries.
  - Furnishers with particularly high disputes relative to their industry peers. For each industry named, the CRA must also name the top furnishers with the largest number of consumer disputes.

Source: [http://files.consumerfinance.gov/f/201412\\_cfpb\\_sample-accuracy-report.pdf](http://files.consumerfinance.gov/f/201412_cfpb_sample-accuracy-report.pdf)



## Credit Reporting

- The ***Fall 2015 Supervisory Highlights*** addressed furnishing activities. Specifically, examiners observed furnishers failed to:
  - establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information reported to CRAs;
  - periodically review and update policies and procedures;
  - notify consumers of results of investigations of direct disputes;
  - distinguish FCRA disputes from other communications and to monitor and track direct disputes; and
  - properly train employees that oversee furnishing.
- Two recent enforcement actions also emphasize CFPB's priorities when it comes to compliance with FCRA and Furnisher Rule:
  - In the Matter of General Information Services, Inc. (Oct. 2015): Alleged that the companies violated the FCRA for failing to take necessary steps to assure accuracy of consumer information and for including impermissible information in consumer reports.
  - In the Matter of Syndicated Office Systems, LLC (June 2015): Alleged that company failed to respond to more than 13K consumer disputes within the 30-day timeframe



# More on Data Furnishing on Venable.com



**VENABLE<sup>®</sup>LLP**

## Minimizing Legal and Compliance Risk for Credit Furnishers

Wednesday, November 18, 2015  
2:00 p.m. – 3:00 p.m. EST  
Webinar

**Speakers**  
Jonathan L. Pompan, Esq., Partner and Co-Chair Consumer Financial Protection Bureau Task Force, Venable LLP  
Andrew E. Bigart, Esq., Counsel, Venable LLP  
Alexandra Megaris, Esq., Associate, Venable LLP

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news & insights

Home » News & Insights » Publications » Articles » Debt Furnishers: Reducing Supervision and Enforcement Risk

**Articles**

October 7, 2015

### Data Furnishers: Reducing Supervision and Enforcement Risk

Recent Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) 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.

**Overview of Data Furnisher Obligations under the FCRA**

The FCRA and its Furnisher Rule (Regulation V) generally require companies that furnish consumer information to CRAs to maintain policies and procedures designed to (1) ensure that the information they report to CRAs is accurate, and (2) allow consumers to dispute, directly with the furnisher, information they believe is inaccurate. The law also requires furnishers to investigate consumer disputes forwarded by the consumer reporting companies. As part of that investigation, furnishers are responsible for reviewing all relevant information provided with the disputes, including documents submitted by consumers.

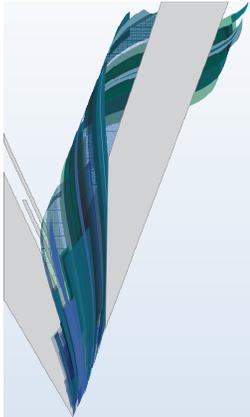
Failure to comply with the FCRA may result in enforcement by the FTC, CFPB, federal banking agencies, and state governments. The FCRA provides for maximum penalties of \$3,500 per violation in the case of lawsuits brought by the FTC, while the CFPB may seek up to \$1,000,000 for each "knowing" violation. Consumers may also bring class actions under the FCRA, and claim statutory damages of \$100 to \$1,000 for each "willful" violation of a clearly established statutory obligation.

**Highlights of Supervisory and Enforcement Developments**

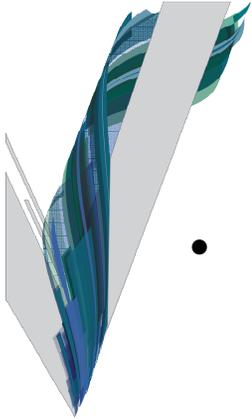
- FTC Enforcement Actions.** The FTC has a long history of enforcement under the FCRA. Most recently, in *FTC v. Tricolor Auto Acceptance Corporation, LLC* (Sept. 17, 2015), the FTC brought a case against Tricolor Auto Acceptance, a loan servicer for an affiliated auto dealer that regularly furnished information to credit bureaus. According to the FTC, Tricolor provided CRAs with details about 11,635 separate consumer accounts but did not have required policies and procedures in place to ensure the accuracy and integrity of the information provided to the CRAs. In addition, the FTC alleged that when consumers disputed the accuracy of the information with Tricolor, the company didn't honor its obligations under the Furnisher Rule. Rather, according to the FTC, the company simply passed the disputes on to a CRA without investigating and reporting back to consumers. The FTC settlement included a civil penalty of \$82,777, and required the company to implement written policies and procedures and to investigate consumer disputes.

**ARCHIVES**

2015	2012	2008
2015	2011	2007
2014	2010	2006
2013	2009	

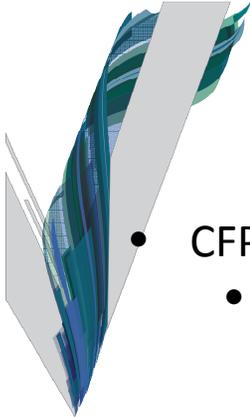


# Payments



# Processing Payments

- Legal Framework
  - Electronic Funds Transfer Act, and Regulation E, regulate electronic funds transfers (EFTs), including preauthorized electronic EFTs. NACHA (a not-for-profit association) manages the ACH Network.
- Recent Supervision and Enforcement
  - Focus on recurring payments and authorizations
  - In the Matter of EZCORP (Dec. 2015)
    - Settlement required consumers to repay loans through electronic withdrawals from bank accounts. The company also allegedly falsely told consumers that the only way to stop collections was to set up a payment plan.
  - In the Matter of: Citibank, N.A., et al. (July 2015)
    - Allegedly charged consumers a convenience fee to pay by phone without explaining that the fee was to post payment to the account on the same day rather than a fee to allow payment.
    - Citibank also allegedly failed to disclose no-cost payment alternatives.



# Processing Debt Payments, Cont'd

- CFPB Guidance
  - CFPB Compliance Bulletin 2015-06, Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers
    - Summarizes the current law, highlights relevant supervisory findings, and articulates the CFPB's expectations for entities obtaining consumer authorizations for preauthorized EFTs.
  - Supervisory Highlights Winter 2015
    - Examiners identified instances in which collection agents misrepresented that consumers were required to make payment by credit card, debit card, or ACH.



Consumer Financial Protection Bureau  
1750 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).<sup>1</sup> 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.<sup>2</sup>

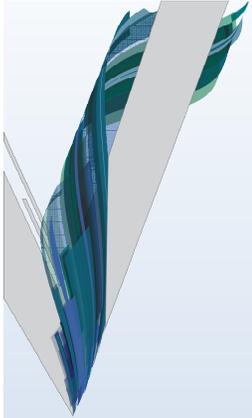
**B. Background**

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

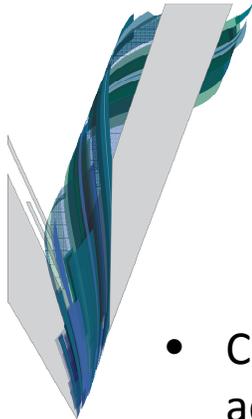
EFTA is intended to protect individual consumers engaging in EFTs and remittance transfers.<sup>6</sup> EFTs are defined broadly and generally include any transfer of funds

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<sup>1</sup> 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.  
<sup>2</sup> 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.  
<sup>3</sup> 12 U.S.C. § 5515(a)



# Arbitration



# Arbitration Clauses in Contracts for Consumer Financial Products and Services

- CFPB has begun a rulemaking process to address use of arbitration agreements in connection with credit cards, deposit accounts, payday loans and various other consumer financial products or services.
- Proposal would (1) prevent companies from using arbitration agreements to foreclose consumers' ability to bring class action lawsuits, which can provide consumers with substantial relief and create the leverage to bring about changes in business practices; (2) and that arbitration filings and awards be submitted to the CFPB.
- Key Issue for installment and other continuity program providers that “roll over” from pre-rule to post rule.

OCTOBER 7, 2015

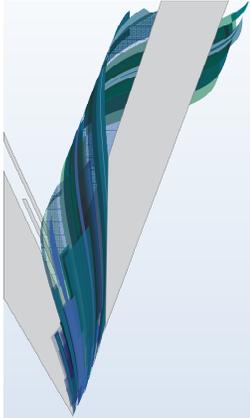
**SMALL BUSINESS ADVISORY REVIEW PANEL FOR  
POTENTIAL RULEMAKING ON ARBITRATION  
AGREEMENTS**

**OUTLINE OF PROPOSALS UNDER CONSIDERATION AND  
ALTERNATIVES CONSIDERED**

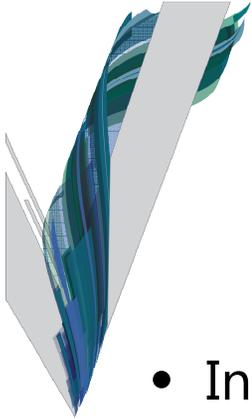
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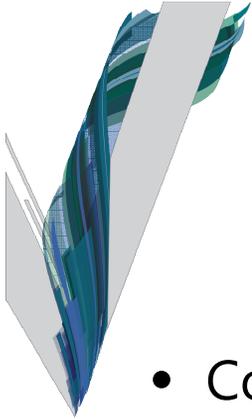


# Enforcement and Examination Trends



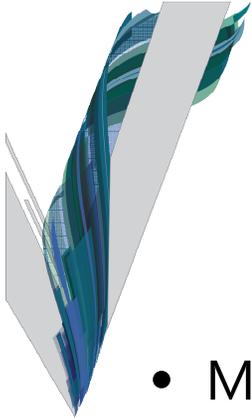
## What does the record enforcement activity reflect?

- Increased use of enforcement authority
  - FY 2015 - 59 public enforcement actions
  - FY 2014 - 41 public enforcement actions
  - FY 2013 – 13 public enforcement actions
  - January 2012 – December 2012 – 9 public enforcement actions
- Larger civil money penalties
  - FY 2015 - \$185M
  - FY 2014 - \$77M
  - FY 2013 – \$49M
  - FY 2012 – \$32M



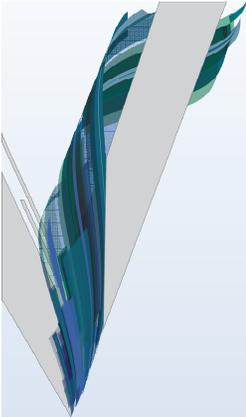
## CFPB Enforcement Trends Expected in 2016

- Continued joint enforcement actions with other regulators (e.g., from past: Department of Justice, State of Maryland, Department of Education, New York Department of Financial Services, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation)
- Increased litigation vs. settlement for some defendants
- More enforcement actions that rely on
  - “Related Person,”
  - “Substantial Assistance,”
  - state law compliance; and
  - other aggressive theories of liability.

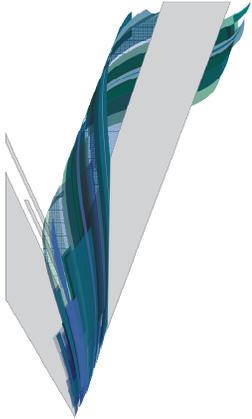


## Examination Trends

- More markets under examination authority and focus shift from mortgage origination and servicing.
- CFPB continues to use exams to build record in markets with pre-rule activity.
- Coordination with state and other federal supervisory agencies.
- Updates to Examinations Manual and continued attempts to harmonize and increase efficiency of exam process and outcomes.
- Expect to see more parties avail themselves of the appeals process, which is unpredictable and opaque.



# **Election Year Developments and Additional Outlook for 2016**



## Comments from our Panelists and Q & A



**Jonathan Pompan**



**Alexandra Megaris**



**Allyson Baker**



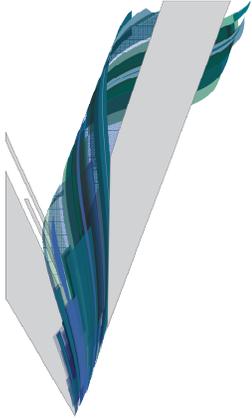
**Andy Arculin**



**Andrew Bigart**



**Leonard Gordon**



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