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 ----

Mortgage Servicing Rules

Cezair v. JPMorgan Chase Bank, N.A., No. DKC 13-2928, 2014 WL 4295048 (D. Md. Aug. 29, 2014)

Plaintiff Ronald Cezair filed suit against Federal Home Loan Mortgage Corporation ("FHLMC"), JPMorgan Chase Bank, N.A. ("Chase"), and LendingTree, LLC ("LendingTree") alleging violations of the Truth in Lending Act ("TILA"), the Real Estate Settlement Procedures Act ("RESPA"), and state law. Defendants filed motions to dismiss.

With respect to the TILA claim, Cezair alleged that Chase and FHLMC failed to send him notice that the ownership of his loan changed pursuant to 15 U.S.C. § 1641(g) and sought damages in connection with defendants' failure to send notice. Chase and FHLMC argued that TILA's one-year statute of limitations barred Cezair's claim. However, the court rejected this argument finding that the date of the transfer was not alleged in the complaint and, therefore, the court could not properly consider the statute of limitations defense.

In support of his RESPA claim, Cezair argued that Chase failed to respond to four letters in violation of 12 U.S.C. § 2605(e). Specifically, Cezair alleged that Chase failed to conduct a reasonable investigation that provided information requested or an explanation of why the information requested was unavailable. Cezair also requested damages in connection with Chase's alleged violations.

The court first rejected Chase's argument that Cezair failed to plead damages incurred as a result of Chase's RESPA violation. The court noted that Cezair allegedly incurred costs by mailing letters and was charged interest and fees resulting from Chase's obstruction of the sale of the property. The court also found that borrowers could recover costs for time and effort expended in preparing a QWR after the servicer fails to respond to a previous QWR.

The court also rejected Chase's argument that it could not be liable for failing to respond to a QWR that was received before the expiration of the 60-day deadline to respond to a prior QWR. The court found that "[n]othing on the face of RESPA prevents a borrower from inundating his servicer with QWRs, even where the period to respond has not passed." Accordingly, the court found that Cezair adequately pleaded a RESPA violation with respect to Chase's failure to respond.

Finally, the court addressed Cezair's allegation that Chase failed to provide documents in response to his request for documentation identifying the owner of the loan and a copy of the note. The court found that Cezair's request did not constitute a QWR, and noted that the Dodd-Frank Act's recent mortgage servicing rules requiring that servicers provide the identity of the owner of the loan did not go into effect until January 10, 2014. Because Cezair sent the letter before the regulations took effect, the letter was not a QWR. However, the court found that Cezair

sufficiently pleaded that Chase failed to respond and that he incurred damages as a result. Thus, the court denied Chase's motion to dismiss Cezair's RESPA claim

Wilson v. Bank of America, N.A., --- F. Supp. 3d ---, 2014 WL 4744555 (E.D. Pa. Sept. 24, 2014)

In *Bryan v. Federal National Mortgage Association*, pPlaintiff Bella Wilson filed suit against Bank of America alleging violations of the RESPA, state law, and breach of the Trial Period Plan ("TPP") contract. Bank of America filed a motion to dismiss Wilson's complaint. Specifically, Bank of America argued that Wilson lacked standing, her RESPA claims were deficiently pleaded, and she did not have a private right of action under HAMP.

Addressing Bank of America's argument that Wilson lacked standing, the court acknowledged that Wilson never assumed the loan. Instead, Bank of America initiated foreclosure against and entered into the TPP contract with the "Estate of Damian Wilson," and Wilson signed in her capacity as administratrix of the estate. Because Wilson never assumed the loan, the court found that she could not bring state law claims as heir. Instead, she could pursue them only as the representative of the estate. Similarly, the court found that RESPA provides a cause of action for the "borrower," which was the Estate of Damian Wilson. Thus, Wilson could bring RESPA claims only as administratrix and could not sue in her individual capacity because she was not the borrower.

In support of her RESPA claims, Wilson alleged that Bank of America failed to conduct a reasonable investigation and provide a written notice in response to Wilson's Notice of Error, as required by Reg. X, 12 C.F.R. § 1024.35. She also alleged that Bank of America failed to conduct a reasonable search in response to her Requests for Information pursuant to Reg. X, 12 C.F.R. § 1024.36. The court noted that § 2605(e) allows a borrower to make a qualified written request, which describes why a borrower believes the account is in error or provides sufficient information to the servicer regarding information sought by the borrower. Section 2605(e)(2) requires a servicer to send written acknowledgement within five days and respond within thirty days. Additionally, within thirty days, the servicer must make appropriate corrections to the borrower's account; provide the borrower with a written explanation or clarification providing reasons why the servicer believes the account is correct and the contact information of an individual employed by the servicer that can provide assistance; or provide a written explanation or clarification including why the information requested by the borrower is unavailable. *See* 12 U.S.C. § 2605(e)(2).

The court noted that RESPA's new regulations, entitled "Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)" went into effect on January 10, 2014. *See* 78 Fed. Red. 10,887 (Feb. 14, 2014). With respect to Wilson's Notice of Error, the court noted that Bank of America was required to send acknowledgement of receipt within five days and respond by (1) correcting the error(s) identified by the borrower; or (2) conducting a reasonable investigation and providing the borrower with written notice including, among other things, why the servicer believes that no error occurred. *See* 12 C.F.R. § 1024.35(e). If during the reasonable investigation the servicer determines that additional or different errors occurred, it must correct those errors and provide the borrower with a written explanation of those errors and action taken to correct them. *See id*. The court noted that the servicer need not comply with these requirements if (1) the error is substantially the same as an error asserted previously and the servicer previously complied; (2) the notice is overbroad and the servicer cannot reasonably determine the specific error the borrower asserts has occurred; or (3) the notice of error was delivered more than one year after a servicing transfer or the loan was discharged. *See* 12 C.F.R. § 1024.35(g).

Turning to Bank of America's argument that it complied with the mortgage servicing rules, the court noted that the cases upon which Bank of America relied were decided before the newly-enacted regulations went into effect. The court found that the "pre-Regulation X statutory language required nothing more than 'an investigation' and a 'written explanation' that the servicer believes supports its

determination that the account is correct." *See* 2014 WL 4744555, at *15. The court continued, stating "Regulation X, however, altered the landscape of those obligations." *See id*. The court determined that the new regulations require the servicer to conduct a *reasonable* investigation, which is a substantive rather than procedural obligation. The court found that Wilson entered into a TPP agreement under the HAMP and, despite the fact that she made payments and supplied documents, the loan was not permanently modified. Additionally, the court found that Bank of America initiated a new agreement but then refused to work with her until she assumed the loan. However, Wilson could not assume the loan while it was delinquent. The court further determined that Bank of America sent contradictory responses to her Notice of Error and contradictory reasons for why she was denied a loan modification. Finally, the court considered plaintiff's allegations that Bank of America's response did not contain the required statement that no error had occurred or advise her of her right to request copies of documents relied upon during the investigation to be true. Accordingly, the court held that Wilson stated a claim under RESPA.

The court also determined that Wilson stated a claim based on Bank of America's alleged failure to respond properly to her Request for Information. Wilson alleged that Bank of America failed to provide all of the information in response to her Request for Information, including copies of servicing logs, recordings of phone calls with Wilson, documents Wilson sent in support of her loan modification request, and invoices from the foreclosure firm. In response, Bank of America argued that Wilson's request was overbroad and, therefore, it was not obligated to search for the requested documents. The court found that Regulation X changed a servicer's obligations and requires the servicer to conduct a reasonable investigation. While the court acknowledged that the law is unsettled as to the scope of a servicer's duties under Regulation X, it said that "Regulation X requires more than mere procedural compliance with the enumerated duties." Because Wilson alleged that Bank of America did not reasonably conduct an investigation, the court held that Wilson sufficiently pleaded a violation of RESPA.

Hittle v. Residential Funding Corp., No. 2:13-cv-353, 2014 WL 3845802 (S.D. Ohio Aug. 5, 2014)

Plaintiff William Hittle filed suit against Ocwen Loan Servicing ("Ocwen") and others alleging violations of the TILA and RESPA after Ocwen allegedly failed to respond to Hittle's QWR. Ocwen moved for summary judgment.

The court first noted that the TILA provision upon which Hittle's claim was based was not in effect at the relevant time. Hittle's claim was based on 15 U.S.C. § 1639g, which went into effect on January 10, 2014. *See* Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 10,902, 11,007 (now codified, with amendments, at 12 C.F.R. § 1026.36(c)(3)). Because the events took place before January 10, 2014, the court found that § 1639g did not apply and dismissed Hittle's TILA claims.

Turning to Hittle's RESPA claim, the court noted that RESPA requires a servicer to acknowledge a consumer's QWR within twenty days and respond within sixty days. However, it acknowledged that the Dodd-Frank Act reduced the time period to five days and thirty days, respectively. Because the QWR was sent in March 2013 before the Dodd-Frank amendments' effective date, the court applied the pre-Dodd Frank time period. The court addressed whether Ocwen had a duty to respond to Hittle's QWR even though it was not sent to the address designated for receipt of QWRs. The court found that Ocwen notified Hittle that the servicer of his loan changed and provided an address for all written correspondence. Two days later, however, Ocwen sent Hittle a mortgage account statement that included an address specifically for QWRs. The court determined that Ocwen sent contradictory correspondence and did not clearly designate the address to which Hittle should send QWRs. The court also found that by acknowledging receipt of the QWR in correspondence to Hittle, the QWR eventually got to the right place even if it was not sent to the proper address. Accordingly, the court found that Ocwen had a duty to respond.

With respect to the sufficiency of Ocwen's response, the court noted that the servicer can respond in one

of three ways, but that it does not have "unfettered discretion about which of the three options to choose." 2014 WL 3845802, at *8. Rather than identify a specific error, Hittle disputed all charges and fees on the loan. Because Hittle admitted that all payments had not been made, the court determined that some late fees were proper and Hittle could not dispute all charges and fees in good faith. Also, the court found that Hittle failed to provide enough detail about errors with the loan to allow Ocwen to formulate a proper response. The court held that Hittle's blanket statement about purported errors with the loan did not trigger Ocwen's obligation to correct any errors or to explain why the account was correct.

Finally, the court found that Ocwen properly responded to Hittle's request for documents. While Ocwen acknowledged in its response that it was difficult to comply with Hittle's generic request relating to the entire history of the loan, the court found that the response showed that Ocwen investigated the matter, provided responsive information, and explained its response to each numbered paragraph. The court distinguished Ocwen's response from the response the servicer provided in *Marais v. Chase Home Finance, LLC*, --- F. Supp. ---, 2014 WL 2515474 (S.D. Ohio 2014), because the servicer in Marais provided a generic response evidencing no investigation. The court acknowledged its "dim view of generic form responses by servicers," but set forth a new rule: "A borrower cannot hold a servicer liable for failing to completely respond to every possible interpretation of a generic and vague QWR when the servicer has responded with a good faith investigation and explanation." *See id*. at *12. Accordingly, the court held that Ocwen made a good-faith effort to respond to Hittle's request for documents and granted Ocwen's motion for summary judgment.

Antiretaliation Provision

Liu Meng-Lin v. Siemens AG, 763 F.3d 175 (2nd Cir. 2014)

The U.S. Court of Appeals for the Second Circuit recently held that the anti-retaliation provision of the Dodd-Frank Act did not apply extraterritorially. Plaintiff Liu Meng-Lin filed suit against his former employer, Siemens, alleging that it violated the Dodd-Frank Act's antiretaliation provision after he was allegedly fired for reporting conduct that violated company policy and U.S. anti-corruption measures. Siemens moved to dismiss.

At the outset, the court noted that legislation of Congress is meant to apply only within the territorial jurisdiction of the United States. The court also acknowledged the presumption against extraterritorial application of laws unless the law expressly provides otherwise. The antiretaliation provision of the Dodd-Frank Act provides that "no employer may discharge . . . a whistleblower . . . because of any lawful act done by the whistleblower . . . in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 . . . and any other law, rule, or regulation subject to the jurisdiction of the SEC." *See* 15 U.S.C. § 78u-6(h)(1)(A). Thus, the court said that Liu was required to show that (1) the complaint alleges facts to support domestic application of the antiretaliation provision of Dodd-Frank, or (2) the antiretaliation provision applies extraterritorially.

The court found that all of the events alleged in the complaint took place outside of the United States. Additionally, the court rejected Liu's argument that the facts were connected to the United States because Siemens elected to have a class of its securities publicly listed on the New York Stock Exchange. The court said that *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), establishes that if the only allegation connecting the harm and domestically-listed securities is that fact that a defendant listed securities on a U.S. exchange, "the listing of securities alone is the sort of 'fleeting' connection that 'cannot overcome the presumption against extraterritoriality.'" 763 F.3d at 180. Accordingly, the court held that Liu failed to satisfy the first requirement to prevail on his Dodd-Frank Act claim.

Turning to the second requirement, the court found that nothing in the Dodd-Frank Act indicated Congress' intent that the Act apply extraterritorially. Liu relied on other sections of the Dodd-Frank Act that discuss extraterritorial application, but the

court determined that Congress acted purposely omitted such language from the antiretaliation provision and, therefore, did not intend for it to apply extraterritorially. Accordingly, the court granted Siemens's motion to dismiss.

Credit Default Swaps Antitrust Litigation

In re Credit Default Swaps Antitrust Litigation, No. 13md2476 (DLC), 2014 WL 4379112 (S.D.N.Y. Sept. 4, 2014)

Plaintiffs filed suit individually and on behalf of all persons who purchased credit default swaps ("CDS") from, or sold CDS to, certain large investment banks (the "Dealer-Defendants") between January 1, 2008 and December 31, 2013. Plaintiffs alleged violations of Sections 1 and 2 of the Sherman Antitrust Act and brought state law unjust enrichment claims. Dealer-Defendants moved to dismiss.

At the outset, the court noted that Plaintiffs had to show that (1) they suffered an antitrust injury and (2) they are efficient enforcers of the antitrust laws. Addressing the Dealer-Defendants' argument that Plaintiffs lacked standing to sue under antitrust law, the court said that it must (1) identify the illegal anticompetitive practice complained of and the reasons such practice is or might be anticompetitive; (2) identify the actual injury; and (3) compare the anticompetitive effect of the specific practice at issue to the actual injury alleged. Plaintiffs allege that they were forced to invest in a CDS market lacking transparency and competition because certain Dealer-Defendants refused to license data to certain ventures because of a secret agreement with Dealer-Defendants arranged to prevent competition. Plaintiffs alleged that, as a result, they were injured by being forced to pay inflated bid/ask spreads. Based on these allegations, the court found that Plaintiffs had standing. The court also found that Plaintiffs were efficient enforcers of antitrust laws.

With respect to Plaintiffs' antitrust claims, the court noted that Section 1 of the Sherman Act prohibits "conspiracies in restraint of trade or commerce among the several States." The court found that Plaintiffs sufficiently alleged that a conspiracy existed by alleging the Dealer-Defendants secretly met and communicated at certain places, and agreed to block certain ventures from entering the CDS market. Turning to Plaintiffs' Section 2 claim, the court noted that Section 2 makes it a crime to monopolize, attempt to monopolize, or conspire with other persons to monopolize any party of the trade or commerce among the several States. The court determined that Plaintiffs alleged that the Dealer-Defendants collectively conspired to monopolize the CDS market but did not allege that the Dealer-Defendants attempted to confer monopoly power on one entity. The court acknowledged that most courts have found that a "shared monopoly" theory cannot support a Section 2 claim. Because Plaintiffs failed to allege that the Dealer-Defendants conspired to form a single entity to monopolize or that they conspired to monopolize jointly, the court dismissed the Section 2 claim.

The court addressed the Dealer-Defendants' argument that the Dodd-Frank Act barred application of antitrust law to alleged conduct after the July 21, 2011 effective date. The court pointed out that the Dodd-Frank Act has a savings clause, which provides that "[n]othing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws unless otherwise specified." 2014 WL 4379112, at *16 (quoting 12 U.S.C. § 5303). The court noted that the Dodd-Frank is silent as to any modifications to the Sherman Antirtust Act, but includes certain provisions modifying the Clayton Act. Thus, the court found that the Dodd-Frank Act did not modify the Sherman Act and it applied to all conduct alleged in the complaint. Additionally, the court rejected the Dealer-Defendants' interpretation of Dodd-Frank Act provisions relevant to the CDS market. The Dealer-Defendants argued that 7 U.S.C. § 6s(j)(6) and 15 U.S.C. § 78o-10(j)(6) provide that a swap dealer may not violate antitrust laws unless such action is necessary to achieve the purposes of the Dodd-Frank Act. Because regulators determine what is necessary or appropriate to achieve the purposes of the Dodd-Frank Act, the Dealer-Defendants argued that they cannot be subject to antitrust laws. The court held that the Dodd-Frank Act did not repeal antitrust laws and allowed Plaintiffs' claims based on conduct occurring after Dodd-Frank's effective date to proceed.

CFPB Involvement in Litigation

Hernandez v. Williams, Zinman & Parham, P.C., No. 14-15672 (9th Cir. Aug. 20, 2014)

On August 20, 2014, the CFPB and FTC filed an amici brief in the case *Hernandez v. Williams, Zinman & Parham, P.C.*, which pending before the Ninth Circuit Court of Appeals. The CFPB challenges the district court's holding that a subsequent debt collector is not required to send a § 1692g notice in its initial communication with a debtor.

In the underlying case, Hernandez sued Williams, Zinman & Parham, P.C. ("WZP") alleging that WZP violated § 1692g of the FDCPA by sending a letter and failing to advise Hernandez that any request for verification or for original creditor information must be in writing. In its motion for summary judgment, WZP argued that it was not required to comply with 1692g because the letter was not the initial communication with Hernandez. Instead, the initial communication previously came from another third-party debt collector. The district court granted WZP's motion for summary judgment finding that WZP, a subsequent debt collector, was not obligated to comply with § 1692g because WZP's letter was not the initial communication that Hernandez received with respect to the debt.

The CFPB argued that a debt collector must "'send the consumer a written notice containing' certain specified information either in 'the initial communication' or 'within five days after the initial communication in connection with the collection of any debt.'" The CFPB also said that Congress intended that each debt collector send the required notice, and the district court's interpretation of "initial communication" as described in § 1692g was improperly narrow. Instead, the CFPB argued that "initial communication" refers to each debt collector's initial communication with a consumer, which is supported by the plain language of the statute, Congress' intent, and case law interpreting § 1692g.

---- IN THE NEWS ----

CFPB Updates Regulation P

The CFPB recently issued a final rule amending Regulation P, the regulation requiring financial institutions to disclose their privacy policies annually to their customers. The regulation had previously required financial institutions to mail the privacy notices to their customers. Responding to concerns that this requirement caused information overload to consumers and unnecessary financial burden to financial institutions, the CFPB amended the rule to allow online posting of privacy notices if certain conditions are met.

To read the final rule, visit: http://files.consumerfinance.gov/f/201410_cfpb_final-rule_annual-privacy-notice.pdf

CFPB Defines "Larger Participants" of International Money Transfer Market

On September 23, 2014, the CFPB issued a final rule amending the Dodd-Frank regulation that defines larger participants of certain consumer financial product and service markets. The amendment identifies a market for international money transfers and defines "larger participants" of this market.

Under the final rule, a nonbank entity constitutes a "larger participant" of the international money transfer market if it performs at least one million aggregate international money transfers annually.

To learn more, visit: https://www.federalregister.gov/articles/2014/09/23/2014-22310/defining-larger-participants-of-the-international-money-transfer-market

CFPB Amends CLA and TILA Regulations

On September 22, 2014, the CFPB issued a final rule amending the official interpretations and commentary for the Consumer Leasing Act ("CLA") and Truth in Lending Act ("TILA") implementing regulations.

Under the Dodd-Frank Act, the CLA's dollar threshold for exempt consumer leases, and TILA's dollar threshold for exempt consumer credit transactions, must be adjusted annually based upon increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Based on this year's increase in the index, the amendments adjust these exemption thresholds to $54,600. The amendments become effective January 1, 2015.

To learn more, visit: https://www.federalregister.gov/articles/2014/09/22/2014-21847/consumer-leasing-regulation-m and https://www.federalregister.gov/articles/2014/09/22/2014-21849/truth-in-lending-regulation-z

CFPB Issues Final Rule on Electronic Fund Transfers

On September 18, 2014, the CFPB issued a final rule amending subpart B of Regulation E under the Electronic Fund Transfer Act. Under the original rule, an exception allowing insured institutions to estimate certain pricing disclosures would have expired on July 21, 2015. The revised rule extends this provision to July 21, 2020.

The final rule becomes effective November 17, 2014.

To learn more, visit: https://www.federalregister.gov/articles/2014/09/18/2014-20681/electronic-fund-transfers-regulation-e

CFPB and Federal Reserve Release Mortgage Rule Webinar

The CFPB and Federal Reserve recently made available a recording of a webinar on the merger of the TILA-RESPA mortgage disclosure rules. This is the third in a series of webinars aimed at helping financial institutions comply with the new rules.

To access the webinar, visit: http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/outlook-live/2014/FAQ-on-TILA-RESPA-Integrated-Disclosures-Rule-3.cfm

CFPB Proposes Policy on No-Action Letters

The CFPB announced that it is considering a policy on No-Action Letters. Under the proposed policy, the agency would issue no-action letters to applicants who are launching beneficial consumer products or services, where the potential application of the Dodd-Frank regulatory framework to the new product or service is unclear.

An applicant would have to explain in detail why the product or service would provide substantial consumer benefit, why the application of the regulatory framework to the proposed product or service is unclear, what risks the product or service may pose, and how those risks could be mitigated.

While not binding on the agency, the no-action letters would indicate the CFPB's present intent not to institute an enforcement action with respect to the product or service.

The CFPB is accepting public comment until December 15, 2014. To submit a comment, visit: https://www.federalregister.gov/articles/2014/10/16/2014-24645/policy-on-no-action-letters

To learn more, visit:

CFPB Seeks Public Comment on Proposed Auto Finance Regulation

The CFPB is seeking public comment on a proposed regulation that would define "larger participants" of the auto finance market. The rule would cover auto finance companies with 10,000 or more originations annually.

The deadline for submitting comments is December 8, 2014.

To submit a comment, visit: https://www.federalregister.gov/articles/2014/10/08/2014-23115/defining-larger-participants-of-the-automobile-financing-market-and-defining-certain-automobile

DOJ Releases FAQ on Bank Mergers

The Department of Justice recently released a frequently-asked-questions guide on how it evaluates the potential competitive effects of mergers and acquisitions under financial regulatory schemes such as the Bank Holding Company Act. The FAQs discuss the Federal Reserve's application review process, the factors it considers, and the role of the Antitrust Division of the Department of Justice in the review process.

To read the FAQs, visit: http://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm

CFPB Updates Mortgage Rules Readiness Guide

The CFPB has updated its Mortgage Rules Readiness Guide to include coverage of the new TILA-RESPA integrated disclosures.

To read the updated guide, visit: http://files.consumerfinance.gov/f/201409_cfpb_readiness-guide_mortgage-implementation.pdf

Federal Reserve Releases EFTA Report

The Federal Reserve recently released a report regarding debit card transactions in 2013, including data on volume, issuer costs, and fraud losses. As in previous years, issuer costs varied dramatically, with the median issuer having a cost of 14.9 cents per transaction and issuers in the 75th percentile having a cost of 42.2 cents per transaction. The agency estimated total fraud losses to be about $1.5 billion.

To read the report, visit: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140918a1.pdf

CFPB Updates Small Entity Compliance Guide

The CFPB recently updated its small entity compliance guide for the TILA-RESPA integrated disclosure rule.

To read the updated guide, visit: http://files.consumerfinance.gov/f/201409_cfpb_tila-respa-integrated-disclosure-rule_compliance-guide.pdf

CFPB Warns Credit Card Issuers About Deceptive Marketing Practices

The CFPB recently issued a bulletin cautioning credit card issuers to avoid potentially deceptive marketing practices with respect to interest rate promotions. Credit card plans often offer consumers a one-month grace period on new purchases, such that interest does not accrue during the first month after a purchase is made. Many card issuers, the agency noted, have been offering promotions that lower a consumer's interest rate but weaken or eliminate the grace period feature. The agency further noted that these promotions have not adequately disclosed how accepting the promotion will alter the grace period feature on an account.

In the bulletin, the CFPB highlighted the Dodd-Frank Act's prohibition on misleading practices, and urged issuers to ensure that their promotional materials adequately and accurately describe the effect of promotional offers on the grace period for new purchases.

To read the bulletin, visit: http://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf

OCC Releases "Heightened Expectations" for Large Banks

The OCC recently completed its "heightened expectations" guidelines for covered banks with more than $50 billion in assets. These guidelines set forth enforceable minimum standards for governance and oversight of large banks. The OCC developed these "heightened expectations" out of its supervisory experience during the financial crisis, when large bank risk management practices were weak.

To read the final rule, visit: http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-117a.pdf

OCC Updates Electronic Funds Transfers Handbook

The OCC recently released an updated version of its handbook on electronic funds transfers. This updated version replaces the 2011 version, and incorporates the CFPB's new remittance transfers rules.

To read the handbook, visit: http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/file-pub-ch-efta.pdf

FHA Revises ARM Rule

On August 26, 2014, the FHA issued a final rule revising its single family ARM regulations. Intended to harmonize the FHA's requirements with the CFPB's regulations, the final rule provides for a 45-day look-back period and a 60-120 day notice period prior to interest rate adjustments.

To read the final rule, visit: https://www.federalregister.gov/articles/2014/08/26/2014-20215/federal-housing-administration-fha-adjustable-rate-mortgage-notification-requirements-and-look-back

FHA Revises Prepayment Rule

On August 26, 2014, the FHA issued a final rule revising its regulations on prepayment. Formerly, a mortgagee was permitted to charge interest through the end of a month, regardless of when payment was made. Under the revised rule, mortgagees may only charge interest through the date of payment.

To read the final rule, visit: https://www.federalregister.gov/articles/2014/08/26/2014-20214/federal-housing-administration-fha-handling-prepayments-eliminating-post-payment-interest-charges

CFPB Issues Bulletin on Mortgage Servicing Transfers

On August 19, 2014, the CFPB issued a bulletin to residential mortgage servicers and subservicers regarding transfers of servicing rights. In the bulletin, the CFPB reminded servicers of their obligations under the CFPB's servicing rule, such as maintaining policies and procedures reasonably designed to facilitate information exchange during transfers.

The agency noted that such policies might include: servicing contracts requiring the transferor to provide all necessary information at transfer; pre-transfer testing protocol; and post-transfer quality control work.

To read the bulletin, visit: http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf

CFPB Updates Dollar Thresholds

On August 15, 2014, the CFPB issued a final rule updating the 2015 dollar thresholds under the CARD Act, HOEPA, and the ability-to-repay and qualified mortgage rules.

To read the final rule, visit: https://www.federalregister.gov/articles/2014/08/15/2014-18838/truth-in-lending-regulation-z-annual-threshold-adjustments-card-act-hoepa-and-atrqm#h-12

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