

Resources

Consumer Financial Protection Bureau Alert—Vol. 1, No. 7

By the Authors of PLI's Consumer Financial Services Answer Book 2011 and Edited by Arthur B. Axelson
December 2, 2011

Regulations and Guidance Update

Bureau Seeks Comments for Report on Private Education Loans and Private Education Lenders

A recent survey found that while young adults believe a college education is more important now than it was for their parents' generation, they also believe a college education has become less affordable in the past five years. In fact, college seniors who graduated in 2010 owed an average of \$25,250, which represents a 5% increase from 2009. Private loans account for 22%, or approximately \$6 billion, of education borrowing. The CFPB, which was created specifically to protect the interests of consumers, is taking a close look at the market for private education loans and the effect that market has had on the increased cost for higher education.

In late October, the CFPB released a model disclosure form for student financial aid packages to clarify and clearly set forth students' options when choosing how to finance their education. Further information on the model disclosure form can be found in Dykema's November 3, 2011, CFPB Alert. Now, as required under Section 1077 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), the CFPB and the Department of Education are in the process of preparing a report on private education loans and private education lenders, which must be completed by July 21, 2012.

In an effort to collect additional data on private education loans, the CFPB, on November 27, 2011, issued a notice and request for information on private education loans and related consumer financial products and services that are currently being offered to, or used by, students and their families to finance higher education. Such loans and products include loans made by a school or a financial institution to finance the cost of higher education, but exclude all loans guaranteed under Title IV of the Higher Education Act, commonly referred to as "federal loans." The CFPB is particularly interested in learning what information would help students make informed decisions about which financial services and products are appropriate and what approaches could assist recent graduates facing difficulty in making their private education loan payments. Rick Hackett, assistant director for installment lending markets at the CFPB, said the CFPB would "love to hear from students, families, school counselors, lenders, servicers, and anyone who has anything to do with private student loans."

Specific questions asked by the CFPB for public comment include: (1) What other forms of non-federal debt financing do families use to finance higher education (e.g., tuition payment plans, credit cards, home equity lines of credit); (2) Why do students choose private loans before exhausting all available federal loan options; (3) Where do families obtain information about private student loans; (4) To what extent are students offered or solicited for private loans directly by their school; (5) How well are the amount and timing of private loan repayment terms understood; and (6) How much does debt affect a student's choice in an undergraduate field of study? A full list of questions posed by the CFPB can be found here. All comments must be submitted by January 17, 2012, and will be posted at www.regulations.gov.

CFPB Seeks to Streamline Regulations

The CFPB has asked the public in a Notice and Request for Information to be published in the Federal Register to help identify and prioritize which consumer financial regulations are in most need of updating, modifying, or eliminating. The Dodd-Frank Act transferred rulemaking authority regarding consumer financial laws from multiple federal agencies to the CFPB. The CFPB will first republish the regulations it inherited from those agencies, as regulations of the Bureau, to be codified in Chapter X of Title 12 of the Code of Federal Regulations, but the CFPB then wishes to streamline the regulations

and make other non-substantive changes to them.

While noting that the inherited regulations provide key protections for consumers, the Bureau believes there is an opportunity to streamline certain regulatory requirements. Congress authorized the CFPB to “reduce unwarranted regulatory burden,” and the CFPB believes “[s]ome regulations have become overly complex and unnecessarily difficult to understand and comply with.” Several agencies were formerly regulating the same laws, and the CFPB now wishes to harmonize those regulations. For example, some existing regulations contain divergent definitions of terms such as “consumer,” “credit,” and “business day.” The CFPB also wishes to address required privacy notices, ATM fee disclosures, and a variety of other regulations, including Regulations B (Equal Credit Opportunity), C (Home Mortgage Disclosure), and Z (Truth in Lending).

The CFPB will consider five factors in setting priorities for streamlining regulations: (1) a cost-benefit analysis; (2) whether the changes are possible under the existing statute; (3) how quickly the public would realize the benefits; (4) the governmental and private resources required to achieve the benefits; and (5) the evidence presented. The CFPB will seek out “the most reliable available evidence,” but “will also expect that advocates of specific revisions to regulations [will] provide evidence to justify any assertion that the benefits of these regulations would justify the costs.”

Those wishing to comment on existing regulations should, according to the CFPB, consider whether the CFPB should address a particular regulation or set of regulations, or instead focus on an entire market sector. In addition, the CFPB urges those making comments to concentrate on their highest priority areas for streamlining.

News from the Bureau

CFPB Increases Senior Staff With New Hires

The CFPB recently expanded its staff with a number of hires at the senior leadership level. Already 700 employees strong and operating without a confirmed director, the CFPB continues to fill in positions to enhance its ability to fulfill its mandate under the Dodd-Frank Act. Raj Date, special advisor to the Secretary of the Treasury who is temporarily running the Bureau, stated that

The C.F.P.B. needs highly qualified staff, from those who are skilled in handling individual consumer complaints to experts in legislative and intergovernmental affairs to lawyers who are able to craft clear and precise rules. Together with the C.F.P.B. staff already on board, these new hires will help us ensure that consumers have the information they need to make the financial choices that are best for them.

The new hires include the following:

Meredith Fuchs has been promoted to chief of staff. She was the CFPB’s principal deputy general counsel. Fuchs has served as chief investigative counsel for the Democratic staff of the House Energy and Commerce Committee. She also has worked as a litigation partner at the law and lobbying firm Wiley Rein.

Roberto J. Gonzalez has been hired as the Bureau’s principal deputy general counsel. Mr. Gonzalez was formerly a special assistant to President Obama. Lisa Konwinski has been hired as assistant director for legislative affairs. She was deputy assistant to President Obama and deputy director of the Office of Legislative Affairs at the White House. Konwinski also has been general counsel for the Democratic staff of the Senate Budget Committee.

Nicholas Rathod has been hired as assistant director for intergovernmental and international affairs. He was the deputy director for intergovernmental affairs at the White House and a past advisor to former New York governor Eliot Spitzer.

Stephen Agostini was named to the chief financial officer position. He had previously been CFO at the U.S. Office of Personnel Management.

Sartaj Alag has been hired as an assistant director for consumer response. He was the president of Capital One’s Canadian subsidiary. Alag has served as a management consultant at McKinsey & Co. He also worked as a member of the technical staff at Comsat Labs, a technology company.

Bureau Passes Financial and Security Audits

The CFPB received clean bills of health in the Government Accountability Office's (GAO) first annual report on the bureau's finances and the Federal Reserve Board's audit of the CFPB's information security programs and practices. On the finance front, the GAO determined the CFPB's financial statements were fairly presented in all material respects, with effective internal control over financial reporting. The GAO found no reportable instances of non-compliance with the laws and regulations it tested. Because 2011 was the first full year of operation for the CFPB and the first year it prepared financial statements, no comparative information existed. The CFPB received strong praise from Senate Banking Committee chairman Tim Johnson regarding the high marks it received during its first financial audit. Johnson stated, "It's no surprise that this new agency that is responsible for looking out for consumer's financial interests is leading by example with its own finances." The annual audits are required by the Dodd-Frank Act.

In regard to the Federal Reserve Board security audit, it should be noted the CFPB currently relies on the Treasury Department's information and security programs and practices. Thus, the CFPB fell under the umbrella of the Treasury's audit. The Federal Information Security Management Act of 2002 (FISMA) requires federal agencies to develop, document, and implement an agency-wide information security program. FISMA also requires each Inspector General to conduct independent evaluations of his or her agency's information security programs and general practices. The Treasury audit concluded that Treasury's information security program and practices for the unclassified systems of its non-Internal Revenue Service bureaus were generally consistent with the requirements of FISMA. The Treasury Department was encouraged to improve the effectiveness of its general support system relied on by the CFPB by strengthening several components, including risk management and contingency planning controls. However, the CFPB's chief information officer noted the CFPB is working to develop and mature its own internal functions and processes, including technology management.

Miscellany

Support for Confirmation of Cordray Continues A number of different groups are pressuring Senate Republican leaders to confirm Richard Cordray as director of the CFPB, or at least to allow a vote on the nomination.

In a recent joint letter, 33 House Democrats called on Minority Leader Mitch McConnell to allow a vote on the Senate floor on the nomination of Mr. Cordray. Citing the fact that the Bureau cannot exercise its full authority to protect consumers, particularly the more vulnerable military and senior groups, House members urged that the nomination be confirmed.

In an unrelated action, the United States Conference of Mayors is expected next week to send a letter to Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell urging "the swift confirmation" of Mr. Cordray. A recent draft of the letter cites Mr. Cordray as an honorable, committed, and highly qualified public servant who has demonstrated that he has the necessary expertise and sound judgment to lead the CFPB.

Evidencing the cliché that "politics makes strange bedfellows," Massachusetts Republican Senator Scott Brown broke from his party and became the first Senate Republican to endorse the nomination of Richard Cordray for director of the Bureau. Brown is currently facing a reelection challenge from Elizabeth Warren, the force behind the creation of the Bureau. Seen as a political move, political pundits believe that Brown's endorsement makes him appear bipartisan and open-minded, and was intended to remove an important issue Warren would use in her election bid.

Consumer Advocates Call on CFPB to Implement Greater Protections for Prepaid Cards

In a November 17, 2011, letter, seven consumer advocacy groups called on the Bureau to clarify that the pooled accounts into which consumers place funds for prepaid debit cards fall within the definition of "accounts" under Regulation E. The groups, including Consumers Union, U.S. PIRG, the Center for Public Policy Priorities, SC Applesseed Legal Justice Center, the National Consumer Law Center, the Coalition of Religious Communities, and the Center for Responsible Lending, said that the change is important to ensure that the growing number of prepaid card users have full consumer protections under the Electronic Fund Transfer Act.

The letter suggests that prepaid debit cardholders should have the same protections as debit cardholders. The letter specifically requests that the prepaid debit card industry be subject to rules including a cap on losses for lost or stolen

cards; a stricter timeline for recrediting unauthorized or missing debits; clear, up-front disclosure requirements regarding fees; the right for cardholders to choose to receive a periodic statement; and a prohibition on overdraft fees for all prepaid cards.

According to the CFPB, over 11 million households have used prepaid cards, and over \$140 billion dollars in transactions were made with reloadable open-loop prepaid cards in 2009. Since 2007, Regulation E protections have extended to payroll cards, which draw on the user's wages or salary, but that extension does not include other stored value cards. In the CFPB's June 2011 proposed rule "Defining Larger Participants in Certain Consumer Financial Products and Services Markets," the CFPB called for public comment regarding whether prepaid debit cards should be addressed in an initial larger participant rule.

Regulatory Scorecard

Below is Dykema's up-to-date chart of pending and final regulatory activities and proceedings at the CFPB.

Consumer Financial Protection Bureau Pending Rulemakings, Final Rulemakings and Other Initiatives under Dodd-Frank Act (DFA) as of December 2, 2011

****NOTE:** [Click here to access a printable version of the Scorecard.](#)

Description

Date of Proposal/ Final or Interim Rule

Summary of Contents

Key Dates

Proposed Federal Reserve Board Comprehensive Regulation Z Proposals August 26, 2009
(74 FR 43428)

August 26, 2009
(74 FR 43232) Two proposals issued in August of 2009 contained revisions to disclosures for closed-end mortgage loans and HELOCs. On February 1, 2011, Fed elected not to finalize proposals, recognizing CFPB's impending authority

Proposed Federal Reserve Board Comprehensive Regulation Z Proposal September 24, 2010
(75 FR 58539) Proposed rule to: (1) expand the right to rescind to additional loan types, (2) amend disclosures to explain the right to rescind, (3) clarify lender's responsibilities upon rescission, (4) mandate disclosures for loan modifications, (5) change reserve mortgage disclosures, and (6) place restrictions on certain advertising and sales practices for reverse mortgages. On February 1, 2011, Fed elected not to finalize proposals, recognizing CFPB's impending authority

Department of Treasury Privacy Act System of Records January 10, 2011
(76 FR 1507)

June 15, 2011
(76 FR 35071) In accordance with the Privacy Act of 1974, as amended, Department of Treasury provided notice of the establishment of a Privacy Act System of Records. Written comments due on or before February 9, 2011

Effective Date: July 15, 2011

Proposed Federal Reserve Board Regulation Z: Escrow Requirements March 2, 2011
(76 FR 11598) Proposed rule to: (1) extend the minimum period an escrow account must be maintained for first lien, higherpriced mortgage loans from one to five years, (2) provide an exemption from the mandatory escrow for certain loans, (3) exempt from the mandatory escrow requirement creditors that

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operate primarily in “rural or “undeserved” counties, and (4) require new disclosure explaining how the escrow account works or what the effects would be of not having an escrow account at all. Written comments due on or before May 2, 2011

CFPB and JAGs Partnership July 6, 2011

The CFPB and JAGS: partnering to protect servicemembers CFPB and Judge Advocate Generals will work together to identify potential violations of consumer law involving service members and their families.

OCC, FED, FDIC, SEC, FHFA, and HUD Risk Retention/Qualified Residential Mortgage (QRM) April 29, 2011
(76 FR 24090)

June 10, 2011
(76 FR 34010) DFA §941 requires sponsors of assetbacked securities (ABSs) to retain at least 5% of the credit risk of assets underlying the securities; proposal includes loan-level requirements such as minimum down payment. Written comments due on or before August 1, 2011

Federal Reserve Board Increase in Regulations Z & M Coverage Thresholds April 4, 2011
(76 FR 11598) Consumer credit transactions and consumer leases with transaction amounts up to \$50,000 will be covered by Regulation Z and Regulation M. Beginning the end of this year (December 31, 2011), the threshold will be adjusted annually based upon the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers. Effective July 21, 2011

CFPB Data Collection under ECOA April 11, 2011

Section 1701 of the Dodd-Frank Act DFA §1071 amended ECOA to require financial institutions to collect and report credit application information for women- or minority-owned businesses and small businesses. CFPB issued guidance to financial institutions clarifying that DFA §1071 does not take effect until the CFPB issues necessary implementing regulations.

Federal Reserve Board Ability to Repay/Qualified Mortgage (QM) April 19, 2011
(76 FR 27390) DFA §1411 requires creditors, when making loans covered by TILA, to determine the consumer’s ability to repay before making a loan and also to establish minimum mortgage underwriting standards; proposal includes alternatives for final regulation. Written comments due on or before July 22, 2011

Federal Reserve Board Foreign Remittance Transfers under Regulation. E May 23, 2011
(76 FR 29902) DFA §1073 amended the EFT Act, adding a new section to require providers of “remittance transfers” to provide disclosures about such transfers, including exchange rate, applicable fees and taxes, and the amount to be received by the “designated recipient.” Written comments due on or before July 22, 2011

Federal Reserve Board Collection Data at Motor Vehicle Dealers under Regulation. B June 20, 2011
(76 FR 36885) Proposed rule to clarify that motor vehicle dealers temporarily are not required to comply with certain data collection requirements in the DFA until the board issues final regulations to implement the statutory requirements. Written comments due on or before July 29, 2011

CFPB “Single Integrated Disclosure” Proposal (in advance of proposed rule) under DFA §1032 May – June, 2011
(www.consumerfinance.gov)

July 20, 2011
(76 FR 43374)

September 12, 2011 CFPB has posted several rounds of “sample” forms on its website and sought public feedback; U.S. Treasury has solicited comments “concerning a proposed generic information collection for development and evaluation of integrated loan disclosures” (combining Regulation. Z mortgage disclosure and the RESPA Good Faith Estimate (GFE) into a single, integrated disclosure form). DFA requires final rule no later than July 21, 2012; CFPB has stated that it will conduct four rounds of consumer testing through February, 2012, and will issue notice and comment rulemaking in July, 2012

CFPB “Larger Participant” Definition June 29, 2011
(76 FR 38059) DFA §1024 provides that CFPB may supervise covered persons in the residential mortgage, private education lending and payday lending markets. For other markets for consumer financial products or services, CFPB’s supervision program will apply only to a “larger participant” of these markets, as defined by rule. Written comments due on or before August 15, 2011

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CFPB Identification of Enforceable Rules and Orders

July 21, 2011
(76 FR 43569)

CFPB published consumer financial protection authorities that would be transferred from seven federal agencies and that it would enforce after the Transfer Date. Effective Date: July 21, 2011

CFPB Alternative Mortgage Transaction Parity (Regulation D)

July 22, 2011
(76 FR 44226)

CFPB published interim final rule establishing Regulation D pursuant to the Alternative Mortgage Transaction Parity Act and the Truth in Lending Act.

Effective for state housing creditors July 22, 2011

Written comments due on or before September 22, 2011

FTC Statement of General Policy or Interpretation; Commentary on the Fair

Credit Reporting Act

July 26, 2011
(76 FR 44462)

FTC is rescinding its Statements of General Policy or Interpretations under the FCRA. Effective Date: July 26, 2011

Disclosure of Records and Information

July 28, 2011
(76 FR 45372)

Interim Final Rule establishes procedures for the public to obtain information from the CFPB under the Freedom of Information Act (FOIA). CFPB also established its rules regarding the confidential treatment of information it obtains in connection with the exercise of its authority.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

Rules of Practice of Adjudication Proceedings

July 28, 2011
(76 FR 45338)

Interim Final Rule establishes procedures regarding the conduct of adjudication proceedings under §1053 of the Dodd-Frank Act, used to enforce compliance with the Dodd-Frank Act or any laws for which it has enforcement authority.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

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State Official Notification Rules

July 28, 2011
(76 FR 45174)

Interim Final Rule establishes procedures to be used by state officials to notify the CFPB of their actions or proceedings in enforcing the Dodd-Frank Act or its regulations.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

Rules Relating to Investigations

July 28, 2011
(76 FR 45168)

Interim Final Rule describing the CFPB's procedures for investigations regarding compliance with the federal consumer financial laws.

Effective Date: July 28, 2011

Written comments due on or before September 26, 2011

Notice of Proposed Privacy Act System of Records

August 1, 2011
(76 FR 45767)

(76 FR 45765)

(76 FR 45761)

(76 FR 45757)

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(76 FR 45759)

(76 FR 45763)

Notice of new records system to collect process, log, track and respond to all FOIA- and Privacy Act-related requests.

Notice of new records system used to enable the CFPB to carry out its responsibilities with respect to certain banks, savings associations, credit unions, and their affiliates and service providers, including coordination and conduct of examinations, supervisory evaluations and enforcement actions.

Notice of a new records system used to enable the CFPB to carry out its responsibilities with respect to individuals related to non-depository covered persons, including the coordination of examinations, supervision evaluations and enforcement actions.

Notice of a new records system used to enable the CFPB to carry out its responsibilities with respect to the enforcement of federal consumer financial protection laws.

Notice of a new records system used to assist the CFPB by providing effective, social media-based ways to share information and interact with the public.

Notice of a new records system that will provide the CFPB with a single, agency-wide repository of identifying and registration information concerning entities offering or providing, or materially assisting in the offering or provision of, consumer financial products or services.

Effective Date: September 12, 2011

Written comments due on or before August 31, 2011

Policy on Ex Parte Presentations in Rulemaking Proceedings
August 16, 2011

Policy on Ex Parte Presentations in Rulemaking Proceedings Policy requiring public disclosure of ex parte presentations made to the CFPB staff concerning a pending rulemaking.
August 16, 2011

Notice and Request for Information on Consumer Financial Products and Services for Servicemembers
September 6, 2011

(76 FR 54998)

Request for input regarding consumer financial products and services tailored to servicemembers and their families.
Written comments due on or before September 20, 2011

Proposed Information Collection; Comment Requests; Generic Clearance for Research in Development of Disclosure Forms September 26, 2011
(76 FR 59379) Generic Clearance Request regarding information collection to OMB in connection with research in the development of disclosure forms and request for comments on the collection of information and the estimated burden on respondents. Written comments due to OMB reviewer and to Treasury Department Clearance Officer on or before October 26, 2011.

FRB Final Rule Amending Regulation B to Postpone Auto Dealer Collection of Information on Minority and Women Owned Businesses and Small Businesses
September 26, 2011

(76 FR 59237)

Provides that motor vehicle dealers are not required to comply with Dodd-Frank's data collection requirements on credit applications by women- and minority-owned businesses until the FRB issues final regulations to implement the statutory requirement. Effective September 26, 2011

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Proposed Collection;
 Comment Request October 31, 2011
 (76 FR 67128) CFPB is soliciting comment for a proposed generic information collection that will help the CFPB satisfy responsibilities under the Dodd-Frank Act—the collection and monitoring of and response to consumer complaints about certain financial products and services. Written comments due on or before December 30, 2011.

Proposed Collection;
 Comment Request November 2, 2011
 (76 FR 67668) CFPB is soliciting comment for a proposed generic information collection for development and/or testing of model forms, tools, and similar related materials. Written comments due on or before January 3, 2012.

CFPB Early Notice of Enforcement Actions CFPB Bulletin 2011-04
 November 7, 2011 CFPB announced it may provide lenders with notice of the nature of the subject's potential violations before proceeding with enforcement actions. Effective November 7, 2011

Notice of Proposed Privacy Act System of Records November 4, 2011
 (76 FR 68395) CFPB is soliciting comments on its new system of records regarding its employees' Transit Subsidy Program. Written comments due on or before December 5, 2011.

Request for Information Regarding Private Education Loans and Private Education Lenders
 November 17, 2011
 (76 FR 71329)
 CFPB is requesting information on private education loans and related consumer financial products and services to help prepare a report on private education loans and private education lenders required under section 1077 of the Dodd-Frank Act. Written comments due on or before January 17, 2012

Notice of Proposed Privacy Act System of Records
 November 17, 2011
 (76 FR 71327)
 CFPB is soliciting comments on its new system of records regarding its employees' benefits, retirement, human resources and payroll programs.
 Written comments due on or before December 19, 2011

Proposed Collection;
 Comment Request
 November 21, 2011
 (76 FR 71932)
 CFPB is soliciting comment on the collection of information from state officials regarding the filing of state actions to enforce the Dodd-Frank Act and regulations prescribed thereunder. Written comments due on or before January 20, 2010

Notice; Request for Information November __, 2011
 (76 FR ____)
 CFPB is requesting specific suggestions for streamlining regulations inherited from other agencies.
 Written comments must be submitted on or before 90 days after publication in the Federal Register

Contacts and Caveats

For more information about Dykema's Financial Services Regulatory and Compliance Team, please contact group leader, **Don Lampe** at 704-335-2736, or any of the listed attorneys.

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As part of our service to you, we regularly compile short reports on new and interesting developments regarding the Consumer Financial Protection Bureau. Please recognize that these reports do not constitute legal advice and that we do not attempt to cover all such developments. Readers should seek specific legal advice before acting with regard to the subjects mentioned here. Rules of certain state supreme courts may consider this advertising and require us to advise you of such designation. Your comments on this Alert, or any Dykema publication, are always welcome. ©2011 Dykema Gossett PLLC.

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Practice Areas

Financial Services Litigation – Consumer

Litigation

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