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Consumer Financial Protection Bureau Frequently Asked Questions

As the CFPB completes its first year of operation, much can be learned from its investigation and enforcement activity thus far.

The Consumer Financial Protection Bureau (CFPB or the Bureau) recently completed its first year of operation as the new "cop on the beat" for consumer financial matters. The CFPB is the newest federal agency authorized to supervise banks, but its authority extends further to larger non-bank participants—companies that provide broadly defined consumer financial products or services but that do not have a bank, thrift, or credit union charter. The CFPB has already begun to enforce its authority, investigating claims of mortgage insurance kickbacks, student loan originations, advertising and marketing by student lenders, and possible discriminatory practices of the dealer-originated car loan industry and challenging the marketing of fee-based products by a large national bank. The Bureau has also proposed new rules for once lightly regulated industries. For example, it recently issued a set of rules designed to improve mortgage servicer transparency. And in July, the CFPB flexed its enforcement muscle for the first time, fining a bank a substantial amount for alleged deceptive marketing by its third-party service provider of add-on credit card services, such as credit-monitoring and payment-protection plans.

Below are frequently asked questions (FAQs) about the CFPB's supervisory and enforcement powers and processes. For financial institutions wondering how vigorous this new agency will be in policing its turf, the answers to these FAQs should provide the answer.

What have the CFPB's investigations involved so far?

The CFPB has publicly examined or investigated the following:

- A large national bank's marketing of fee-based products, including payment-protection programs, to consumers
- The marketing and origination practices of a student lender, focusing on the lender's disclosures and the borrowers' abilities to repay loans
- Whether a major mortgage lender influenced borrowers to use specific mortgage insurers in exchange for kickbacks
- Whether banks participated in discriminatory practices in the making and issuing of car loans

What types of investigations are expected in the future?

Investigations involving overdraft fees and the ordering of transactions in connection with overdraft fees are expected to increase. The CFPB may also investigate whether credit card issuers are charging the best possible exchange rates. Additional investigations and enforcement actions concerning banks' and credit card companies' marketing of fee-based products can be expected as well.

What types of enforcement remedies can the CFPB seek?

Unlike some other regulators, such as the Securities and Exchange Commission, the CFPB has the statutory authority to seek damages in its enforcement actions. This authority could lead to significant monetary payments in CFPB enforcement cases. The CFPB also has the authority to seek significant civil money penalties—up to $1 million per day—for violations of federal consumer finance laws.

What kind of companies is the CFPB targeting on the enforcement side?

It is thought that the CFPB will be keying in on industries that have received little attention from federal regulators, including payday lenders, debt collectors, and debt buyers. These are all areas where the CFPB does not have to be concerned about overstepping the authority of other regulators. Some companies expected to see short-term targeting are banks and marketers of fee-based services provided to banking customers; credit bureaus; large debt collectors; and issuers and servicers of general purpose, reloadable debit cards.

What did CFPB's first enforcement action involve? Are additional similar actions expected in the near term?

The Bureau challenged a large national bank's marketing of fee-based products and found that call center representatives of a third party it had retained were allegedly using deceptive tactics to sell payment-protection and credit-monitoring products to consumers with low credit scores and low credit limits. The CFPB alleged that, when these consumers called to activate new cards, they were misled and deceived into buying products they did not fully understand, and that some were signed up and charged for products without clear notice about what was occurring. In settling this investigation, the CFPB's consent decree called for restitution of at least $140 million along with a $25 million fine. Following this enforcement action, the Bureau and the Federal Deposit Insurance Corporation (FDIC) subpoenaed a large direct banking and payment services company amid a probe concerning the marketing of fee-based products. Other consumer lenders are also currently being investigated.

Over what non-bank companies does the CFPB have supervisory authority?

The CFPB has supervisory authority over residential mortgage originators, servicers, and brokers; private education lenders; and credit-reporting companies, as well as payday lenders. This is to be distinguished from its enforcement authority, which applies to any entity that offers consumer financial products or services. The Bureau is considering including in its supervision program the larger non-bank participants in the following markets: money transmitters, prepaid card issuers, debt collectors, and consumer debt relief services.

What actions has the CFPB taken to improve mortgage servicer transparency?

In August, the CFPB proposed two sets of rules—one designed to provide consumers with clear and timely information about mortgages and another that would impose requirements for handling consumer accounts, correcting errors, and evaluating borrowers' options for avoiding foreclosure.[1] The proposed rules were created with the intent to bring greater transparency to the market. These rules require that mortgage servicers do the following:

- Provide regular monthly mortgage statements that include a breakdown of payments by principal, interest, fees, and escrow; the amount and due date of the next payment; recent transaction activity; and warnings about fees.
- Provide disclosures prior to interest-rate adjustments for most adjustable-rate mortgages. These disclosures should include information about alternatives and counseling resources if the new payment is unaffordable.

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1. 2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposal (Aug. 9, 2012) (to be codified at 12 C.F.R. pt. 1026), *available at* http://files.consumerfinance.gov/f/201208_cfpb_tila_proposed_rules.pdf; 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal (Aug. 9, 2012) (to be codified at 12 C.F.R. pt. 1024), *available at* http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf.

- Give advance notice and pricing information before charging consumers for forced-place insurance and terminate this insurance within 15 days and refund any associated premiums if the servicer receives evidence that the borrower already has the necessary property insurance.
- Provide early information and options for avoiding foreclosure.
- Credit consumers' accounts as of the date a payment is received.
- Maintain accurate and accessible information and documents.
- Correct errors soon after notification by a customer, and inform the customer about the resolution in a timely manner.
- Provide delinquent borrowers with easy, ongoing direct access to employees dedicated to help them.
- Promptly evaluate borrowers' applications for available loss-mitigation options, inform them when their applications are incomplete, and allow the borrowers to appeal certain servicer decisions.

How might the mortgage servicer rules impact servicers from a cost and profitability perspective?

These rules will call for increased one-on-one discussion between mortgage servicer personnel and borrowers. Personalized service is more costly than automated systems, and this could have a negative impact on profitability.

What measures has the CFPB taken to ensure that consumers are provided the best available data prior to purchasing a home?

On August 14, the Bureau released a proposed rule requiring that mortgage lenders provide home loan applicants with copies of written appraisals and other home value estimates developed in connection with the applications at least three days prior to closing.[2] The rule would require that lenders inform consumers, within three days of applying for a loan, of their right to receive a free appraisal report and home value estimate. Currently, consumers must request appraisal reports from lenders and may be charged a fee to obtain the report. Under the proposed rule, creditors could still charge fees associated with conducting appraisals and estimates but would be prohibited from charging consumers fees for obtaining the reports. Also, in partnership with the Federal Reserve System, the FDIC, the Federal Housing Finance Agency, the National Credit Union Administration, and the Office of the Comptroller of the Currency, the Bureau issued a proposed rule to establish special requirements concerning appraisals for higher-risk mortgage loans, requiring that lenders use a licensed or certified appraiser to prepare written appraisal reports based on a physical inspection of the property.

What measures has the CFPB taken to help consumers to better understand mortgage costs and compare home loan offers?

On August 17, the Bureau proposed rules requiring that lenders make available no-fee, no-point mortgages in order to simplify the home loan comparison shopping process for consumers.[3] The proposed rules would require creditors to make available loans free of discount points or origination points or fees, unless consumers are unlikely to qualify for such a loan. The proposal also requires that any upfront payment, whether it is a point or a fee, must be "bona fide," which means that consumers must receive at least a certain minimum interest rate reduction in return for paying the point or fee.

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2. Equal Credit Opportunity Act (Regulation B), 77 Fed. Reg. 50,390 (Aug. 21, 2012) (to be codified at 12 C.F.R. pt. 1002), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-08-21/pdf/2012-20422.pdf.

3. Truth in Lending Act (Regulation Z); Loan Originator Compensation (Aug. 17, 2012) (to be codified at 12 C.F.R. pt. 1026), *available at* http://files.consumerfinance.gov/f/201208_cfpb_tila_mlo_compensation_proposed_rule.pdf.

What steps has the CFPB taken to ensure that all mortgage loan originators operate under a uniform set of standards?

The CFPB's August 17 proposed rules also require that the same qualification and screening standards be applied to all loan originators, that steering incentive payments be prohibited, and that arbitration clauses and credit insurance be restricted. Under the rules governing qualifications and screening standards, all loan originators would be subject to the same standards for "character, fitness[,] and financial responsibility"; originators would be screened for felony convictions and required to undertake training to ensure that they possess the necessary knowledge for the types of loans they originate. The compensation rules would implement a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that bans the practice of varying loan originator compensation based on interest rates or other loan terms and would "clarify certain issues in the existing rule that have created industry confusion." The proposed rule on arbitration clauses and credit insurance would prohibit mandatory arbitration clauses in loan documents and increases in loan amounts to cover credit insurance premiums.

Over what types of depository institutions does the CFPB have supervisory authority?

The CFPB is the primary rulemaker, supervisor, and enforcer of consumer protection laws and regulations for depository institutions with more than $10 billion in assets, as well as their affiliates and service providers. Depository institutions with less than $10 billion in assets are subject to the CFPB's rulemaking authority, but their prudential regulators retain supervisory and enforcement powers over them. The CFPB may tag along on examinations on a sampling basis.

Which credit bureaus fall under the CFPB supervisory umbrella?

The CFPB adopted a rule on July 16 to begin supervising larger consumer reporting agencies, which include credit bureaus that have more than $7 million in annual receipts.[4] This rule will become effective on September 30, 2012. This supervisory authority will cover approximately 30 firms and account for about 94% of industry receipts. The Bureau's oversight will also extend to specialty credit reporting companies, such as those that focus on payday loans or checking accounts, as well as resellers and analysts of credit reports. This represents the first time that the three major credit reporting agencies are being supervised by a single governmental agency.

What is the focus of credit bureau supervision?

Much of the concern is over data integrity, given the widespread use of credit reports. The CFPB will focus on the recordkeeping and reporting practices by lenders and will analyze how credit reporting companies can better test and screen the quality of information they receive from lenders. The Bureau will also examine how credit reporting companies assemble and maintain information contained in credit reports. Lastly, the CFPB will work to ensure that timely and effective mechanisms are in place to help consumers to address disputed items.

What is the expected focus of eventual debt collector supervision?

The CFPB's primary concern is over abusive practices, data accuracy, and the integrity of the third parties used by debt collectors for the data-gathering process. Increased regulation is expected in this area, with a focus on preventing abusive collection tactics and increasing the penalties for such violations.

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4. Defining Larger Participants of the Consumer Reporting Market, 77 Fed. Reg. 42,874 (July 20, 2012) (to be codified at 12 C.F.R. pt. 1090), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-07-20/pdf/2012-17603.pdf.

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Currently, the prepaid, general purpose reloadable (GPR) card market is not subject to the same level of oversight under which banks' prepaid cards operate. How is the CFPB seeking to regulate this market?

On May 24, the CFPB stated its intent to issue a proposal that would extend Regulation E protections to GPR cards and proposed to solicit information about potential consumer protection issues relating to the marketing and use of these cards.[5] On July 23, the Federal Trade Commission (FTC), in public comments, supported the CFPB proposal, noting that users of these cards are protected under the unfair or deceptive acts or practices provision of the FTC Act, but that these users have less protection under other federal laws regarding the cards' costs and terms than users of other types of payment cards.[6] The FTC urged additional protections for GPR card users.

Banks provide card holders with fee disclosures when they sign up for cards, but GPR cards are often marketed and sold in small packages at retail locations where space is limited, making it difficult to provide these disclosures. How might GPR card issuers overcome this challenge?

GPR issuers are unlikely to attach cumbersome legal papers to these cards in a retail environment. Alternatively, they may use online vehicles for making disclosures to consumers.

What additional measures is the CFPB taking to monitor the practices of financial services providers to further support its investigations?

The Bureau recently began recruiting undercover investigators to establish and conduct surveillance of consumer lenders in order to develop intelligence and evidence in support of its investigations, according to an August 12 article published by *The Washington Times*, citing employment advertisements posted by the CFPB.[7] The investigators will provide the Bureau's enforcement office with information about what consumers might experience when shopping for financial products and services.

In summary, for an agency that did not exist two years ago, and was without a director until Richard Cordray was named in a controversial recess appointment by President Barack Obama on January 4, 2012, the CFPB has boldly begun to fulfill the responsibilities mandated by the Dodd-Frank Act.

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5. Electronic Fund Transfers, 77 Fed. Reg. 30,923 (May 24, 2012) (to be codified at 12 C.F.R. pt. 1005), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-05-24/pdf/2012-12565.pdf.

6. Comments of the Staff of the Bureau of Consumer Protection (July 23, 2012), *available at* http://www.ftc.gov/os/2012/07/120730cfpbstaffcomment.pdf.

7. Jim McElhatton, "Consumer Bureau Seeks Sleuths for Bad Bankers," Wash. Times, Aug. 12, 2012, *available at* http://www.washingtontimes.com/news/2012/aug/12/consumer-bureau-seeks-sleuths-for-bad-bankers/.

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