

In the CFPB's Crosshairs...2016 and Beyond

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Generally speaking, the best predictor of future behavior is past behavior. If this axiom holds true, then we can expect the Consumer Financial Protection Bureau ("CFPB"), which turns five this year, to continue to exercise its broad authorities in unanticipated and surprising ways.

Overview of 2015 and Implications for 2016

In many respects, 2015 was a defining year for the CFPB. It was a year in which the relatively young agency took important steps to solidify its policy positions and more clearly define its enforcement, supervisory and regulatory authority and the industries over which it will actively exercise such authority. For example, in June 2015, CFPB Director Richard Cordray, in the agency's first final ruling in a contested administrative proceeding, did not hesitate to take what many viewed as a somewhat surprising position. In siding with the CFPB's Office of Enforcement against PHH Corporation, Director Cordray held, among other things, that enforcement actions in administrative proceedings brought by the CFPB are generally not subject to a statute of limitations.¹ Putting aside the statute of limitations issue, Director Cordray's ruling is notable for increasing the \$6.4 million dollar disgorgement penalty recommended by the presiding administrative law judge ("ALJ") to an astounding \$109 million dollars.² Clearly, this is likely to have a chilling effect on entities involved in other enforcement actions.

A decision in the PHH case, now on appeal to the D.C. Circuit,³ could either solidify the agency's seemingly unfettered enforcement authority or signal the imposition of judicial limits on the agency's enforcement power. With a ruling from the court not likely until the fall of 2016 at the earliest, the consumer financial industry⁴ has reason to be concerned about the expansive scope of the agency's enforcement authority and the uncertainty present in the administrative forum.

One area of promise for the industry is in the supervisory context. As of September 2015, the Office of Inspector General had removed from its list of major management challenges "Improving the Operational Efficiency of Supervision,"⁵ suggesting there is some promise that entities subject to a full-scope examination may avoid a drawn out exam process in 2016.

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From the regulatory perspective, things became somewhat clearer, but decidedly tougher, for certain industry segments. In June 2015, the agency finalized its automobile financing larger participant rule, the fifth in a series of rulemakings to gain supervisory authority in markets for other consumer financial products or services. Of potentially broader significance for future CFPB rulemakings, in connection with the auto financing rule, the CFPB expanded the meaning of a “financial product or service” to include certain leasing activities. This represents just the first of what are likely to be countless rulemakings in which the CFPB will continue to define the contours of its authority under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).⁶

Other notable developments from 2015 include:

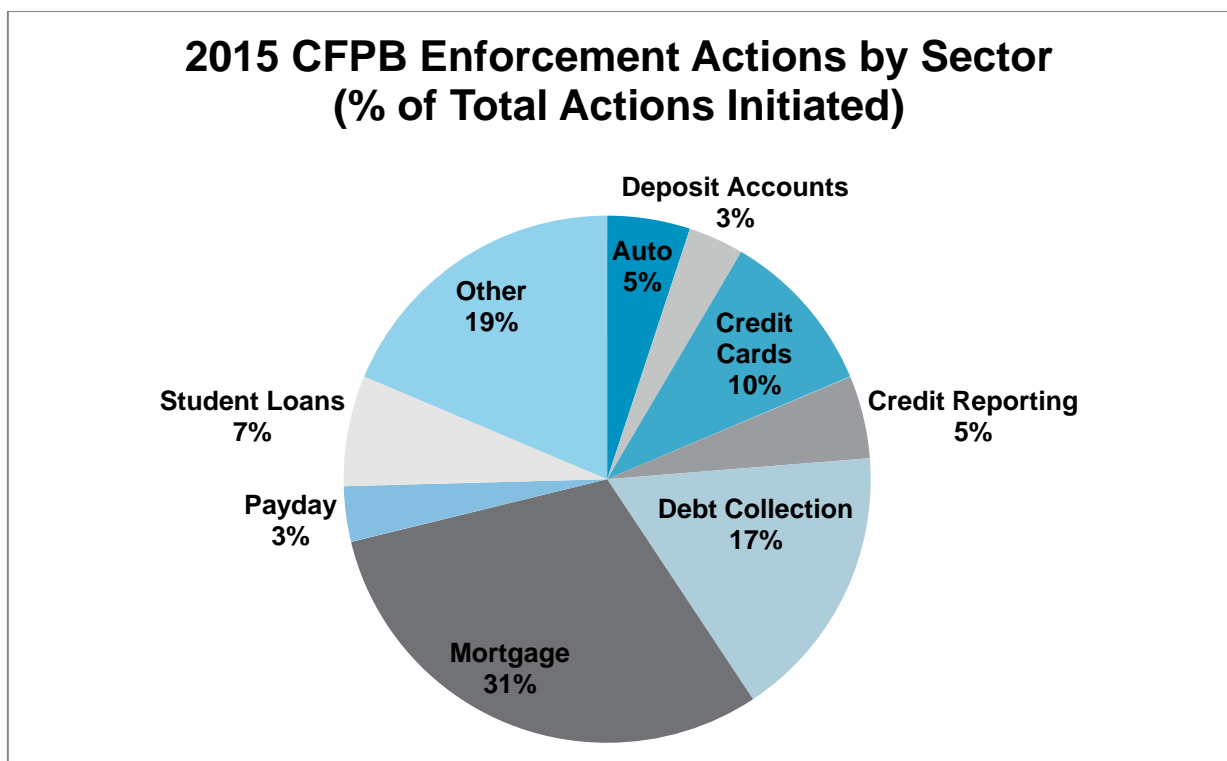
Enforcement	Supervision	Rulemaking
<ul style="list-style-type: none"> □ Initiated over 55 enforcement actions, with close to a third mortgage-related 	<ul style="list-style-type: none"> □ Nearly US\$120 million returned to over 300,000 consumers 	<ul style="list-style-type: none"> □ 14 final rules, with half mortgage-related
<ul style="list-style-type: none"> □ Approximately US\$2.5 billion awarded to consumers 	<ul style="list-style-type: none"> □ Updated examination procedures to reflect new mortgage and auto financing rules 	<ul style="list-style-type: none"> □ Expanded list of financial products and services under CFPB jurisdiction
<ul style="list-style-type: none"> □ Coordinated enforcement activities with the Department of Justice (“DOJ”), Federal Trade Commission (“FTC”), Federal Communications Commission, Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”), Navajo Nation and State Attorneys General⁷ 	<ul style="list-style-type: none"> □ Increased focus on student loan servicing in the second half of 2015 	<ul style="list-style-type: none"> □ Updated mortgage disclosure rules to clarify market risks and lending practices

Notwithstanding these defining initiatives, nearly five years after the CFPB opened its doors,⁸ institutions continue to grapple with understanding the scope and reach of the agency’s enforcement, supervisory and regulatory authority. This is due, in part, to CFPB powers that are not perfectly aligned, including rulemaking authority that extends to more covered persons than its enforcement authority,⁹ which extends to more covered persons than the agency’s supervisory authority.¹⁰ As a result, various institutions and non-financial entities may not appreciate the full extent of their vulnerability to the CFPB’s oversight and jurisdiction. Further complicating this picture is the CFPB’s penchant for expanding traditional notions of what entities are considered “financial institutions.” Underscoring industry concerns, 2015 highlights that the CFPB can and will wield its expansive powers as it sees fit, notwithstanding external pressures to reign in the extent of its reach. For example, on the heels of taking action against a for-profit college in 2014,¹¹ the CFPB sued two wireless companies in 2015.¹² It seems unlikely that any of these entities anticipated being subjected to the CFPB’s jurisdiction.¹³

Key Takeaways from 2015 Enforcement Actions

Unsurprisingly, with the mortgage industry accounting for the largest component of household debt,¹⁴ nearly a third of the CFPB’s enforcement activity focused on mortgages (*see chart below*). While a review of the notable enforcement actions brought by sector is informative (*see Appendix A*), a review of actions across industries may provide a more useful indicator of where the CFPB is heading from an enforcement policy perspective. Based on a cross-industry view, key takeaways from 2015 enforcement actions include the following:

- **The CFPB will continue to communicate through its use of broad remedial powers.**¹⁵ Civil money penalties combined with restitution and other remedial measures that the CFPB imposed send a strong message to all industry participants, including third-party service providers, that violating federal consumer laws may be prohibitively expensive. Significant enforcement actions in 2015 included:
 - A large national bank was ordered to pay a US\$35 million civil money penalty, as well as at least US\$700 million in restitution to approximately 8.8 million affected consumers in an action involving add-on credit card products.¹⁶
 - Another large national bank agreed to pay a US\$30 million civil money penalty plus US\$50 million in restitution for unfair practices relating to the sale of uncollectible credit card debts, specifically, for failing to maintain accurate information regarding defaulted accounts subsequently sold.¹⁷ According to the CFPB, the bank’s actions in connection with the sale of debt were found to violate the Dodd-Frank Act Title X provision barring unfair, deceptive, or abusive acts or practices (“UDAAPs”) because the bank provided “substantial assistance to debt buyers’ deceptive collection practices.” The bank, which entered into a consent order without admitting or denying any of the findings of fact or conclusions of law, agreed to stop all attempts to collect, enforce in court or sell more than 528,000 consumers’ accounts.¹⁸
 - The CFPB obtained a default judgment for US\$530 million in monetary relief and secured US\$480 million in debt forgiveness from one of the largest for-profit, post-secondary education companies in the country.¹⁹



Represents all actions initiated in 2015, including those still pending.

- Finally, the CFPB enjoined various companies and individuals from participating in the consumer finance industry. In one case, the CFPB completely shut down the operations of a credit services company that the agency alleged fraudulently offered a limited type of credit card. The CFPB permanently prohibited the company from offering any consumer credit products or services.²⁰ The CFPB also banned several individuals from the mortgage industry for terms of two to five

years in connection with their participation in a scheme involving illegal kickbacks in violation of the Real Estate Settlement Procedures Act (“RESPA”).²¹

- **The CFPB’s reach will continue to be based on novel applications of law.** For example, the agency will seek to pursue entities that enable or provide substantial assistance to companies that directly engage in wrongful conduct aimed at consumers. Significant enforcement activity in 2015 included:
 - An action against a defendant debt collector involving an alleged illegal robo-calling scheme in which the CFPB also named the payment processors as defendants. According to the agency, by ignoring red flags that indicated the debt collector was engaged in illegal conduct, the payment processors facilitated millions of dollars in ill-gotten gains.²²
 - The CFPB ordered two wireless companies to pay US\$120 million in redress for billing practices that allowed vendors to “cram” unauthorized charges onto consumers’ wireless bills.²³ The agency alleged that by not independently requiring consumers to affirmatively opt-in to this billing structure, vendors were able to illegally charge consumers millions of dollars, which the wireless companies enabled by failing to exercise adequate oversight.²⁴

While the authority of the CFPB to hold companies responsible for the actions of their service providers is well established, it appears the agency is now seeking to hold service providers responsible for consumer harm under what amounts to an aiding and abetting theory.

- **The CFPB’s organizational structure will continue to drive its activities.** In another 2015 development, the agency signaled that it continues to be concerned about consumer law violations that harm particularly vulnerable consumers, such as elderly Americans and military service members. The CFPB’s Office of Older Americans, Office of Servicemember Affairs and Office of Students have been successful in ensuring that the agency’s focus includes these areas.²⁵ Important enforcement initiatives in 2015 involving vulnerable consumer groups included:
 - An action against a military allotment processor that illegally charged service members hidden fees²⁶ and the CFPB’s subsequent sending of notice to companies that sell retail goods to service members, warning them about the rules on the use of the allotment system, which no longer allow the use of allotments as a form of repayment;²⁷
 - A suit against an auto finance company for engaging in deceptive practices by exaggerating the effects of failure to repay under the Uniform Code of Military Justice and for engaging in unfair and abusive practices by contacting, or threatening to contact, the commanding officers of service members with defaulted debt;²⁸
 - A joint action by the CFPB and the New York Department of Financial Services targeting pension advance companies²⁹ and the CFPB’s subsequent release of a guide to help consumers navigate their pension payout options,³⁰ indicating that the CFPB is paying particular attention to companies offering pension-related services; and
 - An enforcement action against a reverse mortgage broker and lender for deceptive marketing³¹ and the CFPB’s publication of reports about reverse mortgage practices, further highlighting the agency’s commitment to protecting uniquely vulnerable consumer groups from deceptive marketing and lending practices.³²
- **The CFPB will continue to partner with various other government entities in pursuing its consumer financial protection mission.** Over a fifth of the CFPB’s cases were coordinated efforts with state and other federal regulators. The CFPB also partnered with a tribal government, bringing suit against the owner and operators of a national tax preparation franchise in connection with tax refund-anticipation loans that were offered in violation of the Truth in Lending Act (“TILA”).³³ Given the agency’s efforts to date, as well as its limited workforce, it is reasonable to expect that the CFPB will leverage its expertise in consumer finance law by working actively and collaboratively with other federal and state regulators.

Key Takeaways from 2015 Supervisory Activities

During 2015, CFPB examinations focused on consumer reporting, debt collection, student loan servicing, mortgage origination, mortgage servicing and fair lending issues.³⁴ While non-public resolutions were reached in connection with supervisory issues involving debt collection, mortgage origination, mortgage servicing, fair lending, deposits, payday lending and credit cards,³⁵ it is unclear how many, exams were referred to the Office of Enforcement.³⁶ With the TILA-RESPA Integrated Disclosure rules that took effect in October 2015³⁷ and the issuance of a new larger participant rule in the auto financing space in June 2015,³⁸ the CFPB updated its relevant exam procedures, indicating that the industry should expect greater activity and emphasis in these areas.³⁹ Key takeaways from the supervisory activities of the CFPB in 2015 include the following:⁴⁰

- ***The CFPB will continue to demand a robust compliance management system (“CMS”) in various sectors.*** From the outset of establishing its oversight and supervisory program, the agency set forth its expectation that all financial institutions maintain a strong CMS, tailored to their unique operations. In 2015, the CFPB called for improvements in CMSs across a number of industries, suggesting that the agency believes that many covered persons subject to the agency’s jurisdiction are failing to comply with the agency’s CMS mandate.⁴¹ Notable areas referencing CMS issues include:
 - The CFPB will continue to demand from furnishers and consumer reporting agencies (“CRAs”) up-to-date policies and procedures to ensure accurate information. The agency highlighted multiple instances of CRAs failing to properly vet new furnishers, implement policies to monitor and provide feedback on data quality and verify the accuracy of public record information.⁴² In addition, the CFPB found that some furnishers, including debt collectors and student loan servicers, failed to implement or maintain up-to-date policies and procedures to investigate disputed information and to correct inaccurate information.⁴³
 - Debt collection activities also continued to attract the CFPB’s attention. The CFPB emphasized that financial institutions involved in debt collection activities should maintain “robust and well-administered” CMSs, emphasizing that such programs are vital to preventing consumer harm.⁴⁴ In addition, the agency underscored the need for proper employee training and board oversight, in addition to comprehensive audit compliance programs, in order to avoid situations where debt collectors are impermissibly contacting consumers at their place of employment or failing to provide consumers with required disclosures.⁴⁵ The agency indicated that financial institutions should also ensure that third-party debt collection personnel complete required training modules commensurate with their activities.⁴⁶
- ***The CFPB will continue to devote substantial resources to supervising the residential mortgage sector.*** As with its 2015 enforcement actions, a significant part of the CFPB’s 2015 supervisory activities related to mortgages. In particular, the CFPB examined lenders for their compliance with the mortgage reform and anti-predatory lending rules promulgated under Title XIV of the Dodd-Frank Act, highlighting particular concerns with violations of disclosure requirements associated with good faith estimates (“GFEs”) and HUD-1 settlement statements.⁴⁷ For example, the CFPB discovered instances where lenders failed to report correct or comprehensive fees, or impermissibly increased fees.⁴⁸ In some cases, the agency deemed these violations to be systemic and due to inadequate training, monitoring and corrective action, or compliance audit.⁴⁹

The CFPB also focused on ensuring that borrowers have ample protections to avoid foreclosure. The agency continues to expect mortgage servicers to maintain proper procedures with respect to the processing of loss mitigation applications, requiring, for example, servicers to communicate a borrower’s right to appeal a denial of an application and to provide proper and timely notices.⁵⁰ In addition, the CFPB noted instances of foreclosure notices being sent to borrowers who were already approved for loss mitigation plans or current on their loans, which the agency characterized as unfair and deceptive.⁵¹

Key Takeaways from 2015 Regulatory Activities and Important Initiatives for 2016

The CFPB's Office of Regulations had an active year in 2015, finalizing 14 rules, half of which were mortgage-related.⁵² According to the agency's recent Unified Agenda of Regulatory and Deregulatory Actions, the CFPB also has a busy regulatory schedule for 2016. Noteworthy CFPB regulations currently at the pre-rule stage include the following:

- **Consumer Installment and Vehicle Title Loan Larger Participant Rule.** The CFPB plans to define a market and require lender registration for consumer installment loans and vehicle title loans to supervise larger nonbank entities that operate in this space. In many respects, this may be the CFPB's most ambitious larger participant rule,⁵³ given the challenges inherent in determining the scope of this market. Of particular note, there is no readily available data source for installment and vehicle title loans.⁵⁴ It may be prudent for large entities operating in this market space, which are likely to be subject to supervision regardless of the market definition, to coordinate with the CFPB's Office of Markets and the Office of Research early on to help educate the agency about the industry.
- **Arbitration Rule.** Based on the CFPB Office of Markets' March 2015 arbitration study, it was no surprise that the agency initiated a rulemaking to address concerns related to the use of arbitration agreements in connection with credit cards, deposit accounts, payday loans and other consumer financial products and services.⁵⁵ The CFPB held a field hearing on October 7, 2015 at which the agency released an outline of proposals under consideration and a list of questions for small businesses to review. On October 20, 2015, the agency convened a Small Business Regulatory Enforcement Fairness Act ("SBREFA") panel to study the arbitration issue. As such, it appears that the CFPB is moving at a relatively fast pace compared to previous rulemakings.

An important rulemaking currently at the proposal stage is the following:

- **Payday, Vehicle Title and Similar Loans Rule.** In March 2015, the CFPB announced that it would consider proposing a rule to address concerns that payday lenders, auto title lenders and lenders offering similar products are offering such products without assessing a consumer's ability to repay.⁵⁶ It should be noted that any such "conduct rule" would likely impact entities that would be subject to supervision under a larger participant rule defining a market for consumer installment loans and vehicle title loans (see above).

A noteworthy CFPB rulemaking at the final rule stage is the following:

- **Mortgage Servicing Rule.** The comment period for the agency's Notice of Proposed Rulemaking ("NPRM") for its mortgage servicing rule ended in March 2015 and the agency has indicated plans to finalize the rule by the end of Q2 2016. In addition to amending loss mitigation requirements, the final servicing rule, which will address compliance requirements when the borrower is a successor in interest or in bankruptcy, may provide insight into the CFPB's position on its debt collection rulemaking.

Other Important Powers and Initiatives

In addition to the CFPB's enforcement, supervisory and rulemaking powers, the agency enjoys a plethora of other tools in exercising its consumer financial protection mandate. For example, the agency has the authority to collect consumer complaints and require covered persons subject to its supervision and enforcement authorities to respond to these complaints.⁵⁷ In March 2015, the CFPB finalized a proposal to publicly disclose complaint narratives of consenting consumers and, in June 2015, consumer narratives identifying named companies became available on the agency's Consumer Complaint Database. While the database is a powerful tool, misleading complaint data is an ongoing industry concern, particularly given that news stories regarding consumers' experience with a particular product or company may result in significant reputational risk for a bank or other financial firm.

Implications for 2016 and Beyond...

There is little doubt that the CFPB will continue to use its enforcement, supervisory, regulatory, investigative and information gathering tools to address issues and activities involving violations or potential violations of federal (and state, working with State Attorneys General) consumer financial protection laws. While Congress created a federal agency with an unprecedented scope of consumer financial protection authority that it inherited from seven different federal agencies,⁵⁸ the CFPB's reach remains constrained. For example, the agency faces resource and staffing limitations relative to the wide range of federal consumer protection laws transferred to its jurisdiction coupled with the significant additional new laws and jurisdiction added by the Dodd-Frank Act.⁵⁹ As a consequence, *how* and *where* the CFPB decides to wield its investigative and enforcement powers and assert its jurisdictional authority in the regulatory and supervisory context will depend on the agency's prioritization of the issues⁶⁰ it believes impede consumer "access to markets for consumer financial products and services."⁶¹ Undoubtedly, the CFPB will continue to be active in the mortgage and credit card space and will likely continue to closely monitor trends in marketplace lending. Finally, the agency appears positioned to continue to increase its presence in the following three key areas:

- **Auto Financing.** According to the Federal Reserve Board of New York, as of the third quarter of 2015, auto loan balances had reached US\$1.05 trillion, a US\$39 billion dollar increase from the previous quarter.⁶² At the same time, the average loan term continues to increase. In the first quarter of 2015, more than a quarter of all-new light vehicles carried loans of 73 to 84 months, an unprecedented number of debt exposure for this market segment.⁶³ Some anticipate that this figure could jump to more than a third within the next few years. Also, in the third quarter of 2015, yet another record was set when over 40% of consumers who took out new and used vehicle loans had loan terms between 61 and 72 months.⁶⁴ While longer loan terms are not necessarily indicative of a problem as vehicles today last longer and are more durable, the CFPB will almost certainly be closely reviewing market dynamics and developments that could result in a buildup of negative equity.

An increased CFPB focus on the auto financing industry in 2016 should come as no surprise. As previously noted, the CFPB finalized its rule defining larger participants of the automobile financing market in June 2015. Though there are no new substantive consumer protections, the rule provides the agency supervisory authority over nonbank entities, which command the lion's share of auto financing.⁶⁵ While the CFPB already had such authority over banks, banks and nonbanks alike should expect the agency to increase monitoring of the industry. On the same day that the rule was finalized, the CFPB published its examination procedures specific to the auto market. At a minimum, the agency will be looking to see that institutions engaged in auto financing have robust policies and procedures in place to ensure compliance with federal consumer financial protection laws, particularly the Equal Credit Opportunity Act ("ECOA"), the TILA and Title X's UDAAP prohibition.⁶⁶

- **Student Loan Servicing.** Outstanding student loan balances in the US are currently at US\$1.2 trillion and that number is climbing.⁶⁷ As of the third quarter of 2015, nearly 12% of student loan debt was either in default or more than 90 days delinquent.⁶⁸ This number is deceiving, however, given that only just over a third of all student loan borrowers make regular scheduled payments. Setting aside the 12% delinquent or in default and the one-third making regular payments, this means that more than half of all student loan borrowers are either in school, in deferral or in forbearance.⁶⁹ To further compound the problem, borrowers who are making payments are not keeping up with the amount of interest that continues to accrue on their outstanding student loan balances.⁷⁰ Clearly, this is a serious problem, of which the CFPB is well aware.

The agency's oversight of the student loan market includes its Office of Students, which focuses, in large part, on student loan servicing;⁷¹ however, the CFPB continues to face oversight challenges in this area. Similar to its activities in 2014, the CFPB's 2015 exams in student loan servicing highlighted the agency's concerns over the allocation of partial payments, requiring servicers to improve their disclosures regarding their allocation methodology and borrowers' ability to direct payments to individual loans.⁷² While to date, the agency has taken both supervisory and enforcement actions against banks and nonbanks, it has yet to wield its rulemaking authority to establish the norms of acceptable conduct under the various federal consumer protection laws.⁷³ Of particular concern for the industry *and* student loan borrowers, it is not clear when the agency will be able to finalize a

student loan servicing rule. For now, the best available guidance regarding the direction of the agency in this area appears to be the agency's September 2015 Student Loan Servicing Report.⁷⁴

- **Debt Collection.** According to the Federal Reserve Board of New York, total household indebtedness stands at over US\$12 trillion, US\$672 billion of which is delinquent. Of the amount delinquent, 70% is "seriously delinquent," meaning more than 90 days late.⁷⁵ While it is unclear where servicing ends and collection activities begin, it is clear that the CFPB has the debt collection industry in its crosshairs.

The agency's Advanced Notice of Proposed Rulemaking on debt collection was issued in November 2013, with comments on more than 150 questions due in February 2014.⁷⁶ Two years later, the rule remains at the pre-rule stage. In November 2015, the CFPB released its Fall 2015 Regulatory Plan,⁷⁷ estimating that further pre-rule activities would conclude in February 2016.⁷⁸ To date, the CFPB has not published the questions that small business representatives will review and provide feedback on during the SBREFA panel that the agency is expected to convene.

Given the delay in reaching the proposed rule stage, the CFPB is unlikely to finalize a debt collection rule any time soon. As a result, the agency has had to resort to overseeing debt collection activities through a combination of supervisory activities and enforcement actions. For now, there remain opportunities for institutions to be involved in working with the CFPB on first-party and third-party debt collection issues *before* the agency publishes its NPRM on the subject. This is an important consideration, particularly because the agency has a somewhat established track record of finalizing rules largely as proposed from a substantive standpoint.

Next Steps...

The CFPB continues to have significant growing pains, both in continuing to define and refine the areas in which it will deploy its considerable consumer financial protection resources and in managing those resources to be able to optimize its impact in a vast consumer financial products and services market that has many challenges. Banks and nonbank financial firms subject to the agency's jurisdiction—or that may be subject to its jurisdiction going forward—are well-advised to engage the agency with respect to the particular aspects and issues unique to their place in the consumer financial market. This is important both to educate CFPB staff and to learn from agency staff about the policies, procedures and programs that are, or may be, in play with respect to the activities and operations of the firms and industry sectors regulated by, or subject to the supervision of, the CFPB.

The following are important considerations in connection with pursuing initiatives and opportunities for reaching out to, and engaging with, the CFPB:

- If your company is likely to be impacted by the CFPB's rulemaking efforts, consider engaging the agency to assist it in structuring rules that strike the appropriate balance between protecting consumers and maintaining adequate and fair access to credit. Consider submitting a letter or report, or requesting a meeting with the relevant group in the CFPB Office of Research, Office of Markets and/or Office of Regulations as the core rulemaking team is composed of individuals from these offices.
- The best time for companies to become involved in activities related to rulemaking efforts is *prior* to the agency's publication of an NPRM. In this regard, please note that the agency is currently considering rulemaking activity in the following areas:
 - Student Loan Servicing
 - Consumer Reporting
 - Consumer Installment and Vehicle Title Loan Larger Participant Rule
 - Debt Collection
 - Payday, Vehicle Title and Similar Loans Rule
 - Arbitration Rule
 - Overdraft Rule

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- Consider all opportunities after an NPRM is published to reach out to the CFPB in writing after a proposal issued, including encouraging industry groups, consumer groups and others to comment on and participate in, a dialogue regarding issues of concern and/or interpretation during the comment period.
 - Service providers, such as payment processors, should evaluate their relationships with institutional customers that offer or provide a consumer financial product or service to determine the extent of their potential liability exposure (to the CFPB and other regulators and in connection with private litigation) for their customers' alleged violations of federal consumer protection laws. In this regard, service providers should:
 - Review their agreements or other ancillary documents with institutional customers to discern the scope of their relationship with those customers and to identify potential conduct that could create liability;
 - Take note of any red flags that may indicate an institutional customer is engaging in conduct that could be construed as violating federal consumer law; and
 - If red flags are present, perform adequate due diligence and engage counsel, as appropriate, to determine if an institutional customer's practices potentially violate federal consumer protection laws.
 - Similarly, institutions should conduct a review of their service provider relationships to make the same determination regarding exposure to potential liability arising from consumer financial protection laws.
 - Companies should review compliance management systems, policies, procedures and programs to ensure ongoing compliance with consumer financial protection laws. Companies that have either received warning letters about questionable practices or that operate in particular industry sectors that have been the subject of CFPB scrutiny should review their programs for potential exposure and vulnerabilities under consumer financial protection laws and, as appropriate, engage counsel and other consultants to address potential liability exposure and program vulnerabilities.
 - Entities receiving a CFPB Information Request should engage counsel for assistance in preparing for an onsite supervision examination to minimize risk of potential escalation to a significant supervisory or enforcement matter.

APPENDIX A

2015 Enforcement Actions

Highlights of Notable Enforcement Actions by Sector

Auto Finance Companies

- Two of the three actions brought against auto finance companies were based on violations of ECOA, which prohibits creditors from discriminating against loan applicants based on race.⁷⁹ Through investigations undertaken with the DOJ, the CFPB found that two of the country's largest indirect auto lenders engaged in discriminatory lending practices by permitting and encouraging auto dealers to "mark-up" the risk-based interest rates initially set by the lenders.⁸⁰ The CFPB and DOJ found dealer mark-ups were typically higher for minority borrowers.⁸¹

Deposit Accounts

- The CFPB brought two actions against banks for violations of the Dodd-Frank Act in connection with their deposit account practices.⁸² One action involved the alleged illegal assessment of overdraft fees pursuant to the "opt-in" requirements of Regulation E,⁸³ and the other concerned the bank's alleged failure to properly credit customers' checking and savings accounts when the total on the deposit slip did not equal the total of the actual checks, which constituted an "unfair" practice in violation of Title X's UDAAP prohibition.⁸⁴ Each bank agreed to pay a civil money penalty of US\$7.5 million and provide full remediation to affected customers.⁸⁵

Credit Cards

- Five enforcement actions were brought against credit card companies and related institutions in 2015, four of which arose from companies' unfair or deceptive practices relating to add-on credit card products.⁸⁶ The CFPB also brought an action against a subprime credit card company for misrepresenting and illegally charging certain fees to consumers in violation of TILA and its implementing Regulation Z.⁸⁷

Debt Collection

- Most actions brought against debt collection companies involved the CFPB's findings of violations of the Fair Debt Collection Practices Act ("FDCPA") and/or Title X's UDAAP prohibition from deceptive debt collection practices.⁸⁸ Notably, several of the actions brought pursuant to the FDCPA arose from the collection, or attempt to collect, unverified or unenforceable debts.⁸⁹

Mortgages

- Actions were brought against 18 loan originators, mortgage servicers and affiliated institutions for engaging in various types of illegal conduct.⁹⁰ Most violations involved the CFPB's findings of illegally providing or receiving kickbacks in violation of RESPA,⁹¹ racially discriminate lending practices in violation of ECOA,⁹² misrepresenting government agency affiliations in violation of Regulation N,⁹³ or otherwise providing deceptive information or misleading consumers about the true costs of borrowing.⁹⁴

Student Loans

- Although four actions brought against companies in the student loan sector represent only 5% of the total actions brought in 2015, the monetary judgments and settlement amounts imposed on those companies represent almost 40% of the total monetary relief obtained by the CFPB in 2015 due to the matters concerning a for-profit post-secondary education company that brokered private student loans to students and later purchased and collected on those loans.⁹⁵ Though the college was found liable

to consumers for over US\$530 million, most, if not all, of that amount is uncollectable.⁹⁶ However, its successor agreed to forgive US\$480 million in student loan debt.⁹⁷

- The CFPB also brought actions against companies for deceptively marketing and illegally charging for fee-based assistance,⁹⁸ and another student loan servicer was penalized for violating the FDCPA and for providing inaccurate or misleading information in connection with outstanding or defaulted accounts.⁹⁹

APPENDIX B

2015 Supervisory Activities

Highlights of Notable Supervisory Activities by Sector

Consumer Reporting

- Requiring CRAs and furnishers to establish and maintain policies and procedures to ensure the accuracy of information provided to CRAs¹⁰⁰
- Requiring CRAs to maintain up-to-date policies and procedures regarding their practices, formal programs to provide feedback to furnishers regarding the accuracy of data, defined processes to verify the accuracy of public record information and policies and procedures to properly handle Fair Credit Reporting Act disputes¹⁰¹
- Requiring furnishers to properly and timely investigate disputed information and to correct any inaccurate information¹⁰²

Debt Collection

- Requiring debt collectors to maintain “robust and well-administered” compliance management systems, including sufficient board oversight, comprehensive compliance audit programs, proper employee training and proper inquiry and complaint management systems¹⁰³
- Complying with communication requirements, which require debt collectors to disclose that they are debt collectors and prohibit them from contacting consumers represented by an attorney or, if prohibited by their employer, at their place of employment¹⁰⁴

Student Loan Servicing

- Ensuring that student loan servicers do not use deceptive or misleading language regarding late fees, tax deductibility of interest or dischargeability of loans¹⁰⁵
- Improving disclosure regarding the allocation methodology of partial payments and borrowers’ ability to direct payments to individual loans¹⁰⁶
- Ensuring that automatic debits are processed and credited fairly¹⁰⁷

Mortgage Origination

- Requiring lenders to timely provide consumers with GFEs, to include all fees on GFEs and to abide by restrictions on fee increases¹⁰⁸
- Requiring lenders to ensure that the HUD-1 closing statement accurately reflects the actual settlement charges paid by the borrower¹⁰⁹
- Complying with Regulation X requirements to timely provide loan applicants with a list of homeownership counseling organizations¹¹⁰
- Maintaining adequate oversight and management over privacy policies¹¹¹
- Removing misleading general waiver provisions from note agreements¹¹²

Mortgage Servicing

- Ensuring that servicers properly evaluate loss mitigation options for borrowers, give borrowers reasonable time to submit applications and communicate the right to appeal a denial of an application and that servicers properly send loss mitigation acknowledgement notices¹¹³
- Prohibiting servicers from sending misleading foreclosure notices to borrowers who were current on their loans or who were already approved for a trial modification without verifying whether the borrower was under a loss mitigation plan¹¹⁴
- Requiring servicers to send periodic statements that detail an account's transaction history¹¹⁵
- Prohibiting servicers from sending debt validation letters listing amounts that the servicer could not verify as accurate¹¹⁶

Fair Lending

- Prohibiting institutions from excluding or refusing to consider income derived from the Section 8 HCV Ownership Program during the mortgage loan application and underwriting process¹¹⁷
- Prohibiting institutions from denying qualified African-American, Hispanic and/or Asian applicants for loan products more frequently than other similarly situated white applicants on the basis of race, in violation of ECOA¹¹⁸

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- ¹ See PHH Corp., CFPB No. 2014-CFPB-0002 (June 4, 2015).
- ² Upholding the ALJ's November 2014 Recommended Decision only in part, Director Cordray determined that the violations at issue accrued when the alleged kickbacks were actually paid, instead of when the underlying mortgage loans closed, which accounted for the \$103 million difference.
- ³ On June 19, 2015, PHH Corporation filed an appeal with the Court of Appeals for the D.C. Circuit, seeking a review of the CFPB's final agency action on the grounds that it is arbitrary, capricious, and an abuse of discretion and otherwise unconstitutional. Brief of Petitioner-Appellant, *PHH Corp. v. CFPB*, Case No. 15-1177 (D.C. Cir. June 19, 2015). The petition for review filed by PHH Corporation may be found [here](#). The D.C. Circuit granted PHH Corporation's motion for a stay, and the disgorgement penalty is not due to be paid while the appeal is pending. *PHH Corp. v. CFPB*, Case No. 15-1177 (D.C. Cir. Aug. 3, 2015). PHH Corporation's opening brief may be found [here](#), and its final brief in reply may be found [here](#). The CFPB's initial brief in response may be found [here](#), and its final brief in response may be found [here](#). The matter is fully briefed and oral arguments are scheduled for April 12, 2016.
- ⁴ While the CFPB's *PHH Corp.* decision concerns the Real Estate Settlement Procedures Act, the agency's ruling in that matter, if subsequently upheld on appeal to the D.C. Circuit, could have far-reaching implications in other matters, such as those in which the CFPB alleges violations against Title X's prohibition against unfair, deceptive, or abusive acts or practices.
- ⁵ In March 2014, the Office of Inspector General for the Board of Governors of the Federal Reserve System and the CFPB issued a scathing review of the Office of Supervision's supervisory activities in a report entitled "The CFPB Can Improve the Efficiency and Effectiveness of Its Supervisory Activities." The 2014 full report is available [here](#), and the 2014 memorandum to the Director is available [here](#). The most recent memorandum from 2015 is available [here](#).
- ⁶ Public Law 111-203 (2010) (codified at 12 U.S.C. § 5301 *et seq.*).
- ⁷ See, e.g., *CFPB v. S/W Tax Loans, Inc.*, Case No. 1:15-cv-00299 (D.N.M. Apr. 14, 2015); *FTC v. Green Tree Servicing LLC*, Civil Action No. 15-2064 (D. Minn. Apr. 21, 2015); CFPB Press Release, [CFPB Takes Action to Obtain \\$120 Million in Redress from Sprint and Verizon for Illegal Mobile Cramming](#) (May 12, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-to-obtain-120-million-in-redress-from-sprint-and-verizon-for-illegal-mobile-cramming/>
- ⁸ Pursuant to section 1062 of the Dodd-Frank Act, the Secretary of the Treasury designated July 21, 2011 as the date for the transfer of functions from certain federal agencies to the CFPB and for the CFPB to exercise certain new authorities under Title X and the enumerated consumer laws. 12 U.S.C. § 5582.
- ⁹ Under section 1002(6) of the Dodd-Frank Act, a "covered person" means "(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described in [(A)] if such affiliate acts as a service provider to such person." 12 U.S.C. § 5481(6).
- ¹⁰ For example, under the CFPB's enforcement authority, the CFPB may investigate *any* covered person whose conduct may constitute a violation of any provision of federal consumer law (generally, Title X of the Dodd-Frank Act and the eighteen enumerated consumer laws). In contrast, under the agency's supervisory authority, the CFPB may only supervise certain covered persons such as very large depository institutions and participants of certain markets for consumer financial products or services. Section 1025 of the Dodd-Frank Act gives the CFPB supervisory authority over depository institutions with over US\$10 billion in net assets and their affiliates and section 1024 gives the agency supervisory authority over only certain nondepository or nonbank institutions. The CFPB has supervisory authority over all nonbank covered persons, regardless of size, that offer or provide three types of consumer financial products or services: (1) origination, brokerage or servicing of consumer loans secured by real estate and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans. However, for all other consumer financial products or services, the CFPB must first engage in rulemaking under section 1024(a)(1)(B). To date, the agency has finalized only five such larger participant rules: credit reporting, debt collection, student loan servicing, international money transfers and automobile financing.
- ¹¹ *CFPB v. Corinthian Colleges, Inc.*, Case No. 1:14-cv-07194 (N.D. Ill. Oct. 27, 2015). The CFPB asserted its jurisdiction over Corinthian Colleges, Inc. ("[Corinthian](#)") by alleging that the for-profit college was a "debt collector"—both as a debt buyer *and* as a third-party debt collector—subject to the reach of the Fair Debt Collection Practices Act ("FDCPA"). Specifically, Corinthian served as a debt buyer when it purchased loans from a private lending group which acted as the intermediary between Corinthian and the originator bank under an agreement which required the for-profit college to purchase all loans for which a payment was more than 90 days delinquent. Further, Corinthian served as a debt collector when it attempted to collect on the debts even before it was obligated to purchase the delinquent loans. Section 803(6)(F)(iii) of the FDCPA excludes from the definition of "debt collector" any person collecting debt *not in default* at the time it was obtained by such person. Therefore, the CFPB's enforcement action suggests that with respect to private student loans, (1) delinquency is default, as Corinthian was not exempt from the FDCPA as a third-party debt collector when it attempted to collect debt that was delinquent; and (2) default occurs when the debt is 90 days past due, as Corinthian was not exempt from the FDCPA as a third-party debt buyer when it collected debt that was delinquent. The latter is in stark contradiction to federal student loans, which are considered to be in default after 270 days. Ultimately, while this action demonstrates the expansive reach of the CFPB's authority, it also reveals that the CFPB is willing to attach FDCPA protections to debt less than 90 days delinquent. First party creditors beware.
- ¹² See *CFPB v. Cellco P'ship*, Case No. 3:15-cv-03268 (D.N.J. June 9, 2015); *CFPB v. Sprint Corp.*, Case No. 1:14-cv-09931 (S.D.N.Y. June 30, 2015). The wireless companies came within the scope of the CFPB's enforcement authority as payment processors for third-party vendors that illegally "crammed" consumers' wireless bills with unauthorized charges.
- ¹³ The "enumerated consumer laws" under section 1002(12) are: the Alternative Mortgage Transaction Parity Act of 1982; the Consumer Leasing Act of 1976; the Electronic Fund Transfer Act; the Equal Credit Opportunity Act; the Fair Credit Billing Act; the Fair Credit Reporting Act; the Fair Debt Collection Practices Act; subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act; sections 502 through 509 of the Gramm-Leach-Bliley Act; the Home Mortgage Disclosure Act of 1975; the Home Ownership and Equity Protection Act; the Real Estate Settlement Procedures Act of 1974; the S.A.F.E. Mortgage Licensing Act of 2008; the Truth in Lending Act; the Truth in Savings Act; section 626 of the Omnibus Appropriations Act; and the Interstate Land Sales Full Disclosure Act. 12 U.S.C. § 5481(12).

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- ¹⁴ Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit* (Nov. 2015), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2015Q3.pdf.
- ¹⁵ In a number of ways, the CFPB's remedial powers exceed those of the other consumer protection agency, the FTC. For example, the CFPB can seek any number of types of relief, including civil penalty fees, under section 1055 of the Dodd-Frank Act for any violation of federal consumer financial laws in state or federal court or in an administrative proceeding. In marked contrast, the FTC can only obtain civil penalties for violations of certain statutory provisions, such as violations of administrative orders or certain trade regulation rules. 15 U.S.C. § 45(l), (m).
- ¹⁶ Citibank, N.A., CFPB No. 2015-CFPB-0015 (July 21, 2015).
- ¹⁷ Chase Bank, USA N.A., CFPB No. 2015-CFPB-0013 (July 8, 2015).
- ¹⁸ *Id.*; see also CFPB Press Release, 47 States and D.C. Take Action Against JPMorgan Chase for Selling Bad Credit Card Debt and Robo-Signing Court Documents (July 8, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-47-states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/>.
- ¹⁹ *CFPB v. Corinthian Colleges, Inc.*, Case No. 1:14-cv-07194 (N.D. Ill. Oct. 27, 2015); CFPB Press Release, CFPB Secures \$480 Million in Debt Relief for Current and Former Corinthian Students (Feb. 3, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/>.
- ²⁰ *CFPB v. Union Workers Credit Services, Inc.*, Case No. 3:14-cv-04410 (N.D. Tex. Feb. 10, 2015).
- ²¹ CFPB Press Release, CFPB and State of Maryland Take Action Against "Pay-To-Play" Mortgage Kickback Scheme (Apr. 29, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-and-state-of-maryland-take-action-against-pay-to-play-mortgage-kickback-scheme/>.
- ²² *CFPB v. Universal Debt & Payment Solutions, LLC*, Case No. 1:15-cv-00859 (N.D. Ga. Mar. 26, 2015).
- ²³ *CFPB v. Celco P'ship*, Case No. 3:15-cv-03268 (D.N.J. June 9, 2015); *CFPB v. Sprint Corp.*, Case No. 1:14-cv-09931 (S.D.N.Y. June 30, 2015).
- ²⁴ *CFPB v. Celco P'ship*, Case No. 3:15-cv-03268 (D.N.J. June 9, 2015); *CFPB v. Sprint Corp.*, Case No. 1:14-cv-09931 (S.D.N.Y. June 30, 2015).
- ²⁵ Notably, the Assistant Director of the Office of Students served in the Office of Servicemember Affairs under Holly Petraeus. As such, the student loan industry can expect an even greater scrutiny in its treatment of service members.
- ²⁶ Fort Knox National Co., CFPB No. 2015-CFPB-0008 (Apr. 20, 2015).
- ²⁷ CFPB Press Release, CFPB Cautions Military Lenders Against Illegal Military Allotment Practices (July 20, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-cautions-military-lenders-against-illegal-military-allotment-practices/>.
- ²⁸ *CFPB v. Security National Automotive Acceptance Co.*, Case No. 1:15-cv-401 (S.D. Ohio June 17, 2015).
- ²⁹ *CFPB v. Pension Funding, LLC*, Case No. 8:15-cv-1329 (S.D. Cal. Aug. 20, 2015).
- ³⁰ CFPB Press Release, CFPB Releases Guide to Help Consumers Navigate Pension Payouts (Jan. 12, 2016), available at <http://www.consumerfinance.gov/newsroom/cfpb-releases-guide-to-help-consumers-navigate-pension-payouts/>.
- ³¹ *CFPB v. All Financial Services, LLC*, Case No. 1:15-cv-00420 (D. Md. Feb. 12, 2015).
- ³² CFPB Press Release, CFPB Report Highlights Consumer Frustration Around Reverse Mortgages (Feb. 9, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-report-highlights-consumer-frustration-around-reverse-mortgages/>; CFPB Press Release, CFPB Study Finds Reverse Mortgage Advertisements Can Create False Impressions (June 4, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-study-finds-reverse-mortgage-advertisements-can-create-false-impressions/>.
- ³³ *CFPB v. S/W Tax Loans, Inc.*, Case No. 1:15-cv-00299 (D.N.M. Apr. 14, 2015). Not only is this the CFPB's first action brought with a tribal government, the case presents a willingness to both further pursue companies that target vulnerable groups of consumers or minority groups and also established a basis for bringing future actions against companies that offer consumers high-cost refund anticipation loans.
- ³⁴ CFPB Supervisory Highlights, Summer 2015, at 3; CFPB Supervisory Highlights, Fall 2015, at 3.
- ³⁵ CFPB Supervisory Highlights, Summer 2015, at 23; CFPB Supervisory Highlights, Fall 2015, at 37.
- ³⁶ The CFPB's Supervisory Highlights indicate that eight public enforcement actions in 2015 resulted, at least in part, from the agency's supervisory activities. However, it is unclear whether such enforcement actions reflect a comprehensive list of all enforcement actions stemming from the agency's examinations, as the CFPB is unfortunately opaque in this respect.
- ³⁷ 80 Fed. Reg. 43911 (July 24, 2015).
- ³⁸ 80 Fed. Reg. 37496 (June 30, 2015).
- ³⁹ See Automobile Finance Examination Procedures (June 10, 2015); RESPA Procedures – TILA RESPA Integrated Disclosures (Updated Oct. 3, 2015); TILA Procedures – TILA RESPA Integrated Disclosures (Updated Oct. 3, 2015).
- ⁴⁰ For a compilation of supervisory activities by sector, see *Appendix B*.
- ⁴¹ See generally CFPB Supervisory Highlights, Summer 2015; CFPB Supervisory Highlights, Fall 2015.
- ⁴² CFPB Supervisory Highlights, Summer 2015, at 6.
- ⁴³ CFPB Supervisory Highlights, Fall 2015, at 8-9, 25-26.
- ⁴⁴ CFPB Supervisory Highlights, Summer 2015, at 7.

⁴⁵ *Id.*; CFPB Supervisory Highlights, Fall 2015, at 7-8.

⁴⁶ CFPB Supervisory Highlights, Summer 2015, at 7.

⁴⁷ *Id.* at 11, 13-14; CFPB Supervisory Highlights, Fall 2015, at 10-11.

⁴⁸ CFPB Supervisory Highlights, Summer 2015, at 13-14; CFPB Supervisory Highlights, Fall 2015, at 10-11.

⁴⁹ CFPB Supervisory Highlights, Fall 2015, at 12.

⁵⁰ *Id.* at 17-18; CFPB Supervisory Highlights, Summer 2015, at 15-18.

⁵¹ CFPB Supervisory Highlights, Summer 2015, at 18.

⁵² Notably, the CFPB finalized a rule updating the reporting requirements of the Home Mortgage Disclosure Act (“HMDA”) in four broad areas: (1) the types of institutions required to collect and report HMDA data; (2) the types of transactions subject to collection and reporting requirements; (3) the type of data that must be collected and reported; and (4) the method and frequency of reporting and making data available to the public. In particular, the CFPB will now require information such as property value, loan terms and the duration of any introductory interest rates with the goal of helping the public to better understand market conditions and identify emerging risks and potential discriminatory lending practices in the marketplace. In addition, the new rule will require financial institutions to provide more information about mortgage loan and underwriting, such as an applicant’s debt-to-income ratio, interest rates and discount points. At the same time, the final rule attempts to ease reporting requirements for certain small banks and credit unions, exempting depository institutions with low loan volumes from HMDA reporting.

⁵³ Under section 1024, the CFPB may supervise nonbank larger participants of certain markets for consumer financial products or services, as defined by regulation. To date, the agency has finalized rules defining markets for consumer reporting (July 20, 2012); consumer debt collection (October 31, 2012); student loan servicing (December 6, 2013); international money transfers (September 23, 2014); and automobile financing (June 30, 2015).

⁵⁴ For example, in the student loan servicing space, the CFPB relied on the 2012 Student Loan Servicing Alliance Servicing Volume Survey in which most nonbank servicers reported data. Also, in the auto financing space, the CFPB relied on 2013 data from Experian Automotive’s AutoCount database.

⁵⁵ In particular, the CFPB is considering whether to propose rules that would prevent companies from using arbitration agreements to foreclose consumers’ ability to bring class action lawsuits, which the CFPB indicates can provide consumers with substantial relief and bring about changes in business practices. In addition, to help monitor the fairness of arbitration proceedings, the CFPB is considering whether to propose requiring that arbitration filings and awards be submitted to the agency.

⁵⁶ The CFPB also raised concerns that certain payment collection practices can subject consumers to substantial fees and increased risk of account closure. CFPB guidance indicates that the agency will likely implement certain safeguards in this respect, requiring, for example, small dollar lenders to assess a consumer’s ability to repay and to verify consumer information such as income and credit history before lending. Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title and Similar Loans, Outline of Proposals Under Consideration and Alternatives Considered, at 32-33 (Mar. 26, 2015).

⁵⁷ 12 U.S.C. § 5534. As explained in the CFPB’s Supervision and Examination Manual, “Consumer complaints play a key role in the detection of unfair, deceptive, or abusive or abusive practices. Consumer complaints have been an essential source of information for examinations, enforcement and rule-making for regulators.” CFPB Supervision and Examination Manual, at UDAAP 9. The manual is available [here](#).

⁵⁸ The Federal Reserve Board (“FRB”), OCC, FDIC, Office of Thrift Supervision (“OTS”), National Credit Union Administration, the FTC and the Department of the Housing and Urban Development (“HUD”).

⁵⁹ As of July 1, 2015, the CFPB had 1,479 full-time employees, 47% of whom worked in the Division of Supervision, Enforcement and Fair Lending. CFPB 2015 Annual Survey, available at http://files.consumerfinance.gov/f/201512_cfpb_2015-annual-employee-survey.pdf. At least some of these employees transferred to the CFPB from the FRB, OCC, OTS, FDIC and HUD. Financial Report of the Consumer Financial Protection Bureau, at 98 (Nov. 16, 2015), available at http://files.consumerfinance.gov/f/201511_cfpb_report_fiscal-year-2015.pdf.

⁶⁰ Congress made it clear that the CFPB would have to set priorities. For example, in section 1024(b)(2) of the Dodd-Frank Act, Congress required that the agency’s supervision program be risk-based. In taking into account the consumer risk, Congress mandated that the CFPB consider the asset size of the covered person, the volume of transactions involving consumer financial products or services in which the covered person engages, the risks to consumers created by the provision of such consumer financial products or services, the extent to which institutions are subject to state oversight for consumer protection and any other relevant factors. 12 U.S.C. § 5514(b)(2).

⁶¹ 12 U.S.C. § 1021(a).

⁶² *Fed. Reserve Bank of N.Y., Quarterly Report on Household Debt and Credit (Nov. 2015)*, available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2015Q3.pdf.

⁶³ Hannah Lutz, *Average New-Car Loan Hit 67 Months in Q1*, Automotive News (June 3, 2015), http://www.autonews.com/article/20150603/FINANCE_AND_INSURANCE/150609945/average-new-car-loan-hit-67-months-in-q1.

⁶⁴ See Melinda Zabritski, Experian Automotive, *State of the Automotive Finance Market Third Quarter 2015*, at 26, available at http://www.experian.com/assets/automotive/white-papers/experian-auto-2015-q3.pdf?WT.srch=Auto_Q32015FinanceTrends_PDF.

⁶⁵ Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37495, 37514 (June 30, 2015).

⁶⁶ As the new exam procedures make clear, the CFPB will be evaluating, among other things, whether such companies are fairly marketing and disclosing auto financing terms, providing accurate information to credit bureaus, adopting fair and legal practices when collecting debts and complying with ECOA and similar laws. Automobile Finance Examination Procedures (June 10, 2015).

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- ⁶⁷ Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit* (Nov. 2015), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2015Q3.pdf.
- ⁶⁸ *Id.*
- ⁶⁹ Brown et al., *Payback Time? Measuring Progress on Student Debt Repayment*, Liberty Street Economics, available at http://libertystreeteconomics.newyorkfed.org/2015/02/payback_time_measuring_progress_on_student_debt_repayment.html#Vp6TJ2dlipp.
- ⁷⁰ *Id.*
- ⁷¹ In addition to the Office of Students, section 1013(a)(5) established a student loan ombudsman. (There is no equivalent in the Office of Servicemember Affairs or the Office of Older Americans.)
- ⁷² CFPB Supervisory Highlights, Fall 2015, at 22.
- ⁷³ The CFPB's Long Term Actions (available [here](#)) include student loan servicing, meaning that the agency does not expect to have a regulatory action within a year. Accordingly, student loan servicing is not listed as being in the "pre-rule stage" of the Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions (available [here](#)). Even assuming that student loan servicing hits the pre-rule stage in 2017, it is hard to foresee the CFPB issuing a Notice of Proposed Rulemaking, giving the public 60 days to comment and issuing a Final Rule in the same year.
- ⁷⁴ The CFPB's September 2015 Student Loan Servicing Report is available at http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.
- ⁷⁵ Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit* (Nov. 2015), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2015Q3.pdf. The report defines delinquency status as:
- Varies between current (paid as agreed), 30-day late (between 30 and 59 day late; not more than 2 payments past due), 60-day late (between 60 and 89 days late; not more than 3 payments past due), 90-day late (between 90 and 119 days late; not more than 4 payments past due), 120-day late (at least 120 days past due; 5 or more payments past due) or collections and severely derogatory (any of the previous states combined with reports of a repossession, charge off to bad debt or foreclosure).
- ⁷⁶ CFPB Blog, *Fall 2015 rulemaking agenda*, (Nov. 20, 2015), available at <http://www.consumerfinance.gov/blog/fall-2015-rulemaking-agenda/>.
- ⁷⁷ Pursuant to section 1100G of the Dodd-Frank Act, when a rule under consideration may have a significant economic impact on a substantial number of small entities, the CFPB (as well as the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor) must convene a panel of small business representatives to "collect advice and recommendations" relating the proposal.
- ⁷⁸ According to the Debt Collection Rule RIN Data (available [here](#)), the CFPB estimates that pre-rule activities would end February 2016.
- ⁷⁹ American Honda Finance Corp., CFPB No. 2015-CFPB-0014 (July 14, 2015); Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015).
- ⁸⁰ CFPB Press Release, *CFPB and DOJ Reach Resolution with Honda to Address Discriminatory Auto Loan Pricing* (July 14, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-and-doj-reach-resolution-with-honda-to-address-discriminatory-auto-loan-pricing/>; CFPB Press Release, *CFPB Takes Action Against Fifth Third Bank for Auto-Lending Discrimination and Illegal Credit Card Practices* (Sept. 28, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/>.
- ⁸¹ American Honda Finance Corp., CFPB No. 2015-CFPB-0014 (July 14, 2015); Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015).
- ⁸² See Regions Bank, CFPB No. 2015-CFPB-0009 (Apr. 28, 2015); RBS Citizens Financial Group, CFPB No., 2015-CFPB-0020 (Aug. 12, 2015).
- ⁸³ Regions Bank, CFPB No. 2015-CFPB-0009 (Apr. 28, 2015).
- ⁸⁴ RBS Citizens Financial Group, CFPB No. 2015-CFPB-0020 (Aug. 12, 2015).
- ⁸⁵ American Honda Finance Corp., CFPB No. 2015-CFPB-0014 (July 14, 2015); Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015).
- ⁸⁶ See *CFPB v. Affinion Group Holdings, Inc.*, Case No. 3:15-cv-01005 (D. Conn. July 1, 2015); *CFPB v. Intersections, Inc.*, Case No. 1:15-cv-00835 (E.D. Va. July 1, 2015); Citibank, N.A., CFPB No. 2015-CFPB-0015 (July 21, 2015); Fifth Third Bank, CFPB No. 2015-CFPB-0025.
- ⁸⁷ Continental Finance Company, CFPB No. 2015-CFPB-0003 (Feb. 4, 2015).
- ⁸⁸ See, e.g., *CFPB v. Universal Debt & Payment Solutions, LLC*, Case No. 1:15-cv-00859 (N.D. Ga. Mar. 26, 2015); *CFPB v. National Corrective Group, Inc.*, Case No. 1:15-cv-00899 (D. Md. Mar. 30, 2015); Westlake Services, LLC, CFPB No. 2015-CFPB-0026 (Sept. 30, 2015); EZCorp, Inc., CFPB No. 2015-CFPB-0031 (Dec. 16, 2015).
- ⁸⁹ See Encore Capital Group, Inc., CFPB No. 2015-CFPB-0022 (Sept. 9, 2015); Portfolio Recovery Associates, LLC, CFPB. No. 2015-CFPB-0023 (Sept. 9, 2015); *CFPB v. Collecto, Inc.*, Case No. 1:15-cv-14024 (D. Mass. Dec. 7, 2015).
- ⁹⁰ Information obtained from CFPB press releases, available at <http://www.consumerfinance.gov/newsroom/> and administrative adjudication docket, available at <http://www.consumerfinance.gov/administrativeadjudication/>.

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- ⁹¹ See JPMorgan Chase Bank, N.A., CFPB No. 2015-CFPB-0001 (Jan. 22, 2015); Wells Fargo Bank, N.A., CFPB No. 2015-CFPB-0002 (Jan. 22, 2015); New Day Financial, CFPB No. 2015-CFPB-0004 (Feb. 10, 2015); *CFPB v. Genuine Title, LLC*, Case No. 1:15-cv-01235 (D. Md. Apr. 29, 2015); Guarantee Mortgage Corp., CFPB No. 2015-CFPB-0011 (June 5, 2015).
- ⁹² *United States v. Provident Funding Associates*, Case No. 3:15-cv-02373 (N.D. Cal. May 8, 2015); *United States v. Hudson City Savings Bank*, Case No. 2:15-cv-07056 (D.N.J. Sept. 24, 2015).
- ⁹³ *CFPB v. All Financial Services, LLC*, Case No. 1:15-cv-00420 (D. Md. Feb. 12, 2015); Flagship Financial Group, LLC, CFPB No. 2015-CFPB-0006 (Feb. 12, 2015); American Preferred Lending, Inc., CFPB No. 2015-CFPB-0005; RMK Financial Corp., CFPB No. 2015-CFPB-0007 (Apr. 9, 2015).
- ⁹⁴ See, e.g., *FTC v. Green Tree Servicing LLC*, Case No. 0:15-cv-02064 (D. Minn. Apr. 21, 2015); Paymap, Inc., CFPB No. 2015-CFPB-0017 (July 28, 2015); LoanCare, LLC, CFPB No. 2015-CFPB-0018 (July 28, 2015).
- ⁹⁵ See *CFPB v. Corinthian Colleges, Inc.*, Case No. 1:14-cv-07194 (N.D. Ill. Oct. 27, 2015).
- ⁹⁶ CFPB Press Release, [CFPB Wins Default Judgment Against Corinthian Colleges for Engaging in a Predatory Lending Scheme](http://www.consumerfinance.gov/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/) (Oct. 28, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/>.
- ⁹⁷ CFPB Press Release, [CFPB Secures \\$480 Million in Debt Relief for Current and Former Corinthian Students](http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/) (Feb. 3, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/>.
- ⁹⁸ *CFPB v. Student Financial Aid Services, Inc.*, Case No. 2:15-cv-01581 (E.D. Cal. July 23, 2015); *CFPB v. Global Financial Support, Inc.*, Case No. 3:15-cv-02440 (S.D. Cal. Oct. 29, 2015).
- ⁹⁹ Discover Bank, CFPB No. 2015-CFPB-0016 (July 22, 2015).
- ¹⁰⁰ CFPB Supervisory Highlights, Summer 2015, at 6-7, 9; CFPB Supervisory Highlights, Fall 2015, at 5-7, 25-26.
- ¹⁰¹ CFPB Supervisory Highlights, Summer 2015, at 6-7; CFPB Supervisory Highlights, Fall 2015, at 6-7.
- ¹⁰² CFPB Supervisory Highlights, Summer 2015, at 8.
- ¹⁰³ *Id.* at 7.
- ¹⁰⁴ CFPB Supervisory Highlights, Fall 2015, at 7-8.
- ¹⁰⁵ *Id.* at 23-24; CFPB Supervisory Highlights, Summer 2015, at 9-10.
- ¹⁰⁶ CFPB Supervisory Highlights, Fall 2015, at 22.
- ¹⁰⁷ *Id.* at 23.
- ¹⁰⁸ *Id.* at 10-11; CFPB Supervisory Highlights, Summer 2015, at 13-14.
- ¹⁰⁹ CFPB Supervisory Highlights, Summer 2015, at 14; CFPB Supervisory Highlights, Fall 2015, at 11-12.
- ¹¹⁰ CFPB Supervisory Highlights, Summer 2015, at 12; CFPB Supervisory Highlights, Fall 2015, at 12.
- ¹¹¹ CFPB Supervisory Highlights, Fall 2015, at 13.
- ¹¹² CFPB Supervisory Highlights, Summer 2015, at 14-15.
- ¹¹³ *Id.* at 15-17; CFPB Supervisory Highlights, Fall 2015, at 16-18.
- ¹¹⁴ CFPB Supervisory Highlights, Summer 2015, at 18.
- ¹¹⁵ *Id.* at 19.
- ¹¹⁶ CFPB Supervisory Highlights, Fall 2015, at 21.
- ¹¹⁷ CFPB Supervisory Highlights, Summer 2015, at 20-22.
- ¹¹⁸ CFPB Supervisory Highlights, Fall 2015, at 28.