BURR • FORMAN

DODD-FRANK NEWS

May 2013

Introduction

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 two 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 - -

Amendments to Preemption Standards

Akopyan v. Wells Fargo Home Mortgage, Inc., 155 Cal. Rptr. 3d 245 (Cal. App. 4th 2013).

Deciding whether the revised preemption standards of the Dodd-Frank Act applied, the California Court of Appeal for the Second District, Division 4, concluded that the Dodd-Frank amendments to the National Bank Act ("NBA") and the Home Owners Loan Act ("HOLA") are prospective, and do not apply retroactively to prior agreements. Thus, applying the authoritative pre-Dodd-Frank preemption provisions of NBA and HOLA, the court held that the plaintiffs' respective contract claims against two national banks were preempted by federal law.

In two separately filed, but substantially related, class action suits against defendants Wells Fargo Home Mortgage, Inc. ("Wells Fargo") and Aurora Loan Services, LLC ("Aurora"), the mortgagee plaintiffs alleged claims for breach of contract, unfair business practices, unjust enrichment, and declaratory relief. Specifically, the complaints pertained to the administration of late fees pursuant to provisions of the California Business and Professions Code ("CBPC"), which provides that payments made within (10) days of the due date of a successive billing cycle must be credited to that billing cycle and not to past due balances for the proceeding installment periods. Assuming that state regulations did not apply, Wells Fargo and Aurora applied late payments made by plaintiffs to past due billing cycles, resulting in the accumulation of multiple late fees beyond that deemed permissible under the CBPC. Plaintiffs filed suit in the Los Angeles Superior Court against Wells Fargo and Aurora, respectively, for misapplied late fees and misadministration in accordance with provisions of the CBPC. Wells Fargo and Aurora claimed federal preemption under the NBA and HOLA.

Addressing the preemption arguments, the court noted that Dodd-Frank Act amendments and regulatory changes - such as the 2011 merger of the Office of Thrift Supervision ("OTS") into the Office of the Comptroller of Currency ("OCC"), the elimination of field preemption under the HOLA, and changes that allow the preemption standards examined in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 33 (1996), to apply to national banks - are all prospective and do not apply to preexisting agreements and disputes. 155 Cal. Rptr. 3d at 254 n.8, 256 n.10. Thus, the court ultimately found in favor of preemption based on an analysis of the pre-Dodd-Frank preemption standards under the NBA and HOLA.

McCauley v. Home Loan Inv. Bank, F.S.B., 710 F.3d 551 (4th Cir. 2013).

Plaintiff-borrower Charlotte McCauley ("Plaintiff") filed state-law claims for unconscionability and fraud against Defendants Home Loan Investment Bank, F.S.B. and Deutsche Bank National Trust Company (collectively "Defendants"). Defendants filed a motion to dismiss, arguing that provisions of the Home Owners Loan Act ("HOLA") preempted Plaintiff's claims. The United States District Court for the Northern District of West Virginia granted Defendants' motion, and Plaintiff appealed. On appeal, the U.S. Court of Appeals for the Fourth Circuit confirmed that Plaintiff's unconscionability claim was preempted by the HOLA, but found that Plaintiff's fraud claim was not preempted.

As an initial matter, Plaintiff argued that HOLA's implementing regulation did not apply to her case, and her claims were therefore not preempted, because the implementing regulation was vacated by the Dodd–Frank Act. While the court acknowledged that the Dodd–Frank Act abolished the Office of Thrift Supervision and vacated its regulations, *see* 12 U.S.C. §§ 5412, 5413, it did not do so retroactively. *See* 710 F.3d 551, 554 n.2. Thus, though the Office of the Comptroller of the Currency has issued a superseding regulation governing preemption, *see* 12 C.F.R. § 150.136, the court found the new regulation did not govern Plaintiff's case, as "[r]egulations, like statutes, cannot be applied retroactively absent express direction from Congress." *Id.* (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). Because "Congress did not direct such retroactive application in the Dodd–Frank Act[,]" and the former implementing regulation in 12 C.F.R. § 560.2 was in effect when the loan contract at issue was entered into, the court analyzed Plaintiff's claims under 12 C.F.R. § 560.2.

With respect to her unconscionability claim under HOLA, Plaintiff asserted that the district court erred in analyzing each aspect of the unconscionability claim separately. Plaintiff argued that if her claim was viewed as a whole, preemption would not have applied. Contrary to Plaintiff's assertions, the court concluded that the framework provided by HOLA requires an examination of each component of any claim under the Act to determine if preemption applies. After considering Plaintiff's allegations individually, as the district court had done, the court determined that Plaintiff's allegations fell within the list of activities to which preemption applied. Accordingly, the court affirmed dismissal of Plaintiff's HOLA claim as preempted. *See* 710 F.3d at 557.

The court then turned to Plaintiff's claims for fraud. Plaintiff alleged that Defendants intentionally employed an appraiser to overstate the value of her property in order to induce Plaintiff into entering her mortgage agreement. Plaintiff then argued that the HOLA does not preempt states from requiring banks to deal honestly with their clients. Addressing this argument, the court noted that Plaintiff alleged an affirmative deception by the mortgage company, and affirmative claims fall outside of the scope of the HOLA and its provisions. Thus, the court held that Plaintiffs state-law claim for fraud was not preempted by the HOLA, and dismissal was not warranted. *See id.* at 558.

TILA Statute of Limitations

Bhandari v. Capital One, N.A., No. 12-04533 PSG, 2013 WL 1736789 (N.D. Cal. Apr. 22, 2013).

Plaintiffs Narpat Bhandari and Chandra Bhandari ("Plaintiffs") moved to enjoin Defendants Capital One ("Capital One"), Chevy Chase Bank ("CCB"), and T.D. Bank ("TD") (collectively "Defendants") from proceeding with a foreclosure sale of Plaintiffs' residence. Plaintiffs alleged multiple causes of action, including: breach of contract, breach of fiduciary duty, fraud, and violations of the Truth in Lending Act ("TILA"). The District Court for the Northern District of California granted Defendants' motion to dismiss for failure to state a claim.

With respect to Plaintiffs' TILA claim, regarding required TILA disclosures, the court found the claim was barred either by the statute of limitations or by release language in a Forbearance Agreement previously entered into between the Plaintiffs and Capital One. In doing so, the court acknowledged that the 2010 amendments to the TILA imposed by the Dodd-Frank Act expressly permit a consumer to assert a TILA claim as a "matter of defense [to a foreclosure action] by recoupment or set-off" without regard to the one-year statute of limitations. 2013 WL 1736789 at *5. The court did not, however, expressly determine whether Plaintiffs were asserting their claim offensively or defensively. Rather, the court held that to the extent the Plaintiffs were attempting to assert TILA as an offensive claim to recover damages based on Defendants' inadequate disclosure during the origination of the Loan Agreement, their claim was time-barred by the one-year statute of limitations. Conversely, to the extent Plaintiffs were attempting to assert TILA as a defense to foreclosure, the Court held such claims fell within a release provision in the parties' prior Forbearance Agreement through which Plaintiffs waived their rights to challenge the foreclosure process. Accordingly, finding that Plaintiffs' other claims similarly failed, the Court granted Defendants' motion to dismiss. *Id.* at *5.

Dodd-Frank Amendments to RESPA

Schneider v. Bank of Am. N.A., No. 2:11-CV-2953-LKK-EFB PS, 2013 WL 1281902 (E.D. Cal. Mar. 26, 2013).

Plaintiff Christopher Schneider ("Plaintiff") sought a temporary restraining order enjoining Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, and Quality Loan Service Corporation (collectively "Defendants") from proceeding with a foreclosure on Plaintiff's residence. Plaintiff alleged several state and federal claims related to the foreclosure, including violation of the Real Estate Settlement and Procedures Act ("RESPA"), violation of Regulation Z of the Truth in Lending Act ("TILA"), violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and various state law claims. The court granted Defendants' motion to dismiss for failure to state a claim.

As part of his RESPA claim, Plaintiff alleged that BANA violated 12 U.S.C. § 2605(k)(1) (C) and (k)(1)(D). The Dodd–Frank Act, passed in 2010, amended certain provisions in RESPA and added subsections (k)-(m). Section 2605(k)(1)(C) requires the servicer to "take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties." 12 U.S.C. § 2605(k)(1)(C). Section 2605(k)(1)(D) requires the servicer to "respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan." 12 U.S.C. § 2605(k)(1)(D).

Addressing these claims, however, the court noted that "the Dodd–Frank Act's revisions to RESPA were not in effect as of the time when Plaintiff allegedly submitted his QWRs to Defendants in 2010 and 2011. 2013 WL 1281902 at *11. Thus, the court held that the deadline to acknowledge receipt of Plaintiff's QWRs was 20 days, as provided in 12 U.S.C. § 2605(e)(1)(A), rather than 10 days as provided in 12 U.S.C. § 2605(k). Accordingly, the court dismissed Plaintiff's claims under 12 U.S.C. § 2605(k)(1)(C) and (k)(1)(D), with leave to amend. *Id.* at *11.

Whistleblower Protection

Genberg v. Porter, No. 11-CV-02434-WYD-MEH, 2013 WL 1222056 (D. Colo. Mar. 25, 2013).

Plaintiff Carl Genberg ("Plaintiff"), former Senior Vice President for Regional Marketing of Ceragenix Corp., brought a concerted action against several officers and directors of Ceragenix Corp. and Ceragenix Pharmaceuticals, Inc. (collectively "Defendants") alleging claims of state law defamation and violations of the whistleblowing provisions of the Sarbanes-Oxley Act ("SOX") and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Plaintiff moved to compel arbitration pursuant to the terms of his employment contract, and Defendants moved to dismiss.

The court proceeded through a detailed analysis of the claims for violation of the Dodd-Frank Act. Specifically, Plaintiff alleged that Defendants retaliated against him by failing to pay post-employment wages per his employment contract. Defendants countered that Plaintiff did not qualify as a "whistleblower" under the Dodd-Frank Act, because he failed to provide information directly to the SEC. Defendants also asserted that the company's failure to pay post-termination wages was not retaliation, but rather Defendant's bankruptcy proceedings compelled non-payment.

Pursuant to the Dodd-Frank Act, "no employer may discharge, demote, suspend, threaten, harass . . . or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower." 15 U.S.C. § 78u–6(h)(1)(A). Applying the standard promoted in *Nolliner v. Southern Baptist Convention, Inc.*, 852 F. Supp. 2d 986, 995 (M.D. Tenn. 2012), the court adopted four elements to state a Dodd-Frank Act retaliation claim: (1) report of an alleged violation to the SEC, or other entity, or internally to management; (2) evidence of retaliation; (3) a disclosure required or made pursuant to a rule, law, or regulation subject to the SEC's jurisdiction; and (4) a disclosure required or protected by a rule, law, or regulation within the SEC's jurisdiction. *See* 2013 WL 1222056 at *9.

The court first considered whether Genberg could be considered a whistleblower under the provisions of the Dodd-Frank Act, which provides "[t]he term 'whistleblower' means any individual who provides . . . information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission." 15 U.S.C. § 78u-6(a)(6). Genberg did not claim to fall within these traditional requirements of a whistleblower, but instead relied on section 78u-6(h)(1)(A)(iii), which provides whistleblower protection to persons who do not report to the SEC, as long as they make disclosures required or protected under the SOX, the SEC, and any other rule, law, or regulation subject to the jurisdiction of the Commission. Acknowledging a conflict in the statutory requirements, the court determined that section 78u-6(h)(1)(A)(iii) was a narrow exception to the traditional statutory requirement, and that Plaintiff's disclosures to upper-level management - alleging securities violations - were sufficient to qualify him as a whistleblower under this narrow exception that applies to disclosures made to persons other than the SEC directly. *See* 2013 WL 1222056 at *10.

The court also examined Plaintiff's claim that Defendants' failure to authorize post-termination payments, pursuant to Plaintiff's employment contract, constituted a separate cause of action for retaliation. Defendants argued that the failure to tender post-termination payments was not a retaliation, but rather a result of the company's pending bankruptcy proceedings. The court examined the facts - that Defendant Ceragenix Corp. filed for bankruptcy in June 2010, and that Plaintiff had not "earned" pay for work completed after the initiation of bankruptcy proceedings – and determined that Plaintiff's claim could not qualify as a post-petition obligation or an "administrative expense." As such, Defendant's bankruptcy was a valid defense to Plaintiff's claims and exonerated the Defendants from liability under the Dodd-Frank Act with respect to the post-termination payment claims. *See id.* at *12.

Jones v. Southpeak Interactive Corp., No. 3:12CV443, 2013 WL 1155566 (E.D. Va. Mar. 19, 2013).

Plaintiff Andrea Jones ("Plaintiff") brought an action for wrongful termination against her former employer Defendant Southpeak Interactive Corporation ("Southpeak") and directors and officers of the corporation (collectively "Defendants"). During the time of her employment, Plaintiff was employed as the Chief Financial Officer of the Southpeak. Plaintiff alleged that Defendants conspired and made misrepresentations about stated earnings and failed to disclose a cash advance made by an officer from his personal funds in their quarterly financial report. Plaintiff suspected that the company's failure to disclose was an attempt to inflate the reported profits of the company, and made numerous attempts to report her suspicions to the company's internal audit committee, to no avail. Plaintiff ultimately filed a complaint with the SEC Enforcement Division. Days after filing her complaint, Plaintiff's employment was terminated.

Plaintiff filed suit against Defendants alleging wrongful termination under the Sarbanes-Oxley Act ("SOX") and the Dodd-Frank Act. Defendants replied that Plaintiff failed to exhaust her internal remedies to bring the SOX claim and that her SOX claim was untimely. With respect to Plaintiff's Dodd-Frank Act claim, Defendants argued that the Act's provisions could not apply retroactively to Plaintiff's claims.

The court first considered whether Plaintiff had exhausted her administrative remedies to meet requirements pursuant to the SOX. Defendants' principal argument was that Plaintiff failed to name any defendants individually in her OSHA complaint. The court, however, concluded that Plaintiff complied with the statutory requirements by broadly listing the Defendants in her complaint materials. Even though Plaintiff only provided the corporate address in her OSHA complaint, the court determined that it was reasonable for Plaintiff to assume that the officers of the Defendant corporation could be properly notified and communicated with through the corporate address. *See* 2013 WL 1155566 at *3-4.

As a secondary determination, the court reviewed the statute of limitations requirements under the SOX, and rejected Defendants' arguments that the two-year statute of limitations should apply. In its reasoning, the court considered the two-year statute of limitations imposed by 28 U.S.C. § 1658(b), but concluded that § 1658(b) could not apply to whistleblower cases, because whistleblower cases do not accrue upon discovery of the fraud. Consequently, the provisions of § 1658(a), which allow for a four-year statute of limitations, were applied to Plaintiff's claim. *See id.* at *7.

Next, the court examined whether the 2010 Dodd-Frank Act provisions could be applied retroactively to Plaintiff's claims for actions that occurred in 2009. Defendants argued that retroactive application would violate the presumption against statutory retroactivity. In its analysis, the court examined the standard set out by the Supreme Court in *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006), which provides a two-part test to determine whether a statutory regime should apply retroactively. Applying this standard, the court reviewed the Dodd-Frank Act provisions and determined that neither the text nor the history of the Act provided conclusive evidence of Congress's intent for the provisions to be applied retroactively. *See* 2013 WL 1155566 at *8.

Following this determination, the court considered a second inquiry regarding whether retroactive application would broaden the Plaintiff's substantive rights, increase Defendant's liabilities, or alter the parties' duties toward one another in an unfair way. In other words, the court sought to determine whether enactment of the Dodd-Frank Act attached new legal consequences that previously did not exist. Applying this test, the court again concluded that the Dodd-Frank Act could not apply retroactively to Plaintiff's claim for wrongful termination. The court rejected Plaintiff's argument that the provisions of the Dodd-Frank Act are so substantially similar to provisions of the SOX that retroactive application would not unfairly increase her measure of remedies. In reaching this determination, the court noted that the SOX only provides for recovery of back pay, while the Dodd-Frank Act provides for recovery of two-times back pay as a baseline measure of damages. The court also rejected Plaintiff's supplemental argument that the Dodd-Frank Act did not increase liability because the SOX provision allows for the award of "all relief necessary," noting that the Dodd-Frank provisions serve the purpose of increasing liability for the losing party. *See id.* at *9. As such, the district court granted Defendants' motion to dismiss with respect to Plaintiff's Dodd-Frank Act claim.

Say-on-Pay Votes

Noble v. AAR Corp., No. 12 C 7973, 2013 WL 1324915 (N.D. Ill. Apr. 3, 2013).

The United States District Court for the Northern District of Illinois dismissed a shareholder plaintiff's motion for a temporary restraining order. In his complaint, Plaintiff Paul Noble ("Plaintiff") alleged that the directors of AAR Corporation violated their fiduciary duties to shareholders by not addressing certain questions in the AAR's annual proxy. Plaintiff alleged that the disclosures were material to the company's "say-on-pay" vote. The court declined to grant Plaintiff's injunction and ultimately dismissed Plaintiff's suit in its entirety, with prejudice, for failure to state a claim.

In the facts of the case, Plaintiff alleged that the company's proxy failed to disclose information that was material to shareholders voting on the company's "say-on-pay" procedures, including detailed information about the change in compensation consultants, changes to the company's peer group, and other compensation analysis methods. Applying Delaware law, the court focused on the issue of materiality to determine whether Board members breached their fiduciary duties to disclose material information to shareholders while soliciting shareholder action. The court held, as a matter of law, that the only proxy disclosures required with respect to "say-on-pay" votes are those explicitly required by Section 951 of the Dodd-Frank Act and those required by the Security Exchange Commission's comprehensive rules in Item 402 of Regulation S-K. The court thus rejected Plaintiff's attempt to create additional disclosure requirements. The Court also held that even if a breach of duty had occurred, Plaintiff failed to particularize damages to state a claim, as the injury Plaintiff alleged was an injury as to the corporation, not to shareholders. Accordingly, the court dismissed Plaintiff's suit in its entirety.

- - NEWS & DEVELOPMENTS - -

CFPB Proposes Temporary Delay to Certain Loan Originator Compensation Rules

The CFPB has proposed a temporary delay of the June 1, 2013 effective date of a prohibition on financing credit insurance premiums. The prohibition was adopted in the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z) Final Rule, which proscribed the addition of a lump-sum premium to the loan amount at closing. Following publication of the final rule, industry members expressed concern that the prohibition left ambiguity about its applicability to other transactions.

The CFPB is accepting comments on the proposed delay for 15 days after publication in the Federal Register.

To read the notice, visit: http://files.consumerfinance.gov/f/201305_cfpb_proposed-rule_loan-originator-compensation.pdf

Federal Reserve Report on Mid-Year Stress Tests

On May 13, 2013, the Federal Reserve released a report regarding the first company-run mid-year stress tests. The mid-year stress tests must be conducted using data as of March 31, 2013 and must be based on scenarios developed by designated bank holding companies (BHCs). BHCs with consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board are required to conduct the tests. The BHCs must report stress test results to the Board no later than July 5, 2013 and publically disclose a summary of results between September 15, 2013 and September 30, 2013.

The Federal Reserve intends to incorporate information collected by the stress tests into an ongoing assessment of companies as part of its supervisory process. However, this information is not part of the Comprehension Capital Analysis and Review, and the Board will not provide an objection or non-objection to a company's mid-year stress test.

To read the report, visit: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20130513a1.pdf

Bernanke Addresses "Too Big to Fail"

On May 10, 2013, Federal Reserve Board Chairman Ben Bernanke spoke at the Annual Conference on Bank Structure and Competition. Bernanke spoke specifically about the ongoing monitoring of the financial system. He stated that significant measures were being taken to monitor Systematically Important Financial Institutions (SIFIs) and additional regulations were possible if necessary. Bernanke mentioned several methods of monitoring in his speech, including: regular stress tests, network analysis, and analysis of market indicators.

Bernanke also spoke about monitoring of shadow banking, assets markets, and the non-financial sector. He concluded by emphasizing that the Federal Reserve is moving toward a more systematic approach to monitoring the vulnerabilities of the financial system as a whole in order to provide necessary information for the regulatory community.

To read the text of the speech, visit: http://www.federalreserve.gov/newsevents/speech/bernanke20130510a.htm

Federal Reserve Board: Qualified Mortgage Standards May Make Credit Access Difficult for Some Homebuyers

On May 9, 2013, the Federal Reserve Board Governor Elizabeth Duke delivered a speech in which she stated that certain aspects of the ability-to-pay rule and the qualified mortgage standards may make credit access difficult for homebuyers with low credit scores.

Duke identified the qualified mortgage rule as a part of the larger ability-to-pay rule that required lenders to make a reasonable, good faith effort to determine that the borrower can repay the loan. Loans that fall outside the qualified mortgage standard may be more costly to originate than loans that meet the standard.

While acknowledging that the housing market was improving, Duke stated that difficulties remain for borrowers with low credit scores. Borrowers with low credit scores have also typically represented a sizable portion of first-time homebuyers and thus, difficulty in receiving credit could channel the housing demand to rentals instead of home ownership. Duke concluded by urging market participants to develop new, sustainable business models for lending to low-credit borrowers.

To read the text of the speech, visit: http://www.federalreserve.gov/newsevents/speech/duke20130509a.htm

First Criminal Complaint Filed Due to CFPB Referral

On May 7, 2013, the CFPB filed a complaint against two debt relief service providers that allegedly charged illegal advances for debt settlement services. The defendants, Missions Settlement Agency and Premier Consultant Group LLC, allegedly charged illegal fees to over a thousand consumers amounting to more than $1.3 million.

The CFPB initiated the investigation in July 2012. The CFPB is required by the Dodd-Frank Act to refer evidence of criminal activity to the Department of Justice. This action is aimed to prevent consumer harm in the debt relief industry.

To read the press release and complaint, visit: http://www.consumerfinance.gov/pressreleases/cfpb-takes-action-against-two-companies-for-charging-illegal-debt-relief-fees/

Bills Introduced to Expand SEC Shareholder Registration Thresholds

On May 7, 2013, the House Financial Service Committee approved H.R. 801, which extends SEC shareholder registration and deregistration thresholds to savings and loan holding companies under the JOBS Act. The bill is identical to the bill introduced in the Senate (S. 872).

The bills are intended to correct an error in the JOBS Act that raised the shareholder threshold from 500 to 2,000 for banks and bank holding companies and raised deregistration threshold from 300 to 1,200. Previously, this provision did not extend to savings and loan companies, despite Congress's intent to treat these institutions in the same manner.

To learn more, visit: http://regreformtracker.aba.com/2013/05/senate-bill-introduced-to-extend-new.html?utm_source=regreformtracker&utm_medium=ABA+Dodd-Frank+Tracker

CFPB Issues Final Rule Amending Regulation E of Electronic Transfer Act

On April 30, 2013, the CFPB amended Regulation E, which implements the Electronic Transfer Act.

The final rule provides protection to consumers who send remittance transfers to other consumers or businesses in a foreign country. This includes disclosures, error resolution, and cancellation rights. The CFPB made two changes in the final rule. First, remittance transfer providers must disclose certain fees and foreign taxes. Second, providers are required to attempt to recover funds when a sender deposits them in the wrong account. However, providers will not be responsible for funds that cannot be recovered. This rule will become effective October 28, 2013.

To read the final rule, visit: http://files.consumerfinance.gov/f/201304_cfpb_final-rule_remittance-transfers.pdf

CFPB Issues Final Rule Amending Regulation Z of Truth in Lending Act

On April 29, 2013, the CFPB issued a final rule to amend Regulation Z of the Truth in Lending Act and the official interpretation to the regulation.

Regulation Z generally prohibits a card issuer from opening a credit card for a consumer or increasing a credit limit without consideration of the consumer's ability to make required payments under terms of the account. Regulation Z required issuers to consider the consumer's independent ability to pay, regardless of the consumer's age. However, TILA requires consideration of independent ability to pay only for consumers who are under age 21. The final rule amends Regulation Z to remove the requirement that issuers consider the consumer's independent ability to pay for applicants who are 21 or older and permits issuers to consider income and assets to which consumers have reasonable expectation of access. Although the rule applies regardless of marital status, the Bureau expects that it will ease application for credit for stay-at-home spouses and partners who have access to familial income.

To read the final rule, visit: http://files.consumerfinance.gov/f/201304_cfpb_credit-card-ability-to-pay-final-rule.pdf

CFPB Issues Consumer Financial Civil Penalty Fund Rule

On April 26, 2013, the CFPB issued a final rule that addresses the Consumer Financial Civil Penalty Fund established under the Dodd-Frank Act. The fund is used for the purposes of depositing civil penalties obtained against any person in actions under federal consumer financial laws. Funds may be used for payments to victims of activities for which civil penalties have been imposed under these laws. Additionally, in the event that victims cannot be located or payment would not be practicable, the funds may be used for consumer education and financial literacy programs.

This rule details what type of payments are appropriate to victims and establishes procedures for allocating funds for payments to victims and for consumer education and financial literacy programs.

To read the final rule, visit: http://files.consumerfinance.gov/f/201304_cfpb_final-rule_civil-penalty-fund.pdf

Report Identifies Problems Older Americans Have With Financial Advising Industry

On April 18, 2013, the CFPB issued a report highlighting issues with older Americans and the financial advising industry. The report identifies that there are more than 50 different designations used by financial advisors to indicate that they specialize or have expertise in the financial needs of older consumers. The CFPB believes this can lead to increased deception and fraud for an already vulnerable population. The Dodd-Frank Act directed the CFPB's Office of Financial Protection for Older Americans to report recommendations to help older Americans select an appropriate, verified financial advisor.

The report recommends that there be rigorous standards to obtain senior designations, strict standards of conduct for those financial advisors with senior designations, and increased supervision and enforcement of this part of the industry.

To read the report, visit: http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf

Four Companies to Pay Penalties for Mortgage Insurer Kickbacks to Lenders

On April 4, 2013, the CFPB announced four enforcement actions against companies that allegedly violated federal consumer financial law by entering into kickback arrangements with lenders. The four companies named were: Genworth Mortgage Insurance Corporation, United Guaranty Corporation, Radian Guaranty Inc., and Mortgage Guaranty Corporation. The CFPB alleges that these mortgage insurers received business referrals from lenders in exchange for kickbacks.

The four mortgage companies have agreed to pay fines in total of $15.4 million and to end the practice. Additionally, the companies have agreed to compliance monitoring and reporting.

To read the press release, visit: http://www.consumerfinance.gov/pressreleases/the-cfpb-takes-action-against-mortgage-insurers-to-end-kickbacks-to-lenders/

CFPB Issues Final Rule Amending Regulation Z of the Truth in Lending Act

On March 28, 2013, the CFPB issued a final rule amending Regulation Z of the Truth in Lending Act and the Official Interpretation of the regulation.

Regulation Z generally limits the total amount of fees that a credit card issuer may require a consumer to pay to 25 percent of the credit limit in effect when the account is opened. Regulation Z previously extended this limitation to apply to the period prior to account opening and the first year after the account was opened. The final rule amends Regulation Z to apply the limitation only to the first year after an account is opened.

To read the final rule, visit: https://www.federalregister.gov/articles/2013/03/28/2013-07066/truth-in-lending-regulation-z

CFPB Releases Nation's Largest Collection of Federal Financial Complaints

On March 28, 2013, the CFPB released the largest national public database of federal consumer financial complaints, which includes more than 90,000 complaints about financial products and services. The database includes complaints about credit cards, mortgages, bank accounts and services, and student loans.

The database includes information about the substance of consumer complaints and how companies responded to the complaints, including timeliness and quality of the response. Complaints are included in the database after the company has responded or the complaint has been outstanding for 15 days.

To view the database, visit: http://www.consumerfinance.gov/complaintdatabase/

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