Authority


The CFPB is an independent agency with the authority to implement and enforce Federal consumer financial law for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that the markets for consumer financial products and services are fair, transparent, and competitive. Emphasis supplied. [Memorandum of Understanding Between The Consumer Financial Protection Bureau and The Federal Trade Commission. p 1.]
Scope of Supervisory Authority

• CFPB has the authority to examine depository and non-depository institutions with assets > $10 billion, depository institutions with assets < $10 billion (limitations apply), mortgage services, payday lenders, private education lenders

Expanded Scope of Supervisory Authority

• Proposed / expanded supervision includes: Debt collectors, debt relief services, consumer credit reporting agencies, money transmitters, check cashers (money services businesses) and their affiliates, to assess their compliance with Federal consumer financial law, evaluate their compliance management systems, and detect and assess risks to consumers and markets for consumer financial products and services. Emphasis supplied. [CFPB Supervisory Highlights Fall 2012]
Effect of Rule Writing Authority

- The Dodd Frank Act gave rule writing authority for the consumer regulations to the CFPB.
- This means that, even institutions that are not regulated by the CFPB must comply with any rules or regulatory amendments it creates.
- A significant case in point are the new mortgage servicing regulations.
- Because the new rules are an amendment to regulations applicable to all mortgage lenders, even financial institutions that are below the supervisory threshold of the CFPB must comply with the rules.

Joint Examinations

- The CFPB has the authority to accompany other federal functional regulators on examinations, thus, it is in a position to express its views to the regulators of institutions for which the CFPB is not the primary regulator.
• The CFPB’s approach to regulating influences the other financial institution regulators, the OCC and the FDIC.

• There is considerable anecdotal reporting that non-CFPB regulated banks are experiencing more aggressive examiners and scrutiny since the creation of the Bureau.

Recent CFPB Activities

• CFPB statistics
• 2013: CFPB Final Rules (As of March 8, 2013)
• 2012: CFPB Final Rules (Selected Examples)
• Consumer financial protection regulations (I/III)
• Consumer financial protection regulations (II/III)
• Consumer financial protection regulations (III/III)
• Memorandum of Understanding on Supervisory Coordination
• What to expect: An expansion of CFPB influence?
Memorandum of Understanding on Supervisory Coordination

- May 16, 2012: CFPB signed a Supervisory Coordination MOU with the Fed, FDIC, NCUA, and OCC

- Pursuant to Dodd-Frank Act section 1025(e) requirements and with the following summarized objectives:
  - Coordinated exam schedules - including simultaneous exam opt out
  - Voluntary coordination between Prudential Regulators
  - Minimize unnecessary regulatory burdens
  - Avoid unnecessary duplication of effort
  - Effective and efficient deployment of responsibilities
  - Minimize risk of conflicting supervisory directives
  - Increase the potential supervisory synergies and alignment

- Confidential information sharing MOU’s between the CFPB and Prudential Regulators apply

- Confidential Treatment of Privileged Information Final Rule applies - effective August 6, 2012

- Critics argue federal agencies with differing enforcement agendas, budgets, and jurisdictions have traditionally functioned in “silos” - questions remain whether the politically decisive Dodd-Frank program will bring meaningful collaborative change

Source: CFPB - Agencies sign Memorandum of Understanding on supervisory coordination

What to expect: An expansion of CFPB influence?

Regulatory observers recently noted a trend in CFPB joint enforcement. One example is the CFPB / FTC partnership announced in November 2012. This collaborative “sweep review” synerized cross-industry resources to “warn companies against misleading consumers with false mortgage advertisements” targeting retirees and veterans.

Other potential CFPB regulatory developments include:

- Retirement savings accounts
- Private student lenders
- Endorsement of banking products by higher education institutions

The Consumer Financial Protection Bureau: Enforcement
University of North Carolina School of Law Center for Banking and Finance

March 22, 2013
Eric J. Mogilnicki

The Origins of the CFPB

- “A new cop on the beat”
- Consolidating consumer protection
- Leveling the playing field
Developments in CFPB Enforcement

- The Enforcement Framework
  - Civil Investigative Demands
  - Notice and Opportunity to Respond and Advise
- The Early Enforcement Matters
- The Enforcement Pipeline
- Future Areas of Focus
Enforcement Process: CIDs

- CID Authority
  - Tight timelines
  - Limited appeal rights
  - Electronically Stored Information

Enforcement Process: The NORA

- Notice and Opportunity to Respond and Advise
- Provides due process to potential subject of enforcement action
- Provides CFPB with opportunity to test its case before taking action
- Demonstrates Bureau’s willingness to listen to the regulated
- Within limits:
  - 14 days to respond
  - Legal issues only
CFPB Enforcement: Capital One

- Alleged failure to monitor third party vendor marketing of credit card add-on products, leading to deceptive marketing by vendors in some cases.
- “Numerous instances of” inaccurate descriptions of product benefits, eligibility, and cost.
- Separate settlements by OCC ($35 million fine) and CFPB ($25 million fine)
- Restrictions on how Capital One and its vendors may market add-on products going forward.
- Estimated $150 million in restitution to all customers during relevant period, representing full refunds of fees paid for the add-on products.
- Vendor management guidance document accompanied settlement

CFPB Enforcement: Discover

- Alleged deceptive marketing of credit card add-on products by Discover and by third party vendors
- Examples of misrepresentations and omissions included:
  - Product described as free benefit rather than optional fee-based product
  - Consumer was rushed through mandatory disclosures
  - Lack of clarity on whether and when product has been purchased
- Joint settlement with CFPB and FDIC ($14 million fine)
- Restrictions on how Discover and its vendors may market add-on products
- Minimum $200 million in refunds to 3.5 million customers
  - Full refunds to customers enrolled in products for less than one year
  - 90 days of refunds to customers enrolled for more than one year
CFPB Enforcement: American Express

- Alleged violations relating to debt collection, credit card promotions, credit reporting, card late fees
- Multiple settlements by three American Express entities with CFPB, FDIC, OCC, and Federal Reserve, for a total fine of $27.5 million
- Restrictions on how American Express and its third party collectors may collect certain debt going forward
- Estimated $85 million in restitution to approximately 250,000 customers
  - Includes return of already collected debt in some cases, where there is no dispute about whether the debt is old
  - Also includes partial refunds of late fees and additional payments on credit card promotions

The Pipeline of Cases

- Vendor Management
  - Add-on products
- Discrimination
  - Disparate impact
- UDAAP in marketing
- “Debt traps”
- Debt Collection, Loan Servicing and Credit Reporting
Other Issues Ahead

- Enforcement Attorneys and Examination
- Challenges to Director Cordray’s appointment
- Arbitration Study and Regulations
Overview

- In 2012, CFPB was focused largely on mortgage regulation
- Issuing proposals on mortgage servicing and underwriting standards
  - Testing mortgage servicing related disclosures and forms
  - Discussion about safe harbor under qualified mortgage rule
- CFPB also focused on defining nonbank supervision role
  - Debt collectors and consumer reporting agencies
- Examination procedures
- Several enforcement actions against major players in credit card industry for add-on products
Major Final Rules

- Mortgage servicing rules under Regulations X (RESPA) and Z (TILA)
  - Early intervention for delinquent borrowers, loss mitigation procedures (e.g., single point of contact), general servicing obligations, notices when interest rates adjust, periodic billing statements, error resolution, force-placed insurance
- Mortgage underwriting rules
  - Ability-to-repay – 8 underwriting factors to consider in determining whether a consumer has the ability to repay the mortgage loan
  - Qualified mortgage safe harbor and rebuttable presumption
- Loan originator compensation rules

Major Final Rules

- Escrow and appraisal rules under Regulation B
  - Appraisals for higher-priced mortgage loans
  - Consumer access to appraisals
- Supervision of nonbanks
  - Defined “larger participants” of the debt collection and consumer reporting markets
  - Examination procedures released for debt collection and consumer reporting markets
- Remittance transfer rule
  - Delayed implementation date
  - Minor changes
What’s to come – The 4 Ds

At recent Consumer Advisory Board meeting, Director Cordray outlined “four classes of problems” on which CFPB intends to focus:

- **Deceptive and misleading marketing practices**
- **Debt traps** — where the product depends on consumers getting into cycles of debt
- **Dead ends** — Structural road blocks, where consumer cannot shop for service provider (e.g., debt collection, mortgage servicing, private student loan servicing, and credit reporting)
- **Discrimination**, including disparate impact analysis
  - April 2012 guidance bulletin on lending discrimination
  - December 2012 Fair Lending Report to Congress

What’s to Come?

- **Small Business Loan Data Collection**
  - Dodd-Frank amended ECOA to require financial institutions to report information about women and minority-owned small businesses
  - Questions about scope of requirements
- **Prepaid Cards**
  - ANPR on general-purpose reloadable cards
  - Consumer groups want CFPB to ban overdraft fees and credit features
- **Finalize mortgage rules**
  - Rethink “zero-zero” rule that creditor that offers loans with upfront fees would also have to offer comparable loan with no upfront fees
  - Confusing to consumers
What’s to Come

- Payday loans/deposit advance products
  - One of the "debt traps"
  - CFPB equating payday loans and bank deposit advance products
  - Focused on banks refusing to accept stop payment orders from payday loan customers

- Overdraft Services
  - Concern about low opt-out rates, fees, marketing
  - Recent comments from Director Cordray indicate that CFPB will not take action in near future
  - Effect on community banks cited

What’s to Come?

- Private student loan market
  - Report to Congress on private student loan market (July 2012)
  - Ombudsman report on the private student loan market (October 2012)
  - Launched inquiry into alternative repayment options for private student loan borrowers (February 2013)

- Request for information on college financial products (March 2013)

- Additional protections for servicemembers
What's to Come? More of the Same

- Issuance of “guidance” instead of rules
- Use of examination procedures to benchmark, especially UDAAP standards
- Rigorous analytics
- Rhetoric around the rule-making process
- Default to enforcement rather than regulation
  - Payday lending/deposit advance products
  - Indirect auto lending compensation