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CFPB Issues Examination Procedures for Short-Term, Small-Dollar Loans

Guidelines hint at future regulation of lead providers and other marketers as “larger participants” under Dodd-Frank Act

In conjunction with remarks this afternoon by Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB), at a much-heralded field meeting on payday lending, the CFPB has released an examination procedure for short-term, small-dollar lending. The guidelines, available [here](#), set forth the agency’s examination objectives and provide an outline of the “modules” that examiners will use in five examination areas: 1. Marketing; 2. Application and Origination of Loans; 3. Payment Processing and Sustained Use; 4. Collection, Accounts in Default, and Consumer Reporting; and 5. Third-Party Relationships (i.e., privacy and safeguards). In addition to providing a practical guide for what to expect during an examination, the guidelines add color to the question surrounding the new agency’s enforcement of the “unfair, deceptive or abusive” prohibition set forth in the Dodd-Frank Act. Additionally, they hint at future regulation of lead providers as a “larger participant” in the consumer finance market, as that term is defined by Dodd-Frank.

Important aspects of the guidelines include the following:

- Under the Marketing module, a focus on marketing methods, as well as an inquiry concerning the use and compensation of lead generators.
- Under the Application and Origination of Loan module, there is a strong emphasis on EFT/ACH authorizations, as well as disclosure of loan terms, repayment terms, collections practices and the consumer’s rights—including, specifically, whether any such disclosures are “misleading” (and therefore, presumably, “unfair, deceptive or abusive”).
- Under the Payment Processing and Sustained Use module, in addition to determining whether the lender complies with Regulations B and Z, examiners are to determine whether refinancing or “rollovers” are disclosed “accurately” and “non-deceptively.”
- Under the Collections, Accounts in Default, and Consumer Reporting module, examiners are to inquire whether lenders and their third-party contractors comply with the Fair Debt Collection Practices Act, and whether the lender “uses deceptive means” to collect debts.
- Under the Third-Party Relationships module, the spotlight will be on whether lenders have proper Gramm-Leach-Bliley privacy safeguards in place, both in-house and in their third-party vendor contracts.

Publication of the guidelines provide lenders and lead providers the opportunity to ensure that their practice—as well as their written policies and procedures manuals are in line with federal law before they are visited by the CFPB examiners.

Katten’s **Consumer Finance Practice** regularly advises lenders and lead providers regarding compliance with state and federal law. Please contact Claudia Callaway at 202.625.3590 or claudia.callaway@kattenlaw.com, to discuss this alert or ways in which the Katten Consumer Finance Practice can assist you.

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