BURR • FORMAN

DODD-FRANK NEWS

May 2014

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 ----

Preemption

Ascher v. Grand Bank for Savings, FSB, No. 13 C 7712, 2014 WL 1018628 (N.D. Ill. Mar. 14, 2014).

Plaintiffs filed suit against Grand Bank for Savings, FSB ("Grand Bank") alleging violations of the Home Ownership Equity Protection Act ("HOEPA") and state law. Grand Bank removed the case to federal court, and plaintiffs sought to amend their complaint to dismiss the HOEPA claim and remand the case back to state court.

The court easily determined that plaintiffs should be granted leave to amend their complaint, as it was plaintiffs' first attempt to amend and there had not been any undue delay. The court then addressed whether there was another basis for it to retain jurisdiction over plaintiffs' remaining claims. In support of its opposition to plaintiffs' motion to remand, Grand Bank argued that HOEPA and the Home Owners' Loan Act ("HOLA") preempted plaintiffs' state law claims and provided a basis for jurisdiction.

Addressing Grand Bank's preemption argument, the court first noted that field preemption applies to state law "if federal law so thoroughly occupies a legislative field 'as to make reasonable the inference that Congress left no room for the States to supplement it.'" 2014 WL 1018628, at * 2 (citation omitted). The court also found that when preemption is raised as a defense, it does not appear on the face of the complaint and cannot authorize removal. However, the court noted that field preemption permits characterization of state law claims to federal claims so that the court has federal question jurisdiction over those claims.

The court then determined whether field preemption applied to plaintiffs' state law claims. At the outset, the court noted that the Dodd-Frank Act "reduce[d] the federal government's preemptive authority under HOLA, HOEPA, and other federal lending and banking laws." *Id.* at * 3 (citation omitted). The court further said that the Dodd-Frank Act provisions do not apply retroactively, and HOLA preemption applies to mortgages originated before July 21, 2010 or July 21 2011. Thus, the court applied the preemption analysis that was in effect before Dodd-Frank's enactment. The court looked to 12 C.F.R. § 560.2(b), which lists areas of law that are preempted. The court found that the state laws at issue dealt with amortization of loans, prepayment penalties, disclosures, usury, and interest rate ceilings, all of which are expressly preempted in § 560.2(b). Accordingly, the court retained jurisdiction over plaintiffs' state law claims and denied their motion to remand.

CFPB Involvement in Litigation

Buchanan v. Northland Group, Inc., No. 13-2523, Doc. 006111982077 (6th Cir. Mar. 5, 2014).

The CFPB and FTC recently filed an amici curiae brief in a case pending in the Court of Appeals for the Sixth Circuit. The CFPB and FTC's brief expands the interpretation § 1692(e) of the Fair Debt Collection Practices Act ("FDCPA").

In the underlying lawsuit, Plaintiff Esther Buchanan received a dunning letter from a debt collector related to a debt upon which the statute of limitations expired. Buchanan filed a class action alleging that the letter violated 15 U.S.C. 1692(e), which prohibits the false, deceptive, or misleading representation in connection with the collection of a debt. The district court dismissed Buchanan's complaint for failure to state a claim upon which relief could be granted.

In their brief, the CFPB and FTC agreed that threatening to sue or suing on a time-barred debt violates the FDCPA. However, the CFPB and FTC took the position that a debt collector violates the FDCPA when any of its communications mislead the least sophisticated consumer. Thus, a debt collector can violate the FDCPA even if the communication does not threaten litigation. Specifically, the CFPB and FTC asserted that the letter at issue, which contained an offer to settle and failed to disclose that the debt was time-barred, was misleading and, thus, violated the FDCPA because it led plaintiff to believe that the debt could be enforced in court. According to the CFPB, "actual or threated litigation is not a necessary predicate for an FDCPA violation" when a debt collector seeks to collect a debt after statute of limitations has expired.

CFTC Regulation of Retail Commodity Transactions

CFTC v. Hunter Wise Commodities, --- F.3d ---, 2014 WL 1424435 (11th Cir. April 15, 2014).

In a matter of first impression, the Eleventh Circuit held that amendments to the Dodd-Frank Act gave the Commodity Futures Trading Commission ("CFTC") broader authority to regulate off-exchange and fraudulent retail commodity transactions. The amendment in question authorized the CFTC to regulate retail commodity transactions offered "on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis." 7 U.S.C. § 2(c)(2)(D).

The CFTC brought the original action against a group of defendants for conducting off-exchange and fraudulent retail commodity transactions in violation of 7 U.S.C. §§ 6(a)-(b). The CFTC alleged that the defendants' brokerage firm, Hunter Wise, traded precious metals without actually storing or transferring any metals. The CFTC also claimed that Hunter Wise "managed its risk exposure . . . by trading derivatives in its own margin trading accounts with precious metals trading companies." After the district court entered a preliminary injunction against the defendants, two officers of the brokerage firm ("Martin and Jager") appealed, arguing that the CFTC lacked statutory authority to bring the enforcement action.

Martin and Jager first argued that a "leveraged" transaction under the amendment has the same meaning as a "leveraged contract" under 7 U.S.C. § 23–a contract that is for a term of ten years or longer. Because transactions made through Hunter Wise matured in only four years, Martin and Jager argued that the transactions in question were not "leveraged" and thus were not subject to the CFTC's enforcement authority. The court held that the transactions did fall under the CFTC's purview, reasoning that a plain language reading of the statute does not give "leveraged" such a limited definition. The court reasoned that "leveraging" refers "generally to the ability to control high-value amounts of a commodity or a security with a comparatively small value of capital, known as the margin." Using this definition of "leverage," the court affirmed the district court's finding that the transactions in question were leveraged and were thus subject to the CFTC's enforcement authority. The court reasoned that Hunter Wise itself characterized its transactions as "leveraged sales in precious commodities" and that dealers could initiate margin calls when customers' trading positions fell below a minimum margin requirement.

Martin and Jager next argued that their commodity transactions were not subject to the CFTC's authority because they fell under the statute's exceptions for "contracts of sale resulting in actual delivery or which create an enforceable obligation to deliver between parties with the ability to deliver." The court held that the transactions were not excluded by the actual delivery exception because the contracts of sale merely resulted in constructive possession of the precious metals. There was no physical delivery of the commodities purchased because Hunter Wise had nothing physical to deliver–it did not possess a physical inventory of metals, but instead traded on the margin trading accounts it had with its suppliers. The court also affirmed the district

court's finding that the contracts lacked an enforceable obligation to deliver and thus did not meet the second exception to 7 U.S.C. § 2(c)(2)(D). Because Hunter Wise did not own enough precious metals to cover its liabilities for the retail transactions at issue, the court reasoned that it did not have the ability to deliver the commodities.

Durbin Amendment

NACS v. Board of Governors of the Federal Reserve System, 746 F.3d 474 (D.C. Cir. 2014).

The D.C. Circuit recently upheld regulations passed by the Board of Governors of the Federal Reserve System ("the Board") pursuant to the Durbin Amendment of the Dodd-Frank Act. The amendment modified the Electronic Funds Transfer Act ("EFTA") and instructed the Board to create regulations addressing excessive debit card transaction fees by setting a cap on the per-transaction fees that banks charge and by increasing competition among payment card networks. NACS, formerly known as the National Association of Convenience Stores, argued that the regulations promulgated by the Board violated the plain language of the Dodd-Frank reforms by failing to set adequate caps on transaction fees and by failing to sufficiently increase network competition. The district court granted summary judgment to NACS, and the Board appealed.

The court first upheld the Board's regulations concerning interchange fees, reasoning that the interchange fee rule "generally rests on a reasonable interpretation of the statute." Further, the court noted that vacating the current regulation would be disruptive as it would result in an unregulated market, allowing banks to charge merchants even higher interchange fees.

The court next held that the Board's anti-exclusivity rule aimed at increasing competition among payment card networks was a reasonable interpretation of the Durbin Amendment's mandate. The court rejected NACS's argument that many merchant are only able to process transactions via signature debit networks, reasoning that merchants' options are thus limited because they first make the choice to refuse to accept PIN debit transactions. The court reasoned that NACS's argument failed because it "selectively view[ed] transactions only from [its] own perspective and only after the point at which the merchant itself or the consumer may have elected to restrict certain routing options." Instead, the Durbin Amendment to the EFTA merely instructs the Board to loosen "issuer and payment card network restrictions imposed prior to ignition of any particular debit card transaction." Consequently, the court reversed the district court's grant of summary judgment and remanded the case for further proceedings.

Appraiser Disclosure Requirements Under Dodd-Frank

Southwest Non-Profit Housing Corp. v. Nowak, --- P.3d ---, 2014 WL 1357338 (Ariz. Ct. App. Mar. 31, 2014).

The Arizona court of appeals recently held that § 1639e(c) of the Dodd-Frank Act does not require appraisers to disclose appraisals to third-parties or impose additional duties owed to third parties.

Southwest Non-Profit Housing Corp. filed separate lawsuits against three appraisers alleging negligence in connection with appraisals that were below the contract price. The lower court granted the appraiser defendants' respective motion to dismiss and motions for summary judgment on the grounds that Southwest was not the intended user of the appraisals and did not rely on them. Southwest appealed, and the court addressed the consolidated cases.

The court first addressed the appraisal defendant's motion to dismiss. As a threshold matter, the court said that to state a claim for relief for negligent misrepresentation, Southwest had to show that it was owed a duty of care. The court relied on Restatement § 552 which provides that an appraiser is liable for losses if he or she "intends to supply the information or knows that the recipient intends to supply it" and if he or she intends to influence the recipient. 2014 WL 1357338, at * 3 (citation omitted). However, appraisers are liable to foreseeable recipients only. The court noted that Southwest entered into the sales contract, which made lending contingent upon an appraisal that was greater than or equal to the sales price, before the appraisal was furnished. Accordingly, the court held that the appraiser did not intend to influence Southwest, because it had already committed to the sales price.

Turning to the appraiser defendants' motion for summary judgment, the court rejected Southwest's arguments on appeal. First, Southwest asserted that because a provision of the appraiser's certification omitted the word "seller" in the list of those intended to receive the appraisal, a genuine issue of material fact existed regarding whether Southwest waived its tort liability against the appraisers. Dismissing this argument, the court found that the appraisal agreement was with only the lender, the appraisers' client. Because Southwest was the seller and was not a party to the agreement, it was not an intended user of the appraisal and, therefore, could not waive any rights arising from the agreement. Second, Southwest argued that § 1639e of the Dodd-Frank Act prohibits "'a person with an interest in the underlying transaction' from attempting to influence the appraised value assigned." *Id.* at *6 (citing 15 U.S.C. § 1639e). However, the court noted that this provision exempts "'any other person with an interest in a real estate transaction' who requests that an appraiser (1) consider appropriate property information; (2) provide further detail for the appraiser's value conclusion; and (3) correct errors in the appraisal report." *Id.* (citing 15 U.S.C. § 1639e(c)). Based on the language of the Dodd-Frank Act, Southwest argued that an appraiser knows that a seller will receive the appraisal in connection with a sale. The court, however, rejected this argument and held that the Dodd-Frank Act did not impose obligations on an appraiser's duties to third parties. Finally, the court found that the record lacked evidence that Southwest relied on the appraisal. Accordingly, the court affirmed the lower court's decision.

Whistleblower Protection

Safarian v. American DG Energy, Inc., No. 10-6082, 2014 WL 1744989 (D.N.J. Apr. 29, 2014)

Plaintiff Mikael Safarian filed suit against the defendant utility business alleging violations of the Fair Labor Standards Act ("FLSA"), the Conscientious Employee Protection Act ("CEPA"), the Dodd-Frank Act, and state law for violations related to his termination. Both parties filed cross motions for summary judgment.

At the outset, the court determined that Safarian was an independent contractor rather than an employee and, thus, the court found that his FLSA and CEPA claims failed as a matter of law. His independent contractor status, however, did not prevent him from bringing a Dodd-Frank claim. Turning to Safarian's Dodd-Frank Act claim, the court addressed the defendant's argument that a whistleblower must (1) disclose the violation to the SEC and (2) bring claims related to a disclosure required by Section 78u-6(h)(A)(iii). The court noted the split on the issue of whether an individual must report to the SEC to bring a whistleblower claim. *See Asadi v. GE Energy,* 720 F.3d 620(5th Cir. 2013) (holding individual must report to the SEC); *Banko v. Apple Inc.,* No. CV 13-02977 RS, 2013 WL 7394596 (N.D. Cal. Sept. 27, 2013) (same); *Khazin v. TD Ameritrade Holding Corp.*, No. 13-4149 (SDW) (MCA), 2014 WL 940703 (D.N.J. Mar. 11, 2014) (holding that a plaintiff need not report to the SEC if disclosures fell under the four categories listed in 78u-6(h)(1)(A)(iii); *Murray v. UBS Sec.*, LLC, No. 12 Civ. 5914 (JMF), 2013 WL 2190084 (S.D.N.Y. May 21, 2013) (same). However, the court declined to decide whether Safarian was required to report to the SEC because his disclosure did not fall under any of the categories listed in 78u-6(h)(A)(iii).

Turning to the second requirement, the court found that Sarafian's disclosures related to overbilling, improper construction, and the failure to obtain proper permits. The court found that protected disclosures contemplate protecting investors "by improving the accuracy and reliability of corporate disclosures made pursuant to the securities law. . . ." 2014 WL 1744989, at *4 (citing Sarbanes-Oxley Act of 2002, PL 107-204, July 30, 2002). Further, Sarbanes-Oxley targeted the conduct of accountants and lawyers, not engineers, such as Sarafian. The court found that overbilling may eventually result in incorrect accounting records or tax submissions, such disclosure did not fall under one of the protected categories, and the court declined to expand the interpretation of Sarbanes-Oxley. Accordingly, the court granted summary judgment in favor of defendants.

Arbitration of Whistleblower Claims

Santoro v. Accenture Federal Services, LLC, --- F.3d ---, 2014 WL 1759072 (4th Cir. 2014).

The Fourth Circuit Court of Appeals recently held that the Dodd-Frank Act did not prohibit an employee's non-whistleblower claims when such claims were not carved

out of an arbitration agreement. The court also held that the Dodd-Frank Act does not supersede the Federal Arbitration Act's ("FAA") mandate that arbitration agreements are enforceable.

Santoro filed suit against his former employer alleging claims for age discrimination, and the defendant moved to compel arbitration. Santoro opposed the defendant's motion to compel arbitration on the grounds the Dodd-Frank Act voided the arbitration clause. The lower court, however, held the Dodd-Frank Act applied only to whistleblower claims. Because Santoro did not bring whistleblower claims, the Dodd-Frank Act did not void the arbitration provision. Santoro appealed.

On appeal, Santoro argued the Dodd-Frank Act voided all arbitration agreements with publicly-traded companies that do not carve-out whistleblower claims. At the outset, the court noted the apparent conflict between the Dodd-Frank Act and the FAA, and stated that the two statutes must be interpreted based on their plain language. The court acknowledged the FAA's mandate that arbitration agreement are enforceable, but also noted that this mandate may be "overridden by a contrary congressional command." According to Santoro, the Dodd-Frank Act was a contrary congressional command that voided the arbitration clause.

Turning to the language of the Dodd-Frank Act, the court noted that the Dodd-Frank amendment to the Commodities Exchange Act, 7 U.S.C. § 26 sought to strengthen whistleblower protection. Consistent with this objective, § 26(h)(1)(B)(i) creates a cause of action for whistleblowers and § 26n invalidates predispute arbitration agreements if the agreement requires the arbitration of claims arising under the provision. The court agreed with the Supreme Court in *CompuCredit Corp. v. Greenwood,* --- U.S. ---, 132 S. Ct. 665, 672 (2012) and said the Dodd-Frank Act invalidates agreements to arbitrate whistleblower claims. However, the court declined to extend this interpretation and find the Dodd-Frank Act prohibits non-whistleblower claims on the grounds that agreement fails to carve-out Dodd-Frank whistleblower claims. The court determined that Santoro failed to show that, based on its plain language, the Dodd-Frank Act was a contrary congressional command that overrode the FAA. Accordingly, the court affirmed the lower court's order compelling Santoro's claims to arbitration.

---- IN THE NEWS ----

Financial Services Committee Chairman Calls for Open CFPB Advisory Meetings

On March 17, 2014, the Chair of the Financial Services Committee requested that the four advisory groups created by the CFPB open their meetings to the public and to the press. Chairman Jeb Hensarling noted the CFPB claim that "transparency is at the core" of the Bureau's agenda.

To learn more, visit: http://financialservices.house.gov/news/email/show.aspx?ID=U52E63UNHWW7TTJYGQWAWDNKPY

CFPB Develops New Prepaid Card Disclosures

The CFPB recently announced that it is developing new prepaid card disclosures. Because each prepaid card company's packaging discloses different fee information, the new proposals would standardize disclosures and thereby facilitate side-by-side comparisons of prepaid card fees. The CFPB is currently testing model disclosures and expects to propose a new rule on these disclosures later in the spring.

To learn more, visit: http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/

CFTC Requests Comment on Swap Data Reporting Requirements

In order to improve data collection and quality standards, the CFTC announced a request for public comment on its swap data recordkeeping and reporting rules. The request for comment seeks input from reporting counterparties and entities on topics related to reporting rules and challenges. The comment period will close on May 27, 2014.

To learn more, visit: http://www.cftc.gov/PressRoom/PressReleases/pr6882-14

Stress Test Results Indicate Success of Large Banking Institutions

On March 20, 2014, the Federal Reserve announced the results of the annual Dodd-Frank bank stress tests, noting that banks seem to be in a much stronger position to meet their financial commitments in the event of another downturn than they were at the time of the financial crisis. According to Federal Reserve Governor Daniel K. Tarullo, the "annual stress test is one of the Federal Reserve's most important tools to gauge the resiliency of the financial sector and to help ensure that the largest firms have strong capital positions."

For more information visit: http://www.federalreserve.gov/newsevents/press/bcreg/20140320a.htm

To read the stress test results, visit: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140320a1.pdf

CFPB Releases Third Annual FDCPA Report

On March 21, 2014, the CFPB released its annual report on the Fair Debt Collection Practices Act (FDCPA). The report provides background information on the debt collection market, summarizes the CFPB's consumer response function, provides the number of consumer complaints regarding debt collection received by the CFPB in 2013, describes the CFPB's debt collection supervision program, outlines developments in law enforcement and advocacy programs, discusses education and outreach initiatives, and discusses the CFPB's ANPR.

To read the report, visit: http://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-practices-act.pdf

OCC Releases Report on Volcker Rule

According to a March 21, 2014 report, the Office of the Comptroller of the Currency (OCC) estimates that the costs associated with Section 619 of the Dodd-Frank Act, also known as the Volcker Rule, will range from $412 million to $4.3 billion. This rule regarding proprietary trading will require an estimated forty-six banks to report metrics, to establish an enhanced compliance program, or to create a core compliance program.

To read the OCC's report, visit: http://www.occ.gov/topics/laws-regulations/legislation-of-interest/volcker-analysis.pdf

Proposed Rules for State Appraisal Regulations Issued Under the Dodd-Frank Act

Federal financial agencies suggested minimum requirements for state supervision of appraisal management companies (AMCs) in a proposed rule on March 24, 2014. The rule would require AMCs operating in states that do regulate AMCs to register, to use only state-certified appraisers for federal transactions, and to ensure independent appraisals. The proposed rule also designates specific powers to state agencies.

To learn more, visit: http://www.federalreserve.gov/newsevents/press/bcreg/20140324a.htm

CFPB Releases Report on Payday Loans

On March 25, 2014, the CFPB released a report presenting the results of an analysis of consumers' use of payday loans, focusing on loan sequences.

To read the report, visit: http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf

CFTC Commissioner Discusses Dodd-Frank Impact on Commodity Futures and Swaps

CFTC Commissioner Scott O'Malia delivered the keynote address at the 2014 Bank of Canada International Economic Analysis Workshop on Financialization of Commodity Markets on March 21st. The Commissioner discussed the impact of the rapid implementation of the Dodd-Frank Act on swap futures.

For more information, visit: http://www.cftc.gov/PressRoom/SpeechesTestimony/opaomalia-33

OIG Releases CFPB Evaluation Report

The Office of Inspector General (OIG) released the results of its evaluation of the effectiveness of the CFPB's supervision program on March 27, 2014. The Report specifically mentions three areas of improvement: (1)

reporting timelines and increased issuance of examination reports; (2) increasing consistency in the use of standard compliance rating definitions in examination reports; and (3) updating the Bureau's policies and procedures to reflect current practices. Additionally, the Report contains twelve recommendations to improve the CFPB's supervision program.

To read the full report, visit: http://www.federalreserve.gov/oig/files/CFPB-Supervisory-Activities-Mar2014.pdf

OCC Releases Summary of TruPS Interim Final Rule

On April 1, 2014, the OCC's interim final rule regarding TruPS went into effect. The rule permits banking institutions to retain investments in TruPS CDOs that invested their offering proceeds in certain securities issued by community banking entities grandfathered under the Dodd-Frank Act.

To read the rule, visit: http://www.occ.gov/news-issuances/federal-register/79fr5223.pdf

OCC Adds Asset-Based Lending Booklet

The OCC recently released a new booklet entitled Asset-Based Lending. This new booklet addresses the fundamentals and risks of asset-based lending (ABL), including risk management guidance and risk-rating examples.

To download the booklet, visit: http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/pub-ch-asset-based-lending.pdf

OCC Releases Quarterly Report on Bank Trading and Derivatives Activity

On March 28, 2014, the OCC released its quarterly report on trading revenue and bank derivatives activities. Commercial banks reported total trading revenue of $2.9 billion in the fourth quarter of 2013, a 34% drop from the previous quarter and a 32% drop from the same trading revenue in the fourth quarter of 2012. Full-year trading revenue, however, was 24% higher in 2013 than in 2012.

To read the full report, visit: http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq413.pdf

CFPB Issues Small Entity Compliance Guide for TILA-RESPA Integrated Disclosure Rule

On March 31, 2014, the CFPB issued a compliance guide to help small entities understand their new responsibilities resulting from the merger of the mandated disclosures in the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The TILA-RESPA Integrated Disclosure Rule will merge these mandatory disclosures into two forms, the Loan Estimate and the Closing Disclosure, and will go into effect on August 1, 2015.

To read the full compliance guide, visit: http://files.consumerfinance.gov/f/201403_cfpb_tila-respa-integrated-disclosure-rule_compliance-guide.pdf

Volcker Rule Took Effect on April 1, 2014

The Volcker Rule, which prohibits banks from engaging in proprietary trading activities and from investing in or sponsoring hedge funds and private equity funds, took effect on April 1, 2014 and extends the conformance deadline to July 21, 2015.

For more information on the Volcker Rule, including the ABA's position on the Rule, visit: http://www.aba.com/Issues/Pages/Volcker-Rule.aspx

OCC Publishes New Booklet on Garnishment of Accounts Containing Federal Benefits Payments

On April 1, 2014, the OCC published a new booklet to the Comptroller's Handbook on the garnishment of accounts containing federal benefits payments. The booklet provides background information and examination procedures for regulation of this type of account and explains what financial institutions are required to do upon receipt of a garnishment order against an account holder who receives federal benefits payments via direct deposit. Social Security benefits, Veteran's benefits, and Federal Employee Retirement System benefits, among others, are subject to the rules outlined in this booklet.

To read the full report, visit: http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/pub-ch-garnishment-of-accounts.pdf

Dodd-Frank Compliance Impacts Small Banks

The costs of adhering to new Dodd-Frank regulations are impacting small banks, although the regulations are primarily aimed at larger banks. According to the Wall Street Journal's Michael Rapoport, the costs of compliance do not decrease as bank size decreases, leading smaller banks to sell themselves to larger banks. The article specifically references the CFPB's new qualified mortgage (QM) rules as complicated and expensive for small banks.

To read more, visit: http://online.wsj.com/news/articles/SB20001424052702304157204579473912995008016

CFPB Expands Non-Bank Supervision

On April 2, 2014, CFPB Deputy Director Steven Antonakes addressed the Consumer Bankers Association and discussed the Bureau's non-bank supervisory role. The expansion of the CFPB's supervision over non-bank entities includes monitoring student loan servicing, improving debt collection practices, and regulating indirect auto lending.

To read the complete version of Deputy Director Antonakes's remarks, visit: http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-deputy-director-steven-antonakes-at-the-consumer-bankers-association/

Federal Reserve Board Delays CLO Prohibition

On April 7, 2014, the Federal Reserve Board announced that it will give banking institutions an additional two years to conform their collateralized loan obligation (CLO) investments to the Dodd-Frank Act's Volcker rule.

To read more, visit: http://www.federalreserve.gov/newsevents/press/bcreg/20140407a.htm

OIG Releases Work Plan for CFPB

On April 11, 2014, the Office of Inspector General released an updated Work Plan for the CFPB as well as for the Board of Governors of the Federal Reserve System. The Work Plan includes completed CFPB projects and notes that the Bureau is in the process of evaluating its compliance with Section 1100G of the Dodd-Frank Act, which mandates that the CFPB evaluate and describe the impact of all proposed rules on the cost of credit for small entities. Additionally, the CFPB is currently auditing its public consumer complaint database.

To read the full Work Plan, which is updated every two weeks, visit: http://www.federalreserve.gov/oig/files/OIG_Work_Plan.pdf

New FDIC Rule Restricts Sales of Assets

Section 210(r) of the Dodd-Frank Act, which would prevent individuals or institutions that may have contributed or did contribute to the failure of a "covered financial company" to buy a covered financial company's assets from the FDIC, will become effective on July 1, 2014.

To read the final rule, visit: https://www.federalregister.gov/articles/2014/04/14/2014-08258/restrictions-on-sales-of-assets-of-a-covered-financial-company-by-the-federal-deposit-insurance

CFPB Proposes Extension to Remittance Disclosure Deadline

On April 16, 2014, the CFPB proposed a five-year extension to a temporary exception in its remittance rule. The exception allows covered remittance transfer providers to estimate fees and exchange rates charged by receiving institutions when the exact amounts cannot be determined. The extension would extend the temporary exception to June 21, 2020. The comment period on this proposed rule has been extended to June 6, 2014.

To read the full proposal, visit: http://files.consumerfinance.gov/f/201404_cfpb_remittances-proposal.pdf

CFPB Releases Guide for TILA-RESPA Integrated Disclosure Forms

In order to increase compliance, the CFPB has released a guide to the new TILA-RESPA Integrated Disclosure rule. The rule takes effect on August 1, 2015 and merges TILA and RESPA real estate disclosures.

For a copy of the rule, a plain-language guide to the rule, detailed instructions on completing the disclosures, and sample integrated loan disclosure forms, visit: http://www.consumerfinance.gov/regulatory-implementation/tila-respa/

CFPB Introduces eClosing Initiative

On April 23, 2014, the CFPB announced a new electronic closing pilot program aimed at decreasing the complexity of the closing process for consumers. Relying upon feedback and commentary from consumers and industry stakeholders, the CFPB developed a long-term vision for the closing process as an "empowered, knowledgeable, homebuyer experiencing a more efficient, consumer-friendly process." The report addresses the complexity of the closing package as well as the high level of variability in the closing process.

To read the full initiative, visit: http://files.consumerfinance.gov/f/201404_cfpb_report_mortgage-closings-today.pdf

CFPB Releases Fair Lending Report

The CFPB's Fair Lending Report provides an update on the Bureau's effort to adhere to its fair lending requirement and identifies several key developments made in the past year: increased efficiency in fair lending activity, guidance on supervisory reviews, outreach to industry and consumers, and interagency collaboration. Additionally, the report identifies supervision and enforcement priorities, including mortgage lending and auto finance.

To view the full report, visit: http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf

New Templates for CFPB Examination Reports and Supervisory Letters

The CFPB plans to change the format of its examination reports and supervisory letters by creating a single section in the report including all of the items the Bureau expects the entity to address when a review identifies legal violations or weaknesses in compliance management.

To read more about the CFPB's Supervisory Highlights, visit: http://files.consumerfinance.gov/f/201401_cfpb_supervisory-highlights-winter-2013.pdf

CFPB Implements Regulation Z on eRegulations Platform

On May 12, 2014, the CFPB implemented the Truth in Lending Act by posting Regulation Z on its eRegulations platform. All documents related to TILA are posted on this platform, and users can search past and present versions of the regulation, view the text and official interpretations of the regulation, and find guidance and other materials published in the Federal Register.

To visit the eRegulation website, visit: http://www.consumerfinance.gov/eregulations/

CFPB Proposes Amendments to Mortgage Rules

The CFPB recently published a proposed rule proposing three amendments to the January 2014 final mortgage rules. The proposed rule, which addresses concerns about origination and servicing issues, would impact QM points and fees, would change the definition of "small servicer," and would increase exemptions from ATR provisions for nonprofit lenders.

To read more, visit: http://www.cfpbmonitor.com/2014/05/01/cfpb-issues-proposed-amendments-to-mortgage-rules/

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