

Client Alert

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CFPB Publishes Semi-Annual Rulemaking Agenda

By Donald C. Lampe and Ryan J. Richardson

Just in time for the holidays, the CFPB released its Fall 2015 rulemaking agenda on Friday, November 20. The agenda does not include any major surprises, but it does slightly revise the projected timeline for several highly anticipated rulemaking activities. Here are the highlights to consider between doses of turkey, football, and family.

- *Payday and other short-term, small-dollar loans.* The CFPB expects to publish a notice of proposed rulemaking (NPR) covering payday, deposit advance, and similar short-term, small-dollar loans in February 2016. The CFPB convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in April 2015 to solicit input for the coming NPR, but it has yet to make public the report of the panel's findings. Based on the CFPB's comments on the topic to date, we anticipate the NPR would, among other things, require lenders to make a good faith determination of borrowers' ability to repay certain short-term, small-dollar loans, and could limit the allowable frequency and total number of refinancings, or "roll overs," with respect to such loans.
- *Prepaid accounts.* The CFPB aims to finalize its proposed rule on prepaid accounts in March 2016. The CFPB published an NPR on prepaid accounts in November 2014, covering prepaid debit cards, payroll cards, and similar products. Key provisions of the NPR included disclosures to consumers in connection with opening a prepaid account and provisions requiring issuers to treat overdraft services and credit features in connection with prepaid accounts as credit card accounts.
- *Mortgage servicing.* The CFPB proposed amendments to the TILA and RESPA mortgage servicing rules in December 2014, and the agenda indicates that the CFPB intends to finalize these amendments by June 2016. Among other things, the proposed amendments included enhanced loss mitigation requirements and new rules governing default servicing for borrowers in bankruptcy. The agenda attributes the delay, at least in part, to testing of periodic statements for borrowers in bankruptcy.
- *Arbitration.* The agenda extends pre-rule activity on arbitration only through the end of 2015, but it provides no indication of when the CFPB intends to publish a proposed rule on the subject. The CFPB held at least two SBREFA panel events on arbitration in October of this year. Based on that schedule, we expect that the panel will deliver its report to the CFPB shortly. Thus, we could see a proposed rule as early as the first quarter of 2016. More realistically, the CFPB likely will take time to study the SBREFA report and release a proposed rule in mid-2016 or later.
- *Debt collection.* The CFPB is continuing to examine comments in response to its November 2013 Advance NPR on debt collection practices, as well as results of its nationwide consumer survey on experiences with debt collectors and debt collection. The agenda extends the CFPB's period of pre-rule activity on debt collection into early 2016, meaning that a proposed rule on debt collection may not be forthcoming until the second half of 2016.
- *Overdrafts on deposit accounts.* The agenda indicates that the CFPB is currently conducting consumer-based research, including consumer testing initiatives related to the "opt-in" process, on overdraft programs in connection with checking accounts. This research, which will complement the CFPB's June 2013 white paper

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on overdrafts, is expected to continue through early 2016. Thus, as is the case with debt collection, it appears a proposed rule on overdrafts may not emerge until the second half of 2016.

- *Larger participants in vehicle title and consumer installment loans.* To follow its June 2015 [rule](#) defining larger participants in the auto lending and leasing markets, the CFPB is in the early stages of rule writing to define larger participants in the vehicle title and consumer installment loan markets. Once final, these rules would subject lenders that satisfy the definition(s) of “larger participant” in these markets to the supervisory jurisdiction of the CFPB. The agenda indicates that pre-rule activity on larger participants in vehicle title and consumer installment loans will continue through the fall of 2016.
- *Data collection on business lending.* The CFPB has initiated research and outreach to support a forthcoming rule requiring collection and reporting of data on loans to women-owned, minority-owned, and small businesses. The rule is required by Section 1071 of the Dodd-Frank Act. The agency indicated in the agenda that the rule under Section 1071 will, to some degree, resemble the recently updated Regulation C, which implements the Home Mortgage Disclosure Act. Pre-rule activity related to data collection on business loans will continue through the fall of 2016.

In addition to the agenda items related to forthcoming proposed and final rules, the CFPB’s [blog post](#) on the Fall 2015 agenda also mentions its continued efforts to support implementation of the major mortgage rules.

Specifically, the blog post mentions the following:

- *Home Mortgage Disclosure.* The CFPB released a [final rule](#) amending Regulation C, which implements the Home Mortgage Disclosure Act, in October 2015. The CFPB is currently preparing a compliance guide and related support materials to prepare for the rule’s significant effective dates in 2017 and 2018.
- *Know Before You Owe.* The TILA/RESPA integrated disclosures rule [became effective](#) in October 2015. The CFPB has already provided guides and materials to support compliance, and the agency continues to monitor ongoing compliance issues.

Lastly, the blog post also mentions two long-term initiatives, which may result in rulemaking activity beyond November 2016. Those two initiatives focus on:

- *Credit reporting.* The CFPB published a [white paper](#) on credit reporting in December 2012, and it continues to examine other agencies’ research on credit reporting issues. The CFPB’s current areas of inquiry center on accuracy of credit reports and processes for resolving customer disputes.
- *Student loan servicing.* The CFPB published a [report](#) on potential improvements to student loan servicing in September 2015. Concurrently, the CFPB joined the Department of Education and the Department of the Treasury in issuing a [Joint Statement on Principals on Student Loan Servicing](#). The CFPB’s current areas of inquiry center on specific acts and practices and consumer disclosures.

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