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DODD-FRANK
NEWS

November 2015

The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted as a measure to promote financial stability and protection for consumers through increased regulation of nearly every aspect of the consumer finance industry. In the years since its enactment, the Dodd-Frank Act has led to significant industry reforms and the promulgation of numerous new laws and regulations. In an effort to stay apprised of these significant industry changes, Burr & Forman's Dodd-Frank Newsletter will serve as a periodic update of recent case law, news, and developments related to the Dodd-Frank Act.

---- RECENT CASES ----

CFPB Involvement in Litigation

Ho v. ReconTrust Co., No. 10-56884, 2015 WL 4735787 (9th Cir. Aug. 7, 2015).

The CFPB recently filed an amicus brief in the case *Ho v. ReconTrust, Co.*, which is on appeal before the U.S. Court of Appeals for the Ninth Circuit. The issues on appeal are whether ReconTrust Co., the trustee, is a debt collector as defined by the Fair Debt Collection Practices Act ("FDCPA") and whether foreclosure proceedings constitute debt collection activities under the FDCPA.

Ho filed suit against ReconTrust alleging that letters sent in connection with foreclosure proceedings, specifically, the Notice of Default and the Notice of Trustee's Sale, contained false and misleading information regarding the amount of the debts owed in violation of the FDCPA. ReconTrust moved to dismiss the complaint on the grounds that it was not a debt collector, and the district court granted its motion. Ho filed three amended complaints, all of which were dismissed. Ho appealed.

In its amicus brief, the CFPB argues that ReconTrust is a debt collector because it sends notices to consumers stating the amount the consumer would have to pay to avoid non-judicial foreclosure in California and, therefore, is attempting to collect debts owed or due to another. The CFPB argues that ReconTrust is a debt collector as defined by the FDCPA. The CFPB further argues that nothing in the FDCPA suggests that enforcers of security interests are categorically excluded from the definition of a "debt collector."

In support of its argument that ReconTrust is a "debt collector," the CFPB relied on the Supreme Court's holding in *Heintz v. Jenkins,* 514 U.S. 291 (1995), which stands for the proposition that lawyers who regularly try to collect consumer debts through litigation are included in the definition of a "debt collector." The CFPB then relied on the Sixth Circuit's decision in *Glazer v. Chase Home Finance, LLC,* 704 F.3d 453 (6th Cir. 2013), and the Third Circuit's decision in *Kaymark v. Bank of America, N.A.,* 783 F.3d 168 (3d Cir. 2015), which held that foreclosure activities constitute debt collection under the FDCPA, even though such efforts relate to the enforcement of a security interest. The CFPB asserted that the key factor in distinguishing foreclosure activities from non-judicial actions to repossess property subject to a security interest is "the need to 'communicate with the debtor regarding the debt during the foreclosure proceedings, regardless of whether the proceedings are judicial or non-judicial in nature.'" *See* 2015 WL 4735787, at *8.

Applying the above reasoning to ReconTrust's Notice of Default and Notice of Trustee's Sale, the CFPB argued that the communications were directed at the consumer and threatened foreclosure if the default was not cured. Because the notices threatened foreclosure, the CFPB claimed that they constituted debt collection.

The CFPB further argued that the fiduciary exception under § 1692a(6)(F)(i) was not broad enough to cover ReconTrust. While the CFPB did not take a position on California state law and whether ReconTrust satisfied the two requirements to come within the fiduciary exception, it argued that nothing in the Act supported an expanded interpretation of the exception. The CFPB argued that "bona fide" obligations under § 1692a(6)(F)(i) contemplate only actual fiduciary obligations.

Rai v. WB Imico Lexington Fee, LLC, No. 14-1916 (2d Cir. Aug. 14, 2015).

The CFPB recently filed an amicus brief in the case *Rai v. WB Imico Lexington Fee, LLC*, which is currently pending on appeal before the U.S. Court of Appeals for the Second Circuit. The court invited the CFPB to weigh in on whether the provision of a "property report," as defined by § 1707 of the Interstate Land Sales Full Disclosure Act ("ILSA"), to a purchaser's attorney satisfies the requirement that the report be "furnished to the purchaser" and bars revocation of a purchase contract under § 1703(c).

The Rais expressed an interest in purchasing a condominium building from WB Imico Lexington Fee, LLC ("WB Imico"). WB Imico sent documents related to the purchase, including a property report, to the Rais' attorney for review. The Rais subsequently executed a purchase agreement. Two years later, the Rais' new attorney sent a letter to WB Imico exercising the Rais' right of rescission pursuant to § 1703(c) of the ILSA on the grounds that a copy of the property report was not furnished to the Rais. The Rais sued WB Imico to enforce their right of rescission, and the district court ruled that the Rais could rescind the purchase of the property, finding that a property report was not "furnished to the purchaser" when it was delivered to the purchasers' attorney and not the purchasers.

Section 1703 of the ILSA provides that it is "unlawful for any developer or agent . . . to sell or lease any lot unless a printed property report . . . has been furnished to the purchaser or lessee in advance of signing any contract." Section 1703 grants the purchaser the right to rescind the contract within two years, if the property report has not been given to the purchaser. The CFPB urged the Second Circuit to find that a property report is properly furnished to the purchaser when a developer delivers the property report to the purchaser's attorney.

In support of its argument, the CFPB first noted that the ILSA is silent on how a purchaser's agent should be treated. Applying common-law agency principles, the CFPB argued that it is reasonable to conclude that where a purchaser elects to retain an attorney authorized to act on his or her behalf, a developer satisfies the requirement set forth in § 1703 by delivering the property report to the purchaser's attorney. The CFPB further argued that the district court mistakenly interpreted the ILSA's definition of "agent" to suggest that Congress implicitly rejected the application of common-law agency principles to purchasers' attorneys. In the ILSA, "agent" is defined as "any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots; but shall not include an attorney at law . . . ." *See* 15 U.S.C. § 1701(6). The CFPB argued that the term "agent" is used to impose responsibilities and prohibitions on developers' agents and subject any such agent to liability under the ILSA. The CFPB reasoned that because the ILSA does not impose obligations on purchasers, Congress did not need to address purchasers' agents' liability in purchase transactions.

The CFPB also argued that allowing purchasers to appoint agents was consistent with the purpose of the ILSA, which is to "prevent false and deceptive practices in the sale of unimproved tracts of land by requiring developers to disclose information needed by potential buyers." *See Bacolitsas v. 86th & 3rd Owner, LLC*, 702 F.3d 673, 680 (2d Cir. 2012). The ILSA requires developers to file a statement of record with the Bureau and to furnish a property report to the purchaser, and neither of these documents may contain an untrue statement of material fact. The legislative history of the ILSA provides that these requirements are aimed to

protect purchasers who were often unrepresented in purchase transactions. The CFPB argued that the ILSA's purpose would be effectuated if purchasers' attorneys received the property report, rather than the purchasers themselves. Accordingly, the CFPB urged the Second Circuit to find that a developer who delivers a property report to a purchaser's attorney satisfies the requirement set forth in § 1703 of the ILSA.

Retroactive Application of Regulation X

Cooper v. Fay Servicing, LLC, -- F. Supp. 3d ---, 2015 WL 4470213 (S.D. Ohio 2015).

Plaintiffs filed suit against Fay Loan Servicing, LLC ("Fay"), the servicer of the note and mortgage, alleging violations of the CFPB's Regulation X promulgated under the Dodd-Frank Act and the Real Estate Settlement Procedures Act ("RESPA"). Plaintiffs alleged that Fay moved forward with foreclosure by arguing its motion for summary judgment after the plaintiffs submitted a loss mitigation application and that Fay failed to respond properly to the loss mitigation application. Fay moved to dismiss plaintiffs' complaint.

In determining whether plaintiffs stated a claim for a violation of Regulation X, the court noted that Regulation X became effective on January 10, 2014. *See* Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 1069-01 (Feb. 14, 2013) (codified at 12 C.F.R. § 1024). Fay argued that it filed its foreclosure action on January 4, 2014, six days before Regulation X went into effect. Fay relied on the Sixth Circuit's decision in *Campbell v. Nationstar Mortgage*, --- F. App'x ---, 2015 WL 2084023 (6th Cir. 2013), which held that Regulation X did not apply to a foreclosure action that was initiated several months before the regulation's effective date. The *Campbell* court also held that Regulation X did not apply retroactively. The court, however, declined to apply the reasoning in *Campbell* to the instant case and determined that plaintiffs were not attempting to apply Regulation X retroactively. Instead, the loss mitigation application at issue here was submitted after the January 10, 2014 effective date. The court also considered the CFPB's non-binding consumer guide, which provides that Regulation X went into effect on January 10, 2014, and any borrower who filed a complete loss mitigation application after that date and 37 days before a scheduled foreclosure sale is entitled to an evaluation of his or her loss mitigation application. *See* CFPB, Help for Struggling Borrowers: A guide to the mortgage servicing rules effective on January 10, 2014, at 8 (Jan. 28, 2014). The CFPB's guidance further provides that "the servicer must conduct this evaluation even if the borrower previously filed for, was granted, or denied a loss mitigation plan before January 10, 2014." *See id.* Accordingly, the court found that the plaintiffs' loss mitigation application, which was filed after January 10, 2014, was entitled to an evaluation before Fay could move forward with foreclosure proceedings.

The court also rejected Fay's argument that 12 C.F.R. § 1024.41 modifies if and when Fay could seek summary judgment. The court found that 12 C.F.R. § 1024.41(g) entitles a borrower to have his or her loss mitigation application evaluated, even if a foreclosure action has been filed. While the court acknowledged that this would affect foreclosure proceedings filed before the effective date, it would apply to loss mitigation applications submitted after Regulation X's effective date. Accordingly, the court held that plaintiffs' claims did not require impressible retroactive application of Regulation X.

Challenges to Constitutionality of the Dodd-Frank Act

State National Bank of Big Spring v. Lew, 795 F.3d 48 (D.C. Cir. 2015).

The U.S. Court of Appeals for the District of Columbia recently held that certain constitutional challenges to the Dodd-Frank Act could survive a motion to dismiss.

Plaintiff State National Bank of Big Springs ("State National Bank") and several states challenged the constitutionality of certain provisions of the

Dodd-Frank Act. First, plaintiffs alleged that the CFPB was unconstitutional because it appoints one person to oversee various departments rather than appoint several people. Second, plaintiffs challenged President Obama's recess appointment of Director Richard Cordray as unconstitutional. Third, plaintiffs challenged the constitutionality of the Financial Stability Oversight Council which, pursuant to Dodd-Frank, has the authority to deem certain institutions "too big to fail" and require additional regulation. Plaintiffs argue that the Council violates the non-delegation doctrine because the Council has broad power to determine which entities should be subject to additional regulation. Finally, plaintiffs asserted that the Dodd-Frank provision that grants the Treasury, the Federal Reserve, and the FDIC "the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States" is unconstitutional. *See* 12 U.S.C. § 5384(a). Specifically, plaintiffs alleged that their investments are worth less because the Government could exercise this "orderly liquidation authority" if the financial institutions experience significant financial difficulties in the future. Because the orderly liquidation authority gives the Government broad power to alter creditors' priority, it is unconstitutional under the Bankruptcy Clause's guarantee of uniform bankruptcy. Defendants moved to dismiss plaintiff's claims, and the U.S. District Court for the District of Columbia granted the motion on the grounds that plaintiffs did not have standing and the claims were not ripe. Plaintiffs appealed.

Addressing State National Bank's first argument that the CFPB was unconstitutional, the court addressed whether State National Bank had standing and whether the claim was ripe. The court noted that, generally, a regulated entity has standing to challenge an allegedly illegal statute under which it is regulated. The court found that State National Bank was subject to regulation by the CFPB and had, in fact, been regulated by the CFPB because it was subject to the Remittance Rule, 12 C.F.R. §§ 1005.30-1005.36, which requires institutions that offer electronic money transfers to make certain disclosures. While the Remittance Rule offers a safe harbor, banks, including State National Bank, incur costs to ensure that they comply with the terms of the safe harbor. Accordingly, the court found that State National Bank had standing to sue. Relying on *Abbott Laboratories v. Gardner,* 387 U.S. 136 (1967), the court found that State National Bank did not need to violate the law in order to challenge the law. Finding that State National Bank had standing to challenge the constitutionality of the CFPB and that its claims were ripe, the court reversed the lower court's decision.

With respect to the constitutionality of President Obama's recess appointment of Director Cordray, the court found State National Bank had standing to challenge the recess appointment for the same reasons that it had standing to challenge the constitutionality of the CFPB. Likewise, the court also found that the claims were ripe. As a result, the court reversed the lower court's dismissal of State National Bank's claim that the recess appointment was unconstitutional.

Addressing State National Bank's challenge to the constitutionality of the Financial Stability Oversight Council, the court noted that State National Bank was not alleging that it received the "too big to fail" designation. Instead, State National Bank relied on the doctrine of competitor standing and argued that it was a competitor of GE Capital, which the Council designated to receive additional regulation. This designation, State National Bank reasoned, indirectly harmed it because it provided a reputational benefit to GE Capital and enabled GE Capital to raise money at lower costs which, in turn, hurt State National Bank's "ability to compete for the same finite funds." *See* 795 F.3d at 55. The court, however, rejected this theory as too speculative and affirmed the lower court's finding that State National Bank lacked standing.

Finally, State National Bank argued that the Dodd-Frank Act's "orderly liquidation authority" was unconstitutional because it denies the States uniform treatment under the Bankruptcy Clause of the Constitution. In support of its argument that it had standing and its claims were ripe, State National Bank said that it has invested funds in financial companies, and the States were

potential creditors in potential, future liquidations. The new orderly liquidation authority, therefore, could deprive the States of the uniform treatment they are entitled to under the Constitution and, as a result, devalues State National Bank's current investments. The court thought that it was premature to assume that a company in which State National Bank was invested would be reorganized by the Government and that States would be treated differently than other creditors. The court also found that State National Bank failed to demonstrate that its current investments were worth less or were otherwise affected by the new liquidation authority. As a result, the court concluded that State National Bank failed to demonstrate that it had standing or that its claims were ripe.

Anti-Retaliation Provisions of the Dodd-Frank Act

Dressler v. Lime Energy, No. 3:14-cv-07060 (FLW), 2015 WL 4773326 (D.N.J. Aug. 13, 2015).

The U.S. District Court for the District of New Jersey joined the majority of district courts and recently held that an individual who makes internal disclosures protected under the Dodd-Frank Act's anti-retaliation provision qualifies as a "whistleblower," even when those disclosures are not made to the SEC.

Plaintiff Wendy Dressler filed suit against Lime Energy alleging that it violated the Dodd-Frank Act when it terminated her employment in retaliation for making internal reports of securities laws violations. Lime Energy moved to dismiss Dressler's complaint on the grounds that Dressler did not qualify as a "whistleblower" under the Dodd-Frank Act.

The Dodd-Frank Act amended the Securities Exchange Act to protect whistleblowers. Specifically, section 78u-6(h) creates a private right of action for individuals whose employment is terminated in retaliation for making certain protected disclosures, and provides that a "whistleblower" is one who provides . . . information relating to a violation of the securities laws to the Commission. . . ." *See* 15 U.S.C. § 78u-6(a), (h). The Sarbanes-Oxley Act also includes an anti-retaliation provision and creates a private right of action for those individuals who disclose alleged violations to certain individuals including, but not limited to, a person with supervisory authority over the employee. *See* 18 U.S.C. § 1514A(a)(1). The Sabanes-Oxley Act and the Dodd-Frank Act also provide for different remedies. For example, the Sarbanes-Oxley Act "(1) provides for recovery of back pay, without a multiplier, (2) requires first filing an administrative complaint with the Department of Labor, and (3) is governed by a significantly shorter statute of limitations, running at 180 days after the violation occurs or 180 days after the employee becomes aware of the violation." *See* 2015 WL 4773326, at *5 (citing 18 U.S.C. § 1514A(b)(2)(D)). Sabanes-Oxley also provides for recovery of damages for emotional distress. On the other hand, the Dodd-Frank Act (1) provides two times back pay for relief, (2) does not require plaintiffs to exhaust administrative remedies, and (3) allows plaintiffs six to ten years to file suit from the time the violation occurs. *See* 15 U.S.C. § 78u-6(h)(1)(B)(iii).

The SEC promulgated a final rule interpreting the Dodd-Frank Act whistleblower provision in 2011, which provides that an individual is a whistleblower if he or she possesses a reasonable belief that the information disclosed relates to a possible securities law violation and the information is provided in a manner described in 15 U.S.C. § 78u-6(h)(1)(A). *See* 17 C.F.R. § 240.21F-2(b)(1). The Dodd-Frank Act provides three categories of protected whistleblower activity, which include making disclosures that are protected under the Sarbanes-Oxley Act. *See* 15 U.S.C. § 78u-6(h)(1)(A)(iii). In turn, Sarbanes-Oxley gives whistleblower protection to employees who disclose information to persons with supervisory authority over the employee, regardless of whether the employee discloses such information to the SEC. Rule 21F-2(b)(1) provides that the Dodd-Frank Act does not require the employee to disclose information to the SEC to receive protection under Dodd-Frank's whistleblower protection provision.

Lime Energy argued that Dressler did not qualify as a whistleblower under the Dodd-Frank Act because she disclosed information to senior management and not to the SEC. The court noted that there is a split of authority over whether a "whistleblower" under the Dodd-Frank Act must disclose information directly to the SEC. The court noted that the Fifth Circuit was the only Circuit Court to weigh in on the issue, and noted that the Fifth Circuit adopted the minority's reasoning. The majority of district courts, on the other hand, adopted a broad interpretation of the term "whistleblower" and found that the Dodd-Frank Act's whistleblower provision protects those who are also protected under Sarbanes-Oxley, regardless of whether they report directly to the SEC.

The court engaged a *Chevron* analysis to determine whether the Dodd-Frank Act's whistleblower provision is ambiguous, and whether the SEC's rule interpreting the provision is reasonable. Step One of the *Chevron* analysis required the court to consider the text and structure of the statute in question and determine whether it was ambiguous. The court determined that inconsistencies between the anti-retaliation provisions of the Sarbanes-Oxley and Dodd-Frank Act created ambiguity. Additionally, the court found that because Dodd-Frank referred to the Commission in subsections (i) and (ii), but omitted a reference to the Commission in subsection (iii) in its anti-retaliation provision, the provision was ambiguous.

Turning to the second prong of the *Chevron* analysis, the court addressed "whether the SEC, in promulgating Rule 21F-2(b)(1), interpreted the Dodd-Frank Act reasonably and permissibly in concluding that the anti-retaliation provisions afforded by the statute apply to individuals who report only internally, rather than to the Commission." *See* 2015 WL 4773326, at *15. The court noted that every court that had addressed this question concluded that the SEC's interpretation of the anti-retaliation provision was reasonable and permissible. Following other courts' reasoning, the court determined that the Rule was entitled to deference. As a result, the court denied Lime Energy's motion to dismiss.

Duke v. Prestige Cruise International, Inc., No. 14-23017-CIV-KING, 2015 WL 4886088 (S.D. Fla. Aug. 14, 2015).

Plaintiff Spencer Duke filed suit against his former employer and numerous related entities alleging retaliatory termination in violation of § 806 of the Sarbanes-Oxley Act, the Dodd-Frank Act, and Florida law. Defendants moved to dismiss Duke's complaint.

Addressing Duke's Sarbanes-Oxley Act claim, the court noted that the anti-retaliation provision applies only to "companies 'with a class of securities registered under section 12 of the Securities Exchange Act of 1934 . . . or that is required to file reports under section 15(d) of the [Securities Exchange Act].'" 2015 WL 4886088, at *3 (quoting 18 U.S.C. § 1514A(a)(1)). The court further said that a person may file a lawsuit for a violation of Sarbanes-Oxley's anti-retaliation provision only if the Secretary of Labor fails to issue a decision within 180 days after a complaint is filed. *See* 18 U.S.C. § 1514A(b)(1, 2). Because Duke exhausted his administrative remedies with respect to only two of the defendants, the court dismissed Duke's claims against the defendants against whom Duke did not file a complaint with the Secretary of Labor. The court further ruled that Duke was entitled to discovery to determine whether the remaining defendants were required to file reports with the SEC.

The court then turned to defendants' argument that Duke's Dodd-Frank Act claim should be dismissed because he did not allege that he reported the alleged conduct to the SEC. Relying on *Asadi v. G.E. Energy (USA), LLC*, 720 F.3d 620, 623 (5th Cir. 2013), which held that a person must report information directly to the SEC to qualify for whistleblower protection, the cour dismissed Duke's Dodd-Frank claim to the extent that it was based on internal reporting. The court allowed Duke to amend his Dodd-Frank whistleblower claim to include allegations that he reported directly to the SEC before his termination.

Preemption

Deutsche Bank National Trust Co. v. Bliss, 159 Conn. App. 483, --- A.3d --- (Conn. Ct. App. 2015).

Deutsche Bank National Trust Co. ("Deutsche Bank") filed a foreclosure action against plaintiff Heather Bliss ("Bliss"), after she defaulted on her mortgage loan. Bliss appealed the trial court's judgment ordering a foreclosure sale. Bliss alleged that Deutsche Bank lacked standing and failed to prove its prima facie case. Bliss further alleged that the court erroneously found that the mortgage was enforceable.

Bliss argued that Deutsche Bank lacked standing, for the first time on appeal, and argued that it failed to show that it possessed the note and blank endorsement at the time it commenced the foreclosure action. The court found that Deutsche Bank presented prima facie evidence that it possessed the note and a blank endorsement when it commenced the foreclosure action. Bliss attempted to show that, based on the testimony of the home lending officer for JP Morgan Chase Bank, N.A., the servicer for Long Beach Mortgage Loan Trust, for which Deutsche Bank was trustee, Deutsche Bank did not possess the blank endorsement when it commenced the foreclosure action. The court first noted that Bliss raised the standing issue for the first time on appeal, and the testimony that Bliss relied upon was unrelated to the issue of standing. The court then found that while the home lending officer did not know specifically when the endorsement was added to the note, the testimony that Bliss relied upon did not contradict earlier testimony that JP Morgan possessed the note and blank endorsement when it commenced the foreclosure action. Accordingly, the court determined that Deutsche Bank had standing to maintain the foreclosure action and that Deutsche Bank proved its prima facie case.

Next, Bliss argued that the mortgage was unenforceable because Long Beach Mortgage originated the loan and, before Bliss obtained the loan, Long Beach Mortgage surrendered its Connecticut mortgage lending license. Deutsche Bank argued that Long Beach Mortgage Company was a subsidiary of a bank operating under federal banking laws and, therefore, whether Long Beach Mortgage Company had a state lending license was irrelevant because state banking laws were preempted. The court followed the trial court's reasoning and found the holding in *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305 (2d Cir. 2005), to be instructive. Relying on *Wachovia*, the court held that "regulations promulgated under the National Bank Act, 12 U.S.C. § 38 et seq., by the federal Office of the Comptroller of the Currency preempted state banking laws intended to apply to operating subsidiaries of nationally chartered banks, including the plaintiff in this case." For the first time on appeal, Bliss argued that the Dodd-Frank Act legislatively overruled *Wachovia*. The court rejected this argument, finding that the Dodd-Frank Act does not apply retroactively, and it was required to consider regulations in effect at the time the loan was consummated. Accordingly, the court rejected Bliss's argument that the mortgage was unenforceable.

---- IN THE NEWS ----

Fannie Mae Providing Innovations to Improve Lending System

Fannie Mae recently announced innovations in its data and technology offerings, aimed at improving the lending market and reducing lender costs.

Fannie Mae will begin providing lenders access to trended credit data from Equifax and TransUnion via Desktop Underwriter. Fannie Mae will require lenders to use trended data in the underwriting process, which Fannie Mae believes will lead to better-informed underwriting decisions. Fannie Mae will also make non-traditional credit data available for borrowers who do not have a robust credit history. This will give more borrowers access to mortgage credit.

As far as technological innovations, Fannie Mae is consolidating several of its legacy systems into a single platform called Fannie Mae Connect. Additionally, Desktop Underwriter will offer data validation services, which will reduce the need for traditional, more cumbersome methods

of income verification, such as paystubs and tax returns.

On June 10, 2015, the CFPB issued a final rule amending the regulation defining "larger participants" of various consumer financial services markets. The agency added a section defining larger participants of a market for "automobile financing," which includes auto loan origination, refinancing of auto loans, auto leasing, and purchase or acquisition of loans or leases. The final rule defines "automobile" as any self-propelled vehicle primarily used for personal, family or household purposes for on-road transportation. Certain vehicles, such as motor homes, RVs, and golf carts, are excluded from this definition.

To learn more, visit: http://www.fanniemae.com/portal/about-us/media/corporate-news/2015/6305.html

CFPB Issues Final Home Mortgage Disclosure Act Rule

On October 15, 2015, the CFPB issued a final rule pursuant to the Home Mortgage Disclosure Act, expanding the data that lenders must collect and report under the statute. The Act requires covered "financial institutions" to collect, report, and disclose certain information about mortgage loan applications and originations.

Under the final rule, lenders must collect and report information on the loan term, the duration of introductory interest rates, the property's value and construction method, the applicant's debt-to-income ratio, and other details regarding the underwriting process. The final rule also refines the definition of covered "financial institutions."

To read the final rule, visit: http://files.consumerfinance.gov/f/201510_cfpb_final-rule_home-mortgage-disclosure_regulation-c.pdf

CFPB Considers Banning Arbitration Clauses in Consumer Financial Transactions

The CFPB recently announced that it is considering proposing rules that would prohibit the inclusion of arbitration clauses and class action waivers in consumer financial contracts.

According to a study conducted by the agency, more than 75% of consumers surveyed were unaware of arbitration clauses in their contracts. CFPB's director, Richard Cordray, commented that "companies are using the arbitration clause as a free pass to sidestep the courts and avoid accountability for wrongdoing."

To learn more, visit: http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-ban-arbitration-clauses-that-allow-companies-to-avoid-accountability-to-their-customers/

CFPB's September Complaint Snapshot Focuses on Mortgages

The CFPB's September Complaint Snapshot revealed numerous complaints directed at mortgage servicing.

The agency reported that, despite increased protections put in place over the past several years, consumers continue to struggle with the loss mitigation process and foreclosure prevention. Additionally, consumers have difficulty making payments due to servicing transfers, payment application errors, and lender policies regarding partial payments.

Mortgage complaints comprise the largest category of complaints submitted to the CFPB.

To read more, visit: http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-spotlights-mortgage-complaints/

CFPB Issues Final Rule Providing Relief to Rural Lenders

The CFPB recently issued a final rule to ease burdens on small lenders providing credit to rural or underserved areas. The final rule expands the pool of lenders eligible for the "small creditor status," increasing the annual loan ceiling from 500 to 2,000.

The rule also expands the definition of "rural areas" to include any county or census block not designated "urban" by the U.S. Census Bureau.

The final rule becomes effective January 1, 2016.

To read the final rule, visit: http://files.consumerfinance.gov/f/201509_cfpb_amendments-relating-to-small-creditors-and-rural-or-underserved-areas-under-the-truth-in-lending-act-regulation-z.pdf

CFPB Issues Updated Dollar Thresholds Under Reg Z

The CFPB recently issued a final rule updating the dollar thresholds under Regulation Z. The adjusted thresholds will become effective January 1, 2016.

For more information on the updated thresholds, visit: https://www.federalregister.gov/articles/2015/09/21/2015-22987/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm

CFPB Issues Updated Guidance for TILA and RESPA

The CFPB recently released updated supervisory publications, which include the new October 2, 2015 effective date of the "Know Before You Owe" integrated mortgage disclosure rule.

To read the updated supervisory publications, visit: http://www.consumerfinance.gov/guidance/

CFPB's August Complaint Snapshot Focuses on Credit Reporting

The CFPB recently released its August Complaint Snapshot, which highlighted consumer complaints regarding credit reporting. Specifically, many complaints related to inaccuracy of information being reported.

According to the agency, credit reporting complaints have increased by 56% over the past year.

To learn more, visit: http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/

CFPB Begins Supervising Nonbank Auto Finance Companies

As of August 31, 2015, the CFPB now supervises nonbank auto finance companies that qualify as "larger participants of a market for automobile financing." Under the Dodd-Frank Act, the agency has the authority to regulate "larger participants" of certain consumer financial markets. Prior to August, the agency already regulated bank auto finance companies. The new regulation brings nonbank entities under the CFPB's regulatory authority.

A nonbank constitutes a "larger participant of a market for automobile financing" if it originates at least 10,000 accounts each year. "Automobile financing" includes origination, refinancing, leases, and assignments thereof.

To read the final rule, visit: https://www.federalregister.gov/articles/2015/06/30/2015-14630/defining-larger-participants-of-the-automobile-financing-market-and-defining-certain-automobile

CFPB Extends Deadline for Implementation of Integrated Disclosures

On July 24, 2015, the CFPB issued a final rule extending the implementation deadline of the integrated TILA-RESPA disclosure. The extended deadline is October 3, 2015.

To read the final rule, visit: https://www.federalregister.gov/articles/2015/07/24/2015-18239/2013-integrated-mortgage-disclosures-rule-under-the-real-estate-settlement-procedures-act-regulation

To read the speech, visit: http://www.federalreserve.gov/newsevents/speech/tarullo20150430a.htm

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No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.

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results matter

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