Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

August 2, 2013

TOPICS COVERED THIS WEEK (CLICK TO VIEW)

FEDERAL ISSUES

CFPB Publishes Update on Student Loan Complaints. On August 1, the CFPB published a "mid-year snapshot" of private student loan (PSL) complaints it received from October 2012 through March 2013. The report updates the Bureau's initial student loan complaint report published in October 2012. This latest report characterizes the volume of student loan complaints as "relatively steady" over the reporting period, with complaints about loan repayment issues, including an inability to modify loans, outpacing all others. In addition to repayment-related complaints, the CFPB highlights a number of other PSL servicing complaints, including those related to (i) payment processing, (ii) conflicting information provided by lender or servicer, (iii) lack of written notices from lender or servicer, and (iv) co-signer issues. Finally, the CFPB states, in both the report and a related blog post, that, despite improvements by PSL servicers, some servicemembers continue to have difficulties obtaining rate relief under the SCRA and that the Bureau will continue to work with the DOJ on potential SCRA violations.

CFPB Plans Study of Bundled Financial Products. On August 1, the CFPB published a notice indicating that it will review bundled financial products and services. The CFPB is seeking comments on its plans to survey "low-income, underserved consumers" about their savings, credit score, and debt to income ratio for the purpose of understanding whether such bundled products and services have an impact on asset building and financial capability. The CFPB is accepting comments on the planned survey through September 30, 2013.

Congress Passes Reverse Mortgage Legislation; Senate Banking Committee Approves Broader FHA Reform Legislation. On July 30, the U.S. Senate passed by unanimous consent the Reverse Mortgage Stabilization Act, H.R. 2167. The bill, which was passed by the House in June and now goes to the President for his signature, will allow HUD to use notices or mortgagee letters

to establish additional or alternative requirements necessary to improve the fiscal safety and soundness of the Home Equity Conversion Mortgage (HECM) program. On July 31, the Senate Banking Committee voted 21-1 to approve the FHA Solvency Act of 2013, S. 1376, as amended during committee markup. As previously reported, that bill also includes reverse mortgage provisions, as well as measures to more broadly reform the FHA. The bill as approved by the committee includes amendments that would, among other things, (i) provide that in addition to the principal dollar amount limitation on all insured HECM loans, fixed rate HECMs may not involve a principal limit with a principal limit factor in excess of .61, (ii) allow HUD to promulgate rules to require servicers of FHA loans to enter into a subservicing arrangement with any independent specialty servicer approved by HUD, and (iii) prohibit FHA from insuring a mortgage executed by a borrower who was the borrower under any two residential properties that have been previously foreclosed upon. In addition, during the markup committee members offered and then withdrew numerous amendments that later could be included in the bill that is considered by the full Senate. For example, those amendments would (i) create a statutory requirement that HUD/FHA repay Treasury for any funds needed to stabilize the MMI Fund, (ii) revise the indemnification provisions to provide certainty for lenders, and (iii) provide the FHA additional flexibility in times of financial crisis to ensure it can play a countercyclical role. Finally, committee members agreed to work with the FHA to expand loss mitigation options for individuals who receive income from sources other than employment.

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Prudential Regulators Propose Stress Test Guidance for Mid-Size Institutions. On July 30, the OCC, the FDIC, and the Federal Reserve Board proposed guidance for stress tests conducted by institutions with more than $10 billion but less than $50 billion in total consolidated assets. Under Dodd-Frank Act mandated regulations adopted by the regulators last October, such firms are required to conduct annual company-run stress tests starting in October 2013. The guidance discusses supervisory expectations for stress test practices, provides examples of practices that would be consistent with those expectations, and offers additional details about stress test methodologies. It also underscores the importance of stress testing as an ongoing risk management practice that supports a company's forward-looking assessment of its risks and better equips the company to address a range of macroeconomic and financial outcomes. Comments on the proposed guidance are due by September 25, 2013.

SEC Adopts New Broker-Dealer Requirements, Amends Others. On July 31, the SEC approved a final rule that amends certain broker-dealer annual reporting, audit, and notification requirements. The amendments require, among other things, (i) that broker-dealers conduct audits in accordance with PCAOB standards, (ii) that broker-deals that clear transactions or carry customer accounts agree to allow the SEC or the broker-dealer's designated examining authority (DEA) to review the documentation associated with certain reports of the broker-dealer's independent public accountant and to allow the accountant to discuss the findings relating to the reports of the accountant with those representatives when requested in connection with a regulatory examination of the broker-dealer, and (iii) that broker-dealers file a new form with their DEA that elicits information about the broker-dealer's practices with respect to the custody of securities and funds of customers and non-customers. Broker-dealers are required to begin filing new quarterly reports with the SEC and annual reports with the Securities Investor Protection Corporation by the end of 2013, and must begin filing annual reports with the SEC June 1, 2014. The SEC also approved amendments to the net capital, customer protection, books and records, and notification rules for broker-dealers. Those amendments take effect 60 days after publication in the Federal Register.

President Obama Announces Plan to Nominate Federal Reserve Board Governor For Deputy Treasury Secretary. On July 31, President Obama announced that he will nominate Federal Reserve Board Governor Sarah Bloom Raskin as Deputy Treasury Secretary. Ms. Raskin was appointed to her current position by President Obama in October 2010, and her term is not due to end until January 2016. Prior to joining the Federal Reserve Board, Ms. Raskin served as

Maryland's Commissioner of Financial Regulation and before that was Managing Director at the Promontory Financial Group. She is a lawyer and previously served as the Banking Counsel for the U.S. Senate Committee on Banking, Housing, and Urban Affairs.

FinCEN Introduces New Form for Authorizing FBAR Filing by Spouses and Third Parties. On July 29, FinCEN released a new form for filers who submit Reports of Foreign Bank and Financial Accounts (FBARs) jointly with spouses, or who wish to submit them via third-party preparers. Filers interested in using the form would obtain it from FinCEN or the IRS, and filers and account owners would maintain the form but would not submit it to FinCEN. FinCEN also announced (i) technical adjustments to ease FBAR filing and allow for enhancements such as introducing new space on the form for filers to provide reasons for late filing as well as the addition of third party preparer information, and (ii) the availability of batch filing capability for testing. FinCEN anticipates the revised electronic FBAR and batch capability will be available for general use by September 30, 2013.

Federal Privacy Stakeholder Meeting Addresses Mobile Application Transparency. Last week, the multi-stakeholder process established in connection with the White House's February 2012 privacy report met to discuss mobile application transparency, including a voluntary code of conduct for mobile application developers. The code covers mobile application short form notices intended to provide consumers enhanced transparency about data collection and sharing practices. Application developers that choose to adopt the voluntary code would employ short form notices that describe (i) the collection of types of certain data - including biometrics, browser history, phone or text log, financial information, location, and more - whether or not consumers know that it is being collected, (ii) a means of accessing a long form privacy policy, if any exists, (iii) the sharing of user-specific data, if any, with certain third parties - e.g. consumer data resellers, data analytics providers, ad networks, and government entities, and (iv) the identity of the entity providing the application. In addition to being voluntary, the code exempts common application collection and sharing activities for operational purposes.

STATE ISSUES

Georgia Attorney General Latest to Sue Tribe-Affiliated Online Payday Lender. On July 29, Georgia Attorney General (AG) Sam Olens announced a lawsuit against a payday lending operation affiliated with a Native American Tribe for allegedly making illegal loans in that state. The AG asserts that the state's Pay Day Lending Act specifically prohibits the making of payday loans, including the making of payday loans to Georgia residents through the Internet. The AG alleges, based on an investigation conducted after receiving numerous consumer complaints, that (i) the payday lender makes high interest payday loans to Georgia consumers over the Internet despite not having a license to lend in that state, (ii) the lender has continued to electronically withdraw funds from consumers' bank accounts even after the consumers have repaid the full amount of the principal on the loan, and (iii) the loan servicer has harassed consumers with repeated telephone calls, obscene and abusive language, threats of wage garnishment or other legal action. In his complaint, the AG rejects claims by the defendants that their lending activities are governed solely by tribal laws, stating that only Georgia law governs loan agreements with Georgia borrowers. According to the AG, efforts to resolve the issue without litigation were undermined by the defendants' continuing illegal activity. The AG is seeking (i) to enjoin the operation from making or collecting on any loans, (ii) a declaration that any pending loans are null and void, and (iii) civil penalties and attorneys' fees. Georgia is among several states, in addition to the FTC, to take action against this operation. For example, earlier this month Minnesota Attorney Lori Swanson filed suit a similar suit against the same operation targeted by the Georgia suit.

COURTS

Federal District Court Dismisses Challenge to Dodd-Frank Act, CFPB. On August 1, the U.S. District Court for the District of Columbia dismissed in its entirety a lawsuit that challenged Titles I, II, and X of the Dodd-Frank Act as unconstitutional. *State Nat'l Bank of Big Spring v. Lew*, No. 12-1032, slip op. (D.D.C. Aug. 1, 2013). The lawsuit originally was brought by three private parties and later was joined by several state attorneys general. The court determined that that the plaintiffs lacked standing and had not demonstrated injury sufficient to permit a challenge of the law on any of their claims. The private plaintiffs' challenge to Title X, which created the CFPB, was based on "financial injuries directly caused by the unconstitutional formation and operation of the [CFPB,]" including substantial compliance costs, increased costs of doing business, and forced discontinuance of profitable and legitimate business practices in order to avoid risk of prosecution. The court concluded that such "self-inflicted" harm could not confer standing to challenge Title X. With respect to the private plaintiffs' challenge to the Financial Stability Oversight Council (FSOC) created by Title I, the court concluded that while an unregulated party is not precluded from establishing standing to challenge the creation and operation of FSOC, standing is "substantially more difficult to establish" under such circumstances and the theories asserted by the plaintiffs were too remote to confer standing. Both the private plaintiffs and the state attorneys general challenged Title II, claiming that the "orderly liquidation authority" (OLA) provisions violate the separation of powers, deny due process to creditors of a liquidated firm, and violate the requirement for uniformity in bankruptcy. The court again concluded that none of the plaintiffs established either present or future injury sufficient to confer standing to challenge the OLA.

D.C. Federal District Court Vacates Federal Reserve Board's Interchange Fee Rule. On July 31, the U.S. District Court for the District of Columbia held that the Federal Reserve Board's 2011 final rule implementing the so-called Durbin Amendment is invalid under the Administrative Procedures Act (APA). *NACS v. Bd. of Govs. Of the Fed. Res. Syst.*, No. 11-2075, slip op. (D.D.C. Jul. 31, 2013). Several retailers and their trade associations filed suit to challenge the Federal Reserve Board's rule that set a 21-cent cap on interchange fees - the fees payment networks charge merchants on each debit card transaction to compensate the card issuer - and required that only two unaffiliated networks be available for each debit card. The court found that the Board exceeded its authority under the Durbin Amendment by adjusting the fee cap in the Final Rule to include costs (such as network processing fees and fraud losses) that were not permitted to be considered. The court also concluded that the Board violated the APA by not requiring that all debit transactions be able to run over at least two unaffiliated networks, regardless of authorization method (i.e., signature or PIN). The court further noted that the Board did not provide merchants the ability to choose the network on which they would process transactions. The court vacated the Board's interchange transaction fee and network non-exclusivity regulations as arbitrary, capricious or otherwise not in accordance with law and remanded them to the Board for further action. However, in order to avoid disrupting commerce, the court allowed the current regulations to remain in place temporarily. The court invited further briefing on the appropriate length of the stay and whether the current standards should remain in place until they are replaced or the Board should develop interim standards sufficient to allow the court to lift the stay.

California Supreme Court Holds Borrowers Can Bring State Law Claims Based on TISA Violations. On August 1, the California Supreme Court held that the federal Truth in Savings Act (TISA), which does not provide a private right of action, does not similarly bar state law claims derived from alleged TISA violations. *Rose v. Bank of Am., N.A.*, No. S199074, 2013 WL 3942612 (Cal. Aug. 1, 2013). In this case, a putative class filed suit claiming a bank violated the state's Unfair Competition Law (UCL) when it failed to provide certain disclosures required by TISA. The trial and appellate courts held that because Congress amended TISA in 2001 to remove its private right of action, before the borrowers filed their TISA-based class claims, those claims were barred. The

appellate court explained that Congress's repeal of the private right of action reflected its intent to bar any private action to enforce TISA. The Supreme Court disagreed and held that Congress's decision to leave TISA's savings clause in place explicitly allowed for the enforcement of state laws relating to the disclosures at issue here, except to the extent that those laws are inconsistent with the relevant TISA provision. The court rejected the bank's argument that the UCL may not be employed to borrow directlyfrom a federal statute where Congress has not provided a private right of action, holding instead that "when Congress permits state law to borrow the requirements of a federal statute, it matters not whether the borrowing is accomplished by specific legislative enactment or by a more general operation of law." The court reversed the appeals court's judgment.

Eleventh Circuit Affirms TILA's Safe Harbor Exception Applies to Servicer Seeking to Foreclose. On July 29, the U.S. Court of Appeals for the Eleventh Circuit held that a mortgage servicer moving to foreclose on borrowers pursuant to an assignment from the lender's nominee was exempt from TILA's debt ownership disclosure requirements. *Reed v. Chase Home Fin., LLC*, No. 12-15755, 2013 WL 3868079 (11th Cir. Jul. 29, 2013). The borrowers argued that the assignment made the servicer the new owner of the debt and triggered the servicer's obligation under TILA to inform the borrowers of a change in debt ownership. The court agreed with the servicer and the district court, holding that the servicer was exempt from the disclosure requirements because it was operating under an assignment made solely for "administrative convenience," based on the plain meaning of those terms, which are not defined in the statute. The court held that because the servicer was operating within the administrative convenience safe harbor, it was allowed to service the loan - including by seeking to foreclose on the home - without making any additional disclosure. The court affirmed the district court's grant of summary judgment in favor of the servicer.

MISCELLANY

California City Sets Ultimatum for Eminent Domain Action. On July 29, the California city of Richmond reportedly sent letters to the owners and servicers of the mortgages on 626 homes in the city, informing those entities that if they do not accept the city's offer to purchase the mortgages, the city will employ its eminent domain powers to seize the mortgages. The city is demanding to buy both current and delinquent loans, and the first pool of 626 loans does not include any homes with large second mortgages. It intends to write down the principal of the purchased mortgages in an effort to avoid additional foreclosures, and then sell the loans to new investors. If the city follows through on its ultimatum, it would be the first locality to use eminent domain in this way. Several other localities have considered or are considering such action, including North Las Vegas, Nevada, which recently announced its intent to assess the potential use of eminent domain.

FIRM NEWS

Jonice Gray Tucker will moderate a Regulatory "Super Session" at the California Mortgage Bankers Association's Western States Loan Servicing Conference on August 4, 2013, in Las Vegas, Nevada. The panel will focus the changing regulatory landscape for mortgage servicers and practical tips for compliance.

Jonice Gray Tucker will moderate a panel at the American Bar Association Annual Meeting entitled: "Knowing is Half the Battle: The CFPB's Mortgage Rules, HUD's Disparate Impact Rule, and More." Speakers will include BuckleySandler partner Joseph Reilly, David Berenbaum (NCRC), Ken Markison (MBA), and David Stein (Promontory). The panel will be held on August 10, 2013, in San

Francisco, CA.

Kirk Jensen will speak at the American Bar Association Annual Meeting on August 10, 2013 in San Francisco, CA. Mr. Jensen's panel is titled, "The CFPB's Amicus Program and Trends in Consumer Litigation."

BuckleySandler is a proud sponsor of The Five Star Institute's Compliance Caucus taking place September 9-10, 2013 in Dallas, TX. The firm will have two speakers at this year's event: On Tuesday, September 10, Andrea Mitchell will speak on the panel, "Understanding UDAAP and Emerging Regulations in Compliance," and Ben Olson will speak on the panel, "Get to Know CFPB and What's on the Agenda."

Jeffrey Naimon will speak at the Mortgage Bankers Association's Risk Management and Quality Assurance Forum in Phoenix, AZ, on September 11, 2013. His session entitled, "Regulatory Compliance Update", will analyze the Dodd-Frank Ability to Repay/QM rule requirements.

Ben Olson will speak at the National Mortgage News Annual Mortgage Regulatory Forum taking place September 23-24 in Arlington, Virginia. His panel, scheduled for September 24, is titled, "Navigating Future Regulatory Compliance Challenges and Enhancing Regulatory Relationship Management."

Richard Gottlieb will speak at ACI's Residential Mortgage Litigation and Regulatory Enforcement conference in Dallas, TX on September 27, 2013. He will participate in the panel, "Fair Lending: Managing and Defending Against Claims of Discriminatory Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement," and will speak specifically on UDAAP interplay with fair lending enforcement.

Jeffrey Naimonwill participate in the American Bar Association's Consumer Financial Services Basics seminar on September 30, 2013. Mr. Naimon will speak on "Truth-in-Lending" and address key consumer financial services disclosure regulations and the future of disclosures as a regulatory technique.

James Shreve will speak at the International Association of Privacy Professionals Privacy Academy in Seattle, Washington on October 1, 2013. The session, "Is the Best Defense a Good Offense?," will discuss legal issues involved in employing active defense techniques in responding to cybersecurity incidents and risks.

James Shreve will be speaking at the Information Systems Security Association's International Conference in Nashville, Tennessee on October 10, 2013. The session, "Get Up to Date: 20 Security & Privacy Laws in 50 Minutes" will examine the primary privacy and data security laws impacting information security professionals.

Thomas Sporkin will participate on a panel on whistleblowers at the American Bar Association's Securities Fraud 2013 Conference in New Orleans, LA, October 24-25, 2013.

Margo Tank and David Whitaker will speak at The Electronic Signature and Record Association's E-Signatures 2013 Annual Conference, on November 14, 2013 in New York. Their panel is titled, "E-Sign 101 - Questions, Answers, and Best Practices."

Richard Gottlieb will speak at ACI's Bank and Non-Bank Forum on Mortgage Servicing Compliance taking place Thursday, November 21 - 22, 2013 in Washington, DC. His panel, "When Is a Residential Mortgage Loan Servicer Considered a Debt-Collector and Thus Potentially Subject to

Liability for Violations of the FDCPA," will analyze federal and state laws relating to mortgage servicers and any potential inconsistencies, discuss the requirements for mortgage servicers who qualify as a debt collectors, and will examine how to avoid violations under the FDCPA when servicing mortgage loans.

FIRM PUBLICATIONS

Margo Tank, Sara Emley, and David Whitaker published "A Brief Guide to Using Electronic Signatures in Securities Transactions" in the July-August 2013 issue of Practical Compliance and Risk Management for the Securities Industry.

John Redding authored "How the CFPB's Servicing Rules Apply to Small Servicers," which was published by BankNews Mobile on July 1, 2013.

Kirk Jensen and Valerie Hletko authored "More Scrutiny for Short-Term, Small-Dollar Lenders," which appeared on Law360 on July 8, 2013.

Jonice Gray Tucker and Amanda Raines authored "CFPB Investigations in Focus: Navigating CIDs," which appeared on Law360 on July 11, 2013.

Valerie Hletko authored "A Broader Application of Fair Debt Collection Principles," which was published by Law360 on July 12, 2013.

Jeffrey Naimon and Valerie Hletko published "HUD Sets the Stage for FCA Claims against Fund Recipients," in Law360 on July 23, 2012.

Margo Tank was interviewed for Law360's Rainmaker Q&A series on July 23, 2012.

Margo Tank and Ian Spear authored "What Emerging Payment Providers Can Learn From Liberty Reserve and Mt. Gox." The article will appear in the August 1, 2013 issue of Payments Journal.

About BuckleySandler LLP (www.buckleysandler.com)

With nearly 150 lawyers in Washington, New York, Los Angeles, and Orange County, BuckleySandler provides best-in-class legal counsel to meet the challenges of its financial services industry and other corporate and individual clients across the full range of government enforcement actions, complex and class action litigation, and transactional, regulatory, and public policy issues. The Firm represents many of the nation's leading financial services institutions. "The best at what they do in the country." (Chambers USA).

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Los Angeles: 100 Wilshire Boulevard, Suite 1000, Santa Monica, CA 90401, (310) 424-3900
Orange County: 3121 Michelson Drive, Suite 210, Irvine, CA 92612, (949)398-1360

We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes. Email infobytes@buckleysandler.com.

In addition, please feel free to email our attorneys. A list of attorneys can be found here.

For back issues of InfoBytes, please see: http://www.buckleysandler.com/infobytes/infobytes.

InfoBytes is not intended as legal advice to any person or firm. It is provided as a client service and information herein is drawn from various public sources, including other publications.

MORTGAGES

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BANKING

CFPB Plans Study of Bundled Financial Products. On August 1, the CFPB published a notice indicating that it will review bundled financial products and services. The CFPB is seeking comments on its plans to survey "low-income, underserved consumers" about their savings, credit score, and debt to income ratio for the purpose of understanding whether such bundled products and services have an impact on asset building and financial capability. The CFPB is accepting comments on the planned survey through September 30, 2013.

Prudential Regulators Propose Stress Test Guidance for Mid-Size Institutions. On July 30, the OCC, the FDIC, and the Federal Reserve Board proposed guidance for stress tests conducted by institutions with more than $10 billion but less than $50 billion in total consolidated assets. Under Dodd-Frank Act mandated regulations adopted by the regulators last October, such firms are required to conduct annual company-run stress tests starting in October 2013. The guidance discusses supervisory expectations for stress test practices, provides examples of practices that would be consistent with those expectations, and offers additional details about stress test methodologies. It also underscores the importance of stress testing as an ongoing risk management practice that supports a company's forward-looking assessment of its risks and better equips the company to address a range of macroeconomic and financial outcomes. Comments on the proposed guidance are due by September 25, 2013.

President Obama Announces Plan to Nominate Federal Reserve Board Governor For Deputy Treasury Secretary. On July 31, President Obama announced that he will nominate Federal Reserve Board Governor Sarah Bloom Raskin as Deputy Treasury Secretary. Ms. Raskin was appointed to her current position by President Obama in October 2010, and her term is not due to end until January 2016. Prior to joining the Federal Reserve Board, Ms. Raskin served as Maryland's Commissioner of Financial Regulation and before that was Managing Director at the Promontory Financial Group. She is a lawyer and previously served as the Banking Counsel for the U.S. Senate Committee on Banking, Housing, and Urban Affairs.

FinCEN Introduces New Form for Authorizing FBAR Filing by Spouses and Third Parties. On July 29, FinCEN released a new form for filers who submit Reports of Foreign Bank and Financial Accounts (FBARs) jointly with spouses, or who wish to submit them via third-party preparers. Filers interested in using the form would obtain it from FinCEN or the IRS, and filers and account owners would maintain the form but would not submit it to FinCEN. FinCEN also announced (i) technical adjustments to ease FBAR filing and allow for enhancements such as introducing new space on the form for filers to provide reasons for late filing as well as the addition of third party preparer information, and (ii) the availability of batch filing capability for testing. FinCEN anticipates the revised electronic FBAR and batch capability will be available for general use by September 30, 2013.

California Supreme Court Holds Borrowers Can Bring State Law Claims Based on TISA Violations. On August 1, the California Supreme Court held that the federal Truth in Savings Act

(TISA), which does not provide a private right of action, does not similarly bar state law claims derived from alleged TISA violations. *Rose v. Bank of Am., N.A.*, No. S199074, 2013 WL 3942612 (Cal. Aug. 1, 2013). In this case, a putative class filed suit claiming a bank violated the state's Unfair Competition Law (UCL) when it failed to provide certain disclosures required by TISA. The trial and appellate courts held that because Congress amended TISA in 2001 to remove its private right of action, before the borrowers filed their TISA-based class claims, those claims were barred. The appellate court explained that Congress's repeal of the private right of action reflected its intent to bar any private action to enforce TISA. The Supreme Court disagreed and held that Congress's decision to leave TISA's savings clause in place explicitly allowed for the enforcement of state laws relating to the disclosures at issue here, except to the extent that those laws are inconsistent with the relevant TISA provision. The court rejected the bank's argument that the UCL may not be employed to borrow directlyfrom a federal statute where Congress has not provided a private right of action, holding instead that "when Congress permits state law to borrow the requirements of a federal statute, it matters not whether the borrowing is accomplished by specific legislative enactment or by a more general operation of law." The court reversed the appeals court's judgment.

CONSUMER FINANCE

CFPB Publishes Update on Student Loan Complaints. On August 1, the CFPB published a "mid-year snapshot" of private student loan (PSL) complaints it received from October 2012 through March 2013. The report updates the Bureau's initial student loan complaint report published in October 2012. This latest report characterizes the volume of student loan complaints as "relatively steady" over the reporting period, with complaints about loan repayment issues, including an inability to modify loans, outpacing all others. In addition to repayment-related complaints, the CFPB highlights a number of other PSL servicing complaints, including those related to (i) payment processing, (ii) conflicting information provided by lender or servicer, (iii) lack of written notices from lender or servicer, and (iv) co-signer issues. Finally, the CFPB states, in both the report and a related blog post, that, despite improvements by PSL servicers, some servicemembers continue to have difficulties obtaining rate relief under the SCRA and that the Bureau will continue to work with the DOJ on potential SCRA violations.

Georgia Attorney General Latest to Sue Tribe-Affiliated Online Payday Lender. On July 29, Georgia Attorney General (AG) Sam Olens announced a lawsuit against a payday lending operation affiliated with a Native American Tribe for allegedly making illegal loans in that state. The AG asserts that the state's Pay Day Lending Act specifically prohibits the making of payday loans, including the making of payday loans to Georgia residents through the Internet. The AG alleges, based on an investigation conducted after receiving numerous consumer complaints, that (i) the payday lender makes high interest payday loans to Georgia consumers over the Internet despite not having a license to lend in that state, (ii) the lender has continued to electronically withdraw funds from consumers' bank accounts even after the consumers have repaid the full amount of the principal on the loan, and (iii) the loan servicer has harassed consumers with repeated telephone calls, obscene and abusive language, threats of wage garnishment or other legal action. In his complaint, the AG rejects claims by the defendants that their lending activities are governed solely by tribal laws, stating that only Georgia law governs loan agreements with Georgia borrowers. According to the AG, efforts to resolve the issue without litigation were undermined by the defendants' continuing illegal activity. The AG is seeking (i) to enjoin the operation from making or collecting on any loans, (ii) a declaration that any pending loans are null and void, and (iii) civil penalties and attorneys' fees. Georgia is among several states, in addition to the FTC, to take action against this operation. For example, earlier this month Minnesota Attorney Lori Swanson filed suit a similar suit against the same operation targeted by the Georgia suit.

Federal District Court Dismisses Challenge to Dodd-Frank Act, CFPB. On August 1, the U.S. District Court for the District of Columbia dismissed in its entirety a lawsuit that challenged Titles I, II, and X of the Dodd-Frank Act as unconstitutional. *State Nat'l Bank of Big Spring v. Lew*, No. 12-1032, slip op. (D.D.C. Aug. 1, 2013). The lawsuit originally was brought by three private parties and later was joined by several state attorneys general. The court determined that that the plaintiffs lacked standing and had not demonstrated injury sufficient to permit a challenge of the law on any of their claims. The private plaintiffs' challenge to Title X, which created the CFPB, was based on "financial injuries directly caused by the unconstitutional formation and operation of the [CFPB,]" including substantial compliance costs, increased costs of doing business, and forced discontinuance of profitable and legitimate business practices in order to avoid risk of prosecution. The court concluded that such "self-inflicted" harm could not confer standing to challenge Title X. With respect to the private plaintiffs' challenge to the Financial Stability Oversight Council (FSOC) created by Title I, the court concluded that while an unregulated party is not precluded from establishing standing to challenge the creation and operation of FSOC, standing is "substantially more difficult to establish" under such circumstances and the theories asserted by the plaintiffs were too remote to confer standing. Both the private plaintiffs and the state attorneys general challenged Title II, claiming that the "orderly liquidation authority" (OLA) provisions violate the separation of powers, deny due process to creditors of a liquidated firm, and violate the requirement for uniformity in bankruptcy. The court again concluded that none of the plaintiffs established either present or future injury sufficient to confer standing to challenge the OLA.

SECURITIES

SEC Adopts New Broker-Dealer Requirements, Amends Others. On July 31, the SEC approved a final rule that amends certain broker-dealer annual reporting, audit, and notification requirements. The amendments require, among other things, (i) that broker-dealers conduct audits in accordance with PCAOB standards, (ii) that broker-deals that clear transactions or carry customer accounts agree to allow the SEC or the broker-dealer's designated examining authority (DEA) to review the documentation associated with certain reports of the broker-dealer's independent public accountant and to allow the accountant to discuss the findings relating to the reports of the accountant with those representatives when requested in connection with a regulatory examination of the broker-dealer, and (iii) that broker-dealers file a new form with their DEA that elicits information about the broker-dealer's practices with respect to the custody of securities and funds of customers and non-customers. Broker-dealers are required to begin filing new quarterly reports with the SEC and annual reports with the Securities Investor Protection Corporation by the end of 2013, and must begin filing annual reports with the SEC June 1, 2014. The SEC also approved amendments to the net capital, customer protection, books and records, and notification rules for broker-dealers. Those amendments take effect 60 days after publication in the Federal Register.

PRIVACY/DATA SECURITY

Federal Privacy Stakeholder Meeting Addresses Mobile Application Transparency. Last week, the multi-stakeholder process established in connection with the White House's February 2012 privacy report met to discuss mobile application transparency, including a voluntary code of conduct for mobile application developers. The code covers mobile application short form notices intended to provide consumers enhanced transparency about data collection and sharing practices. Application developers that choose to adopt the voluntary code would employ short form notices that describe (i) the collection of types of certain data - including biometrics, browser history, phone or text log, financial information, location, and more - whether or not consumers know that it is being collected, (ii) a means of accessing a long form privacy policy, if any exists, (iii) the sharing of user-

specific data, if any, with certain third parties - e.g. consumer data resellers, data analytics providers, ad networks, and government entities, and (iv) the identity of the entity providing the application. In addition to being voluntary, the code exempts common application collection and sharing activities for operational purposes.

PAYMENTS

D.C. Federal District Court Vacates Federal Reserve Board's Interchange Fee Rule. On July 31, the U.S. District Court for the District of Columbia held that the Federal Reserve Board's 2011 final rule implementing the so-called Durbin Amendment is invalid under the Administrative Procedures Act (APA). *NACS v. Bd. of Govs. Of the Fed. Res. Syst.*, No. 11-2075, slip op. (D.D.C. Jul. 31, 2013). Several retailers and their trade associations filed suit to challenge the Federal Reserve Board's rule that set a 21-cent cap on interchange fees - the fees payment networks charge merchants on each debit card transaction to compensate the card issuer - and required that only two unaffiliated networks be available for each debit card. The court found that the Board exceeded its authority under the Durbin Amendment by adjusting the fee cap in the Final Rule to include costs (such as network processing fees and fraud losses) that were not permitted to be considered. The court also concluded that the Board violated the APA by not requiring that all debit transactions be able to run over at least two unaffiliated networks, regardless of authorization method (i.e., signature or PIN). The court further noted that the Board did not provide merchants the ability to choose the network on which they would process transactions. The court vacated the Board's interchange transaction fee and network non-exclusivity regulations as arbitrary, capricious or otherwise not in accordance with law and remanded them to the Board for further action. However, in order to avoid disrupting commerce, the court allowed the current regulations to remain in place temporarily. The court invited further briefing on the appropriate length of the stay and whether the current standards should remain in place until they are replaced or the Board should develop interim standards sufficient to allow the court to lift the stay.