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CFPB Issues Its Spring 2014 Supervisory Highlights Report with a Focus on Nonbank Examination Findings

On May 22, 2014, the Consumer Financial Protection Bureau (CFPB or the Bureau) released its [Spring 2014 Supervisory Highlights](#) report, which addresses the agency's supervisory activities during the last six months (spanning November 2013-February 2014). The report focuses on the Bureau's nonbank supervisory efforts and in particular on its examination findings in three industries: consumer reporting agencies; debt collection; and short-term, small dollar lending (or payday lending).

The report also focuses on two more general regulatory concerns: the maintenance of adequate compliance management systems (CMS) and the importance of vendor management. Specifically, the report notes that adequate CMS have "four interdependent control components," which include management and oversight by the board of directors; a compliance program; a consumer complaint management program; and an independent compliance audit. Throughout the report, the Bureau also reiterates its expectation that all supervised entities will manage carefully their vendor relationships; the Bureau first addressed this issue in its [Bulletin dated April 13, 2012](#).

Consumer Reporting Agencies (CRAs)

The Bureau started supervising consumer reporting agencies (CRAs) in September 2012 when its larger participant rulemaking for CRAs took effect. Subject to certain parameters, an entity is a larger participant of the credit reporting markets and, thus, subject to CFPB supervisory authority, if its "annual receipts from consumer reporting are more than \$7 million." The report makes the following observations about CRAs that the Bureau recently examined:

- "[S]ome CRAs had either no formal CMS or inadequate CMS."
- Some CRAs lacked documented policies and procedures, including policies that address "dispute-handling obligations," which are mandated by Fair Credit Reporting Act.
- "Several CRAs lacked policies and procedures to verify that service providers understood their responsibilities under Federal consumer financial law, that the employees of service providers were appropriately trained, and that service providers and their employees in fact complied with Federal consumer financial law."

Debt Collection

The CFPB began supervising debt collectors in January 2013 when its rule defining larger participants in the debt collection markets became effective. Subject to certain parameters, an entity is "a larger participant of the consumer debt collection market," and, thus, subject to the Bureau's supervisory authority, if that entity's annual receipts resulting from consumer debt collection are more than \$10 million. The report makes the following observations about debt collectors that the Bureau recently examined and reminds debt collectors and creditors about certain requirements of the consumer financial laws:

- Several debt collectors had "significant weaknesses in the[ir] CMS."
- Some debt collection companies have violated Regulation E "by failing to secure a written authorization, either signed or similarly authenticated by the consumer, before initiating recurring electronic fund transfers from consumers' accounts."
- "[T]he CFPB expects creditors and other debt sellers to employ adequate policies and procedures to ensure the accuracy of the data associated with any debts that they sell."
- The Bureau also expects furnishers of information to CRAs to have a method for investigating disputes regarding the accuracy of consumer information that is reported to CRAs.
- There are two critical aspects of compliance with the fair debt collections practice: 1) under the Fair Debt Collections Practices Act (FDCPA), collections phone calls can only be placed during "appropriate calling hours set forth in the FDCPA," and 2) that debt collection companies cannot make "false or misleading representations in connection with the collections of debt."

Short-Term, Small Dollar Lending (Payday Lending)

The Bureau started its payday lending supervision program in January 2012. Unlike entities in the credit reporting and debt collection markets, which are only subject to the Bureau's supervisory authority if they are larger participants in the marketplace as defined by rulemaking, the Dodd-Frank Act specifies that all payday lenders, regardless of size, are within the CFPB's supervisory jurisdiction. The report makes the following observations about payday lenders that the Bureau recently examined:

- "[A] number of payday lenders have not implemented effective compliance management systems."
- The Bureau found that many contracts between payday lenders and their vendors "contained no specific compliance-related expectations, and some did not include any reference at all to compliance responsibilities."
- In several instances, "CFPB examiners also found inadequate compliance management systems for collection activity," including a failure of payday lenders to monitor collections calls, any "attempt to understand the root causes of complaints arising from collections practices," train their collectors, or oversee their third-party debt collectors.
- "Supervision has cited multiple lenders for unfair, deceptive, or abusive acts or practices or risks of these acts or practices" in the collections arena and notes that lenders also "contacted references and improperly disclosed personal debt information" to locate or contact borrowers for collections purposes.
- Also in the collections arena, multiple lenders had "false or misleading communications with borrowers," including making false threats to consumers that they would be subject to additional fees or non-existent legal actions or reported to CRAs.
- "One or more lenders" engaged in a deceptive practice when they threatened consumers with "ACH transactions that were contrary to the agreement" executed between the lender and the consumer.
- The Bureau generally observed that lenders need to mitigate fair lending risks by implementing a comprehensive CMS that adequately accounts for these risks.

The Bureau's report also emphasizes the importance of the Fair Credit Reporting Act and Regulation V requirements that furnishers of consumer information to CRAs have a method for conducting "a reasonable investigation" into those instances when a "consumer disputes the completeness or accuracy of information" provided to the CRA.

The report concludes with other general updates and observations: (1) noting that the Bureau's examination staff has grown to approximately 320 examiners; (2) reminding supervised entities to assess how social media affects their compliance with the consumer financial laws; and (3) stating that the Bureau anticipates larger participant rulemaking in the indirect nonbank auto lender markets.

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Allyson Baker, a partner in Venable's commercial litigation group, is a trial attorney and civil litigator with more than a decade of experience in the federal government and private practice. She focuses her practice on litigation involving consumer finance, financial fraud, and complex financial transactions and on law enforcement investigations involving financial institutions, especially those initiated by the Consumer Financial Protection Bureau (CFPB) and the Department of Justice (DOJ). She regularly handles investigations initiated by the CFPB.

For more information, please see our [CFPB Task Force](#).