Newsletter | Financial Institutions Advisory

CFPB

The Quarterly Review

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As we reported in our **inaugural CFPB newsletter**, 2016 is proving to be a busy year for the CFPB and market participants. In the third quarter, the CFPB reached a consent agreement with the country's third-largest bank, imposing the largest fine in its five-year history. The Bureau also had a number of major rulemakings as well as updates to its Supervision Examination Manual.

The CFPB speaks

Incentive compensation and sales practices

On September 8, 2016, the CFPB announced an enforcement action, brought in coordination with the Office of the Comptroller of the Currency ("OCC") and the Los Angeles City Attorney, against one of the country's biggest banks for opening unauthorized deposit and credit card accounts. CFPB Director Richard Cordray emphasized that the "action should serve notice to the entire industry that financial incentive programs, if not monitored carefully, carry serious risks that can have serious legal consequences."

The enforcement action (discussed more fully below), which was brought under the CFPB's authority to prohibit unfair, deceptive or abusive acts or practices ("UDAAP"), arose from employee conduct that allegedly started in 2011. According to the CFPB, the bank aggressively sought to cross-sell consumer banking products and services to its existing customers by establishing sales quotas for each of its branches and implementing an incentive program that rewarded employees for the number of new accounts opened. To achieve sales quotas and receive bonuses, branch managers and employees allegedly opened more than two million unauthorized deposit and credit card accounts. Employees also transferred funds from customers' authorized accounts to temporarily fund newly created unauthorized accounts. The bank reported that it has terminated approximately 5,300 employees for engaging in such practices since 2011.

Under the terms of the consent order, the bank is required to pay a fine of US$100 million to the CFPB, which is the largest civil penalty imposed by the CFPB to date, and install an independent consultant to review the bank's sales practices. The bank is also required to pay US$35 million to the OCC and US$50 million to the City and County of Los Angeles.

Following the enforcement action, there have been a number of Congressional hearings in which regulators and company officials have been called to explain the allegations underlying the consent order. On September 20, Director Cordray testified that the alleged employee misconduct was the result of an

incentive-compensation program aimed at boosting the cross-selling of products and that the widespread practices were allowed to continue due to poor monitoring by the bank. He also put the industry on notice:

> This action should serve notice to the entire industry. If sales targets and incentive compensation schemes are implemented in ways that threaten harm to consumers and lead to violations of the law, then banks and other financial companies will be held accountable. We have seen the risk that such programs pose to consumers across the entire financial sector—in debt collection, mortgage origination, credit card add-on products, overdraft products, and now in this action. Any such initiatives should be carefully monitored as a basic element in a company's compliance program.

Accordingly, we expect increased investigations into the incentive compensation programs and sales practices at financial institutions.

Semi-annual report to Congress

On June 30, 2016, the CFPB issued its ninth semi-annual report to Congress and the President covering its supervisory, enforcement and rulemaking activities, newly developed consumer tools, and various published reports and guidance from October 1, 2015 through March 31, 2016. During this period, the CFPB reported:

- Supervisory actions resulting in financial institutions paying more than US$44 million in redress to more than 177,000 consumers;
- Total relief to consumers through enforcement actions of approximately US$200 million. We note that a different figure—US$82 million—is provided in the message from Director Cordray at the beginning of the report. However, upon review of the enforcement actions during the reporting period, US$200 million appears to be more accurate, which the agency discloses later in the report; and
- More than US$70 million in civil money penalties imposed on industry participants.

These figures are substantially lower than those disclosed in the prior eighth semi-annual report, which indicated US$95 million in redress to approximately the same number of consumers through supervisory activities and approximately US$1.2 billion in total relief through enforcement actions, which was fueled in part by high-dollar resolutions involving two banks and two telecommunications companies. (Interestingly, we note that in its eighth semiannual report, the CFPB had actually provided a figure of US$5.8 billion for total relief to consumers. However, based on the enforcement actions during the covered time frame, it is unclear how this figure was calculated. Our own calculations indicate that US$1.2 billion is a more accurate figure.)

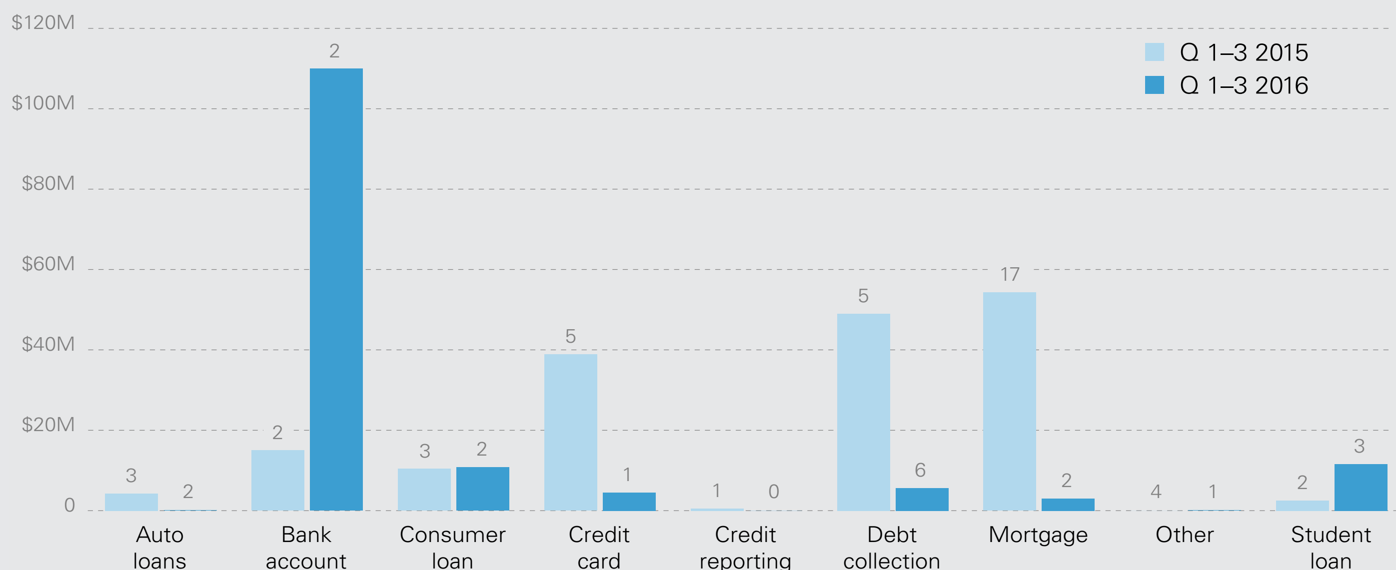
The June 30 report also, among other things:

- Highlights an array of financial education initiatives taken by the CFPB, including online tools to help consumers find home mortgage products and students evaluate their higher education financing options;
- Describes the CFPB's rulemaking activities in the mortgage sector as well as the agency's continued research and other preparations for rulemakings regarding debt collection, payday loans and deposit advance programs, and overdraft features on deposit accounts; and
- Provides an overview of the CFPB's supervisory activities, as detailed in the agency's Supervisory Highlights issued in November 2015 and March 2016, which reported examination findings in the areas of consumer reporting, debt collection, mortgage origination, mortgage servicing, remittances, student loan servicing and fair lending.

According to the report, the CFPB has published nearly 80,000 new complaints in its Consumer Complaint Database, more than half of which included a consumer narrative. Although the CFPB allows companies to respond publicly to the substance of these consumer complaints, many choose not to do so as a matter of policy. Industry participants will want to continue to evaluate the best response approach as usage—by consumers and otherwise—of the database continues to evolve.

Supervisory highlights

On June 22, 2016, for the first time, the CFPB released a special edition of its Supervisory Highlights. It focused on foreclosures and mortgage servicing, signaling to the industry that this area continues to be squarely in the Bureau's crosshairs. The Bureau's strongest criticism of the industry continues to be on the "[o]utdated and deficient servicing technology" that is compounded by "lack of proper training, testing, and auditing of technology-driven processes." This is an important message and is likely to get louder as the Bureau continues to emphasize the importance of



technology,—including updated regtech solutions—to address technology and compliance deficiencies. Companies should consider conducting risk assessments of their technology structures to ensure that these systems are not the root cause of compliance failures.

On June 30, several days after release of the Bureau's special edition of its Supervisory Highlights, the CFPB released the 12th regular edition of its Supervisory Highlights, which covers the period from January to April 2016. The 12th edition includes supervisory observations in the areas of auto origination, debt collection, mortgage origination, small-dollar lending and fair lending. According to the report, the agency's supervisory activities during this period resulted in the restitution of approximately US$24.5 million to more than 257,000 consumers and either led to or supported a public enforcement action that required nearly US$5 million in consumer remediation and US$3 million in civil penalties. In addition, the report indicates that the CFPB has taken corrective actions to, among other things, ensure institutions enhance their compliance management systems, including policies and procedures as well as employee training.

Update to supervision examination manual – Military Lending Act

On September 30, 2016, the CFPB issued procedures its examiners will use in identifying consumer harm and risks related to the Military Lending Act ("MLA") rule, which was amended in July 2015 to expand the types of covered credit products. Among other things, the MLA prohibits creditors from charging active-duty service members and covered dependents an interest rate higher than 36 percent or requiring them to submit to mandatory arbitration or waive other consumer protection laws. According to the procedures, examiners will assess whether a financial institution is properly training its staff and has implemented policies, procedures and practices to ensure and monitor compliance with the MLA and to correctly calculate the applicable interest rates. Further, examiners will also check to see whether borrowers are receiving the required information and disclosures and the specific consumer protections afforded by the MLA. In light of the CFPB's statement that it will "exercise its enforcement authority in appropriate cases of substantial consumer harm" and the significant reputational risk for violating the MLA, industry participants should review these guidelines carefully to ensure compliance with the new procedures.

CFPB outreach to credit unions

In a July 18, 2016 letter to the CFPB, a bipartisan group of 70 US senators urged the agency to "carefully tailor its regulations to match the unique nature of community banks and credit unions" because "community-based depository lenders . . . are essential to spurring economic growth and prosperity at a local level." The senators noted that with CFPB's "robust tailoring authority" under the Dodd-Frank Act, it can "exempt any class" of entity from its regulatory requirements and prevent any unintended consequences that would negatively impact community

banks and credit unions or unnecessarily limit their ability to serve consumers. In his August 17 response, Director Cordray emphasized the CFPB's commitment to promulgating "well-tailored and effective regulations" and enumerated several examples whereby the CFPB relaxed certain requirements for small creditors, such as an expanded safe harbor for Qualified Mortgage loans.

At the Credit Union Advisory Council meeting on September 1, Director Cordray sought the council's input into the debt collection rulemaking proposals under consideration that we discussed in a prior client alert. As we explained, those proposals are targeted towards "debt collectors" as defined under the Fair Debt Collection Practices Act ("FDCPA"). Director Cordray also noted that the CFPB plans to address first-party debt collection issues on a separate track. Interestingly, unlike the Dodd-Frank Act, the FDCPA makes no mention of exempting any class of entities. As such, it is unclear whether the CFPB can exempt certain entities in connection with a debt collection rulemaking. Therefore, as the CFPB prepares to increase its oversight of the first-party debt collection industry, small creditors and credit unions should not rely on obtaining exemptions. (Notably, on October 11, 2016, the CFPB issued an enforcement order against one of the country's largest credit unions, which primarily serves military service members, for deceptive debt collection practices. The CFPB announcement of the enforcement action is available here.)

Rulemaking

Debt collection

The CFPB's debt collection rulemaking process began in November 2013 when the agency issued an Advance Notice of Proposed Rulemaking ("ANPR"). After a number of delays, the CFPB reached three milestones in the third quarter of 2016:

- On July 28, the CFPB issued an outline of proposals under consideration ("Outline") for the Bureau's forthcoming debt collection rulemaking. This represents an important and long-awaited step in the CFPB's pre-rulemaking process that began when the agency issued an ANPR on November 6, 2013. The ANPR covered first- and third-party debt collection issues, indicating that the CFPB intends to regulate third-party debt collectors pursuant to its rulemaking authority under the FDCPA as well as creditors and other first-party collectors under its authority to proscribe UDAAPs under Title X of the Dodd-Frank Act.
- Because the Outline was directed at "debt collectors," as defined by the FDCPA, (e.g., collection agencies, debt buyers, collection law firms, and loan servicers" for "debts acquired in default"), the CFPB announced that it would address the collection practices of first-party debt collectors and creditors who are covered persons under the Dodd-Frank Act, but not "debt collectors" under the FDCPA "in the next several months." However, the Outline hinted at the types of requirements that the CFPB is likely to propose for first-party collectors and creditors. Future proposals covering creditors and first-party collectors will likely correspond to requirements applicable to third-party collectors under the proposals currently under consideration. In particular, the CFPB stated that it intends to consider whether to require creditors to provide information needed to substantiate a debt when engaging a debt collector or selling debt, including fundamental information and representations of accuracy. Other proposals likely to be considered for first-party collectors and creditors include information transfer requirements, recordkeeping requirements and restrictions on placing debt with collectors unable to lawfully collect upon the debt.

A more detailed analysis of this Outline is available here.

- On August 4, the same day the CFPB issued a final rule amending its mortgage servicing rules, the CFPB issued an interpretive rule under the FDCPA to clarify the intersection between mortgage servicing and debt collection obligations. Under the interpretive rule, mortgage servicers do not violate the FDCPA's section 805(c) cease communications provision when they seek to comply with mortgage servicing requirements. In particular, the agency provided three safe harbors from FDCPA liability for: (1) when servicers communicate about a loan with confirmed successors in interest; (2) when servicers provide written early intervention notices; and (3) when servicers respond to borrower-initiated communications concerning loss mitigation.
- On August 25, the agency convened a Small Business Review Panel ("Panel") to solicit information from small entity representatives ("SERs") on the economic impact the debt collection proposals would have on small businesses at a day-long hearing pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Unless the agency can certify that its proposals would not have a significant impact on a substantial number of small businesses, the CFPB must provide representative entities with an opportunity to provide alternative recommendations. The Panel's report

on its findings on the impact the proposals would have on small business is due 60 days after the hearing, but it will not be made public until after the CFPB issues its Notice of Proposed Rulemaking on debt collection.

Proposed information privacy amendments

On July 1, 2016, the CFPB proposed amendments to Regulation P, which implements the consumer financial information privacy protections of the Gramm-Leach-Bliley Act ("GLBA") by requiring financial institutions to provide an annual disclosure of their privacy policies to their customers. The amendment, which implements legislation passed by Congress in December 2015, would exempt financial institutions that meet certain requirements from sending annual privacy notices to their customers. Comments were due on August 10. Because of the straightforward nature of this rulemaking and the fact that the CFPB received fewer than two dozen comments, we expect the CFPB to issue a final rule amending Regulation P within the next six months.

Mortgage

On July 29, 2016, the CFPB released a Notice of Proposed Rulemaking ("NPRM") that, if finalized as proposed, would make four amendments to the "Know Before You Owe" mortgage disclosure rule that was issued in October 2015. The NPRM addresses:

- *Tolerances for total payments.* With the proposed change, the total payments disclosure would be consistent with what it was prior to the October 2015 rule by creating tolerances for accuracy in calculating total payments that is consistent with tolerances for accuracy in calculating the finance charge.
- *Housing assistance lending.* The Bureau would incentivize partnerships with housing finance agencies. The proposal, if finalized, clarifies that recording fees and transfer taxes can be charged to housing assistance loans without losing eligibility for partial exemption from disclosure requirements.
- *Cooperatives.* The mortgage disclosure rule would now apply to all cooperatives, regardless of whether they are treated as personal property (rather than real property) under certain state laws.
- *Sharing of Information.* The Bureau would also clarify how entities can share information with various parties involved in the mortgage origination process without running afoul of the GLBA.

Comments are due on October 18. Because the Bureau is proposing that any final rule would not go into effect until 120 days after its publication in the Federal Register, we do not expect the amendments to go into effect until the second half of 2017.

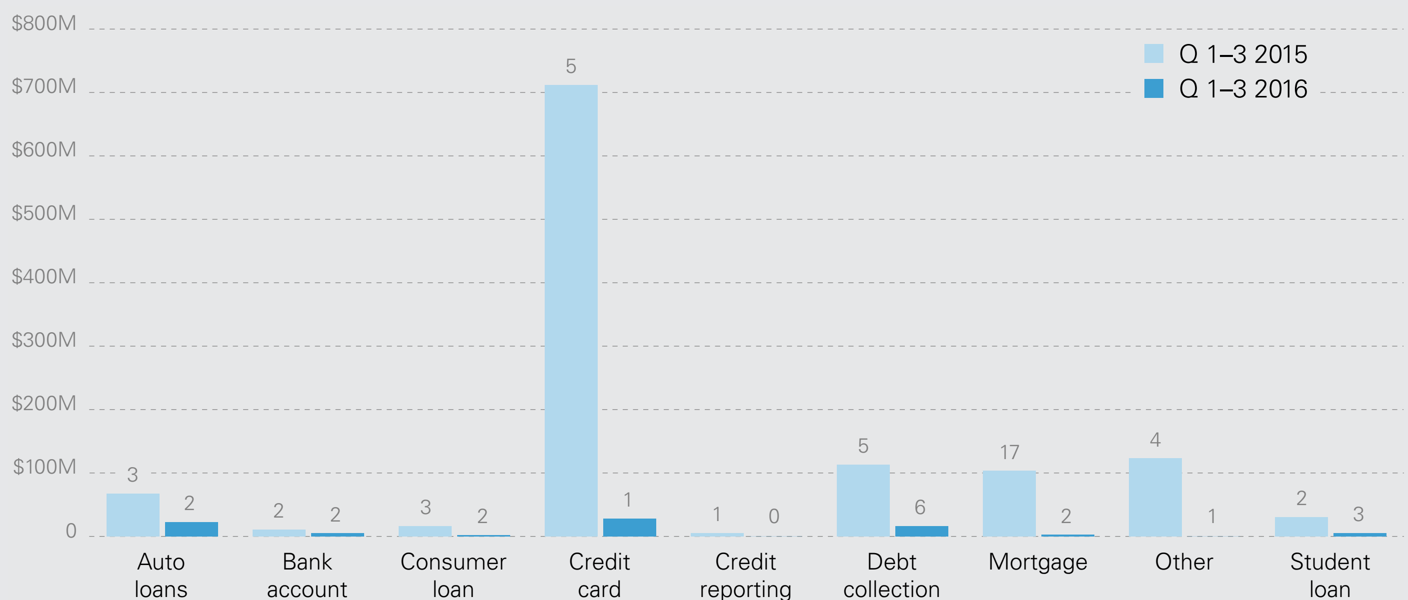
On August 4, the CFPB finalized amendments to mortgage servicing rules issued under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). The agency aims to expand foreclosure protection by, among other things, requiring servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan. In particular, servicers will be required to meet loss mitigation requirements for borrowers who have brought their loans current at any time since submitting a prior complete loss mitigation application. The rule also clarifies the scope of existing requirements regarding early intervention live contact/written notices, sending periodic statements, and the difference between prompt payment crediting for loans in mitigation programs and permanent modification.

Bank accounts and credit cards

Enforcement

The CFPB brought enforcement actions against three banks for UDAAPs related to consumer bank accounts and credit cards.

- Of these actions, the most notable was announced on September 8, 2016 and involved the alleged unauthorized opening of deposit and credit card accounts by employees of the country's third-largest banking institution. According to the CFPB, branch managers and employees opened more than two million unauthorized accounts and enrolled customers in other services without their knowledge or consent in order to satisfy sales goals and earn financial rewards under the bank's incentive compensation program. Bank employees allegedly opened roughly 1.5 million unauthorized deposit accounts and transferred funds from customers' authorized accounts to temporarily fund the newly created unauthorized accounts. This practice, called "simulated funding," incurred about US$2 million in overdraft and insufficient funds fees for roughly 85,000 of the unauthorized accounts. The CFPB alleged that employees also submitted applications for approximately 565,000 unauthorized credit card accounts and, as a result, caused customers who had unauthorized accounts opened in their names to incur over US$400,000 in fees and associated finance or



interest charges. In addition, employees used fake email addresses to enroll customers in online banking services without their knowledge or consent and obtained and activated debit cards for customers without authorization. Pursuant to the consent order, the bank is required to pay a US$100 million civil penalty, provide consumer redress and hire an independent consultant to conduct a thorough review of its sales practices.

On September 13, the bank announced that it would eliminate all product sales goals in retail banking effective January 1, 2017. However, during Congressional testimony, on September 29, the bank's (now former) Chairman and CEO, announced that the effective date would be moved up to October 1, 2016.

- In another action announced on July 14, the CFPB entered into a consent order whereby the defendant bank agreed to pay a US$10 million civil penalty in connection with the bank's alleged overdraft service practices, including the telemarketing practices of a third-party vendor that was hired to enroll consumers in the bank's overdraft service. The CFPB found that the bank, through the conduct of its vendor representatives, enrolled certain customers in the bank's overdraft service without their consent in violation of Regulation E and the Electronic Fund Transfer Act ("EFTA"), and misled customers about the terms of the overdraft service and associated fees in violation of the Dodd-Frank Act's prohibition on deceptive acts or practices.
- On August 25, the CFPB entered into another consent order with a bank for its alleged unfair and deceptive marketing, enrollment and billing practices related to credit card add-on products. Specifically, the CFPB alleged that the bank violated the UDAAP provisions of the Dodd-Frank Act by misleading consumers into signing up for certain credit card add-on products, misrepresenting the terms of such products, and billing consumers for benefits purportedly provided by such products which they did not receive. These practices began as early as 1997 and ceased in 2012 after they were uncovered by the CFPB during a supervisory examination. The bank was fined a US$4.5 million civil penalty and must provide US$27.75 million in relief to affected consumers in order to satisfy the terms of the consent order.

Small dollar loans

Enforcement

- On September 27, 2016, the CFPB and California's Department of Business Oversight (DBO) reached settlements with an online lending company that marketed its single-payment loans and installment loans as an alternative to traditional payday loans. Under the settlements, the company must pay more than US$6 million in penalties and consumer redress. The CFPB alleged UDAAP violations, as well as separate violations of the Truth in Lending

Act ("TILA") and Fair Credit Reporting Act ("FCRA"), whereas the DBO's claims focused on violations of the California Deferred Deposit Transaction Law ("CDDTL") and California Finance Lenders Law ("CFLL").

According to the CFPB, the company engaged in deceptive marketing practices. The company falsely claimed that it would offer cheaper loans and help consumers build credit, but failed to furnish any useful credit information to credit reporting companies on behalf of consumer clients. Further, the company falsely advertised that consumers who participated in its program would progress to lower-priced loans. In addition, the CFPB alleged TILA and Regulation Z violations arising from inaccurate disclosure of finance charges, failure to disclose the annual percentage rate ("APR") for loans in advertisements, failure to disclose "extension fees" such as reversal of discounts or charges added to loans upon default, understatement of APR, and FCRA/Regulation V violations for failure to maintain written FCRA-specific policies and procedures.

The DBO found a separate set of violations after conducting two regulatory exams between July 2013 and August 2014. Under the CDDTL, the company was found to have violated state law in connection with charging pass-through fees for instant funding, for discount reduction upon loan default (an illegal "fee to extend the payment due date"), and for making CFLL loans contingent on the purchase of CDDTL products. The agency also found five separate violations of the CFLL, including providing an inaccurate APR and miscalculating interest charges.

The investigation into the online lending company covered activity beginning in March 2012, several months after the company was incorporated at the end of November 2011 and essentially when the company began offering loans. The agency orders highlight the need for new fintech companies and specifically payday lenders to maintain robust compliance regimes starting at product launch. Industry participants should consider regulations while the product is being developed. As demonstrated in this case, TILA disclosures and marketing decisions often go hand-in-hand.

- On September 26, the CFPB reached a settlement with one of the nation's largest auto title lenders. Under the consent order, the agency alleged that the title lender provided borrowers with misleading information about the terms and costs of loan renewals, resulting in costlier loans, and engaged in illegal debt collection practices, including conducting home and work visits, which improperly disclosed information about the debt to employers, friends and family of the borrowers. The Bureau ordered the company to change its loan collection policies, stop making in-person visits to consumers' homes or workplaces, and pay a US$9 million civil penalty.

This action is the latest in a spate of enforcement activity this year that demonstrates the CFPB's position on the "abusive" prong of its UDAAP authority. The CFPB alleged that the company's sales pitch for 30-day loans was abusive. Specifically, the Bureau took issue with a payback guide used by employees with customers that focused on the amount of the monthly payment and not the loan's true cost—particularly as to multiple loan renewals. Further, the Bureau found that, by focusing borrower attention on the payback guide, which was not a repayment plan and did not affect the original 30-day loan terms, the company allegedly "materially interfere[d]" with the borrower's understanding of the total cost of the loan. Industry participants should closely evaluate their advertising materials and sales' scripts for language that the Bureau could construe as similarly misleading borrowers as to the true loan costs and terms.

In addition, lenders engaged in collection of their own debt should take note of the CFPB's willingness to require lenders to adhere to standards similar to those set forth under the FDCPA that was outlined in its 2013 bulletin regarding its UDAAP authority.

Student loans

Partnering with the Department of Education and the Department of Treasury

At a press call on July 20, 2016, CFPB Director Cordray announced the development of prototype disclosure forms by the Department of Education, in consultation with the CFPB and the Treasury Department, to address widespread deficiencies in the student loan servicing market. In what he called a "notable commitment by the Department of Education to make a major investment in student loan servicing that will drive stronger practices and better outcomes for borrowers," Director Cordray emphasized that these "Payback Playbook" forms would be able to give borrowers "clear, personalized information about repayment options" and introduce greater consistency, transparency, actionability and accountability to the marketplace. At the same time, Cordray reaffirmed

the CFPB's commitment to take immediate action to protect consumers in the market, indicating that the agency will "use [its] enforcement and supervisory tools to address illegal student loan servicing practices."

CFPB report on student loan complaints

On August 18, 2016, the CFPB released its midyear update on student loan complaints, which analyzes complaints submitted by consumers from October 1, 2015 through May 31, 2016. This is the first CFPB report based on data from federal student loan servicing complaints. According to the report, when borrowers seek to enroll in income-driven repayment plans, they face problems ranging from poor customer service and unexpected delays to lost paperwork and inconsistent or inaccurate application processing, resulting in increased costs, reduced benefits and extended repayment terms for consumers. The midyear update also included recommendations for policymakers to tackle these problems, such as improved servicer-borrower communications to help consumers navigate the enrollment and recertification process, as well as steps to expand public access to data on student loan performance and the use of alternative repayment plans. Industry participants should take note of the CFPB's concerns as the agency's long-term plan includes issuing a student loan servicing rule.

Enforcement

The CFPB continues to police both banks and nonbanks in the student-lending space.

- On August 22, the CFPB entered into a consent order against the third-largest banking institution for private student loan servicing practices that allegedly increased costs and unfairly penalized certain student loan borrowers. Under the bank's allocation methodology, when a borrower made a payment that was not enough to cover the total amount due for all outstanding loans, the bank allocated the partial payment proportionally to bring each delinquent loan closer to becoming current instead of in a manner that would have satisfied as many delinquent loans as possible. By neither disclosing the bank's allocation methodology nor the borrowers' right to direct the bank to allocate payments in a particular manner, the bank allegedly maximized late fees and misrepresented that a partial payment could not fully satisfy any existing obligation on an account. The CFPB determined that such conduct constituted unfair and deceptive acts or practices in violation of the Dodd-Frank Act. As a result of the bank's payment allocation practices, the bank also allegedly failed to update and correct inaccurate, negative information reported to credit reporting companies about certain borrowers who made partial payments or overpayments, which was a violation of the FCRA and Regulation V. The CFPB ordered the bank to provide at least US$410,000 to compensate consumers for late fees and pay a US$3.6 million civil penalty.
- In another action, on September 12, the CFPB entered into a consent order with a for-profit college chain for deceiving students into taking out private student loans that cost more than advertised. The agency ordered the institution to: (i) refund all payments made by students toward private student loans taken out from the school (approximately US$5 million); (ii) discharge all outstanding debt for its institutional student loans (approximately US$18.5 million); and (iii) pay an US$8 million civil penalty.

Upcoming in 2016 and beyond

- **Update on PHH.** As reported in previous client alerts (here, here and here), the CFPB and mortgage lender PHH have been engaged in a legal battle before the Court of Appeals for the District of Columbia Circuit over the constitutionality of the CFPB and the scope of the Bureau's enforcement authority under the Real Estate Settlement Procedures Act ("RESPA"). On October 11, 2016, PHH won what many view as a landmark victory, as the court agreed that the single-director structure of the CFPB violates Article II of the Constitution. Further, the court unanimously held that: (i) the CFPB misinterpreted Sections 8(a) and (c) of the RESPA to bar all captive reinsurance arrangements where, pursuant to the statutory text, such arrangements are permissible so long as the amount paid for the reinsurance does not exceed the reasonable market value of the reinsurance; (ii) the CFPB violated PHH's due process rights by retroactively applying a new interpretation of the relevant RESPA provisions that departed from prior interpretations issued by the Department of Housing and Urban Development; and (iii) the RESPA's three-year statute of limitations is applicable to administrative proceedings brought by the CFPB. Should the Bureau petition the DC Circuit for rehearing *en banc*, it must do so by November 25. Due to the significance of this ruling, which will be more fully discussed in a forthcoming client alert, we expect the Bureau to appeal the panel's decision.

- **Increased oversight of cross-selling and overdraft-fee practices.** With members of Congress from both sides of the aisle expressing concern over how widespread a problem incentive compensation structures and sales practices are, we expect the CFPB's examinations and investigations to more closely scrutinize how monetary incentives are structured around sales performance targets.

- **Arbitration rulemaking.** In May 2016, we reported on CFPB's proposed rule that would curtail the use of pre-dispute arbitration. At the time, we noted that we did not expect a final rule to take effect until the second quarter of 2017, at the earliest. Since then, the Bureau received well over 50,000 comments in response to its proposal. As the CFPB must review all submissions prior to finalizing any rule and the prospective effect of the rule (i.e., the Bureau proposed that the final rule would only apply to agreements entered into after the 180-day period beginning on the effective date of the final rule, which itself was 30 days following publication of the final rule in the Federal Register), we now believe that the impact to industry participants would likely not occur until 2018.

- **Payday rulemaking.** In June 2016, we reported on CFPB's proposed rule on short-term lending, which was the Bureau's first attempt at a UDAAP rulemaking. At the time, we expected that any final rule would not take effect until 2019, at the earliest. While that timing may still prove correct, there is much more uncertainty, as the Bureau received nearly 200,000 responses by the time the comment period closed on October 7, 2016.

- **Debt collection SBREFA panel for first-party rulemaking.** As we reported in August 2016, the CFPB bifurcated the debt collection rulemaking process at the SBREFA stage. Though it remains unclear whether the Bureau will issue its FDCPA regulations affecting third-party debt collectors under a time frame different from when it will issue its UDAAP regulations affecting creditors, we expect the agency to release a proposed framework for a debt collection proposal covering creditors in the first half of 2017.

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