

February 17, 2012

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BuckleySandler Launches InfoBytes Blog

We are pleased to announce the firm's first ever blog - an on-line version of this newsletter. In addition to regular "bytes," the blog will contain additional real-time firm content and commentary on news and developments affecting financial services providers and other financial system participants. Click here to visit the blog and sign up to receive RSS feeds. Of course, we will continue to publish our weekly InfoBytes newsletter. We hope that you will find this new resource helpful and welcome any feedback, comments, or suggestions you might have on how we can do a better job in sharing critical developments of interest.

www.infobytesblog.com

Federal Issues

CFPB Proposes Rule to Define "Larger Participants" in the Consumer Debt Collection and Consumer Reporting Markets. On February 16, [the CFPB released a proposed rule](#) to define "larger participants" in the markets for consumer debt collection and consumer reporting, thereby beginning the process by which the CFPB will determine which such entities are subject to its supervision. In short, the proposal uses annual receipts as the metric for determining larger participants. Under the Dodd-Frank Act, the CFPB has authority to supervise, regardless of size, nonbanks that provide to consumers (i) origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (ii) private education loans; and (iii) payday loans. The CFPB also has the power to supervise "larger participants" in any other market for consumer financial products or services, and the Act grants the CFPB authority to define "larger participants." In this first effort to define larger participants in specific markets, [the CFPB proposes](#) to supervise debt collectors with more than \$10 million in annual receipts from debt collection activities, which would cover approximately 175 debt collection firms that collectively account for 63 percent of annual receipts from the debt collection market. Consumer reporting agencies with more than \$7 million in annual receipts from consumer reporting activities

also would be covered, capturing approximately seven percent of consumer reporting agencies, or about 30 firms, which the CFPB estimates account for approximately 94 percent of the annual receipts from consumer reporting. Stakeholders and the public can submit comments on the proposal through April 17, 2012. The CFPB plans to issue larger participant proposed rules for other markets. Final rules for all markets must be published by July 21, 2012.

Legislators Move Forward on Bill to Address Non-Waiver of Privileged Documents Submitted to CFPB. On February 16, the House Financial Services Committee approved [H.R. 4014](#), which would mandate that providing information to the CFPB for any purpose as part of the supervisory process will not be construed as waiving, destroying, or otherwise affecting any privilege applicable to such information. The bill would accomplish this by amending the Federal Deposit Insurance Act to create the same non-waiver of privilege protections already afforded to information submitted by supervised entities to federal, state, and foreign banking regulators. A substantially identical bill, [S. 2099](#), recently was introduced in the Senate by Chairman Johnson and Ranking Member Shelby of the Senate Banking Committee.

CFPB Issues Draft Monthly Mortgage Statement, Outlines Future Mortgage Servicing Rules. On February 13, [the CFPB released](#) a draft model [monthly mortgage statement](#) designed to help implement Dodd-Frank Act amendments to the Truth in Lending Act that require such statements. [The CFPB acknowledges](#) that many financial institutions already provide monthly statements to borrowers. However, the Dodd-Frank Act requires specific information to be provided in regular statements, including (i) the principal amount, (ii) the current interest rate, (iii) the interest rate reset date, (iv) a description of late or prepayment fees, (v) housing counselor information, (vi) certain contact information, and (vii) other information prescribed by CFPB regulations. The CFPB has been testing the draft model statement with consumers and now is seeking broader public comment through its website. After this informal comment period ends, the CFPB will proceed to a formal rulemaking through which it will set the requirements for monthly statements and provide a model form for use in complying with the new rules. Institutions will have some flexibility to adjust the model. One day prior, CFPB Director Richard Cordray [published an op-ed](#) in which he outlined additional agency efforts regarding mortgage servicing, including future rules that would restrict the use of force-placed insurance and require additional disclosures relating to hybrid adjustable rate-mortgages.

FFETF Launches Federal-State Financial Fraud Consumer Protection Working. On February 10, the [Financial Fraud Enforcement Task Force \(FFETF\)](#) launched the Consumer Protection Working Group, which is charged with coordinating federal and state law enforcement and regulatory efforts to address consumer financial fraud, including fraud targeting unemployed persons, students, active-duty military personnel and veterans. The group is co-chaired by Assistant Attorneys General Tony West and Lanny Breuer, U.S. Attorney for the Central District of California André Birotte, Director of the FTC Bureau of Consumer Protection David Vladek, and CFPB Director of Enforcement Kent Markus. The [Department of Justice's press release](#) states that meeting participants set priorities for the group as it seeks to address fraud in (i) payday lending, (ii) high-pressure telemarketing and Internet scams, (iii) business opportunity schemes, (iv) for-profit colleges, and (v) third-party payment processors. The meeting also addressed plans to establish a best-practices tool kit, policy initiatives

(including legislative and regulatory proposals), and an information-sharing structure for Working Group participants.

FTC Submits Information Regarding 2011 Enforcement Actions and Planned 2012 Activities.

On February 10, [the FTC released](#) a letter it recently submitted to the Federal Reserve Board (FRB) that reviews the FTC's efforts in 2011 to enforce certain consumer financial services laws. The information provided in the letter will be used by the FRB in its 2011 Annual Report to Congress. In addition to reviewing past activity, [the letter](#) also outlines the FTC's plans to exercise new authorities provided by the Dodd-Frank Act, including new or enhanced authority with regard to payment cards, motor vehicles, and mortgage disclosures.

Banking Agencies Extend Deadline to Request Independent Foreclosure Review. On February 15, the [Federal Reserve Board and the Office of the Comptroller of the Currency announced](#) that the deadline for borrowers to seek review of their mortgage foreclosures under the [Independent Foreclosure Review program](#) has been extended to July 31, 2012. Under the program, an eligible borrower can have his or her foreclosure reviewed by independent consultants to determine whether the borrower was financially injured due to errors, misrepresentations, or other deficiencies in the foreclosure process. An injured borrower may be eligible for compensation or other remedies.

FinCEN Issues Advisory Regarding Foreign-Located Money Services Businesses. On February 15, the Financial Crimes Enforcement Network (FinCEN) [issued guidance](#) regarding anti-money laundering (AML) programs for financial institutions that provide services to foreign-located money services businesses (MSB) or engage in transactions with such businesses. The guidance follows FinCEN's [July 2011 regulations issued under the Bank Secrecy Act](#) that amended the definition of MSB to include businesses that conduct activities in the U.S. even if the business does not have any agents, agencies, branches, or offices physically located in the U.S. The advisory reviews the July regulations, reminds institutions about their obligations to file suspicious activity reports, and suggests that financial institutions update their AML programs using prior guidance on [doing business with MSBs](#) and on [informal value transfer systems](#).

Federal Reserve Releases Mortgage Servicing Monetary Sanction Orders. On February 13, the [Federal Reserve Board \(FRB\) released](#) the consent orders requiring five major mortgage servicing companies to pay a combined \$766.5 million in monetary sanctions. The consent orders were entered in connection with the \$25 billion [multi-party mortgage servicing settlement](#) announced on February 9, and that total settlement amount includes the FRB sanctions.

Senate Banking Chairman Requests Audits of Community Bank and Credit Union Exam Processes. On February 10, [Senator Tim Johnson, Chairman of the Senate Banking Committee, sent a letter](#) to the inspectors general of the Department of Treasury, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration seeking audits of each agency's exam process for community banks and credit unions. The letter cites community bank and credit union complaints of unclear standards and inconsistent application of policies and procedures. Sen. Johnson asked that the audit review (i) the overall exam process, (ii) examination timelines, and (iii) the ability of an institution to question or appeal exam results. The House Financial

Services Committee has been considering legislation, [H.R. 3461](#), that would mandate changes to the examination process. To date, no corresponding bill has been introduced in the Senate.

NMLS Holds Annual User Conference and Training. The Nationwide Mortgage Licensing System and Registry (NMLS) held its fourth annual [NMLS User Conference and Training](#) in Scottsdale, Arizona from February 6-9, 2012. The Conference brought together state and federal mortgage regulators, industry professionals, compliance companies, top law firms, and education providers to learn about the latest developments in mortgage supervision and to discuss pressing issues confronting the industry. [BuckleySandler prepared a special report](#) that provides a summary of key topics addressed at the meeting as well as announcements regarding important state licensing initiatives, including: (i) enhancements to the NMLS system to expand its use for licensing of non-mortgage financial services companies, (ii) issuance of SAFE Act examination guidelines, and (iii) the announcement of efforts to develop a uniform mortgage loan originator state test.

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HUD Clarifies Requirements Regarding Closing a Loan in the Name of an FHA-Approved Mortgagee Acting as a Sponsored Third Party Originator. On February 10, HUD issued [Mortgagee Letter 2012-2](#) to clarify the requirements for the origination, closing, and submission for FHA insurance endorsement of loans via the sponsored third-party origination process. The Letter states that all third-party originators must be sponsored by an FHA-approved Direct Endorsement lender, and that sponsoring lenders are responsible for ensuring that the originators they sponsor adhere to FHA requirements. Sponsored third-party originator compliance failures may result in administrative action against the sponsoring mortgagee. Moreover, compliance failures by an FHA-approved mortgagee acting as a third-party sponsored originator may result in administrative action against both the sponsoring mortgagee and the FHA-approved mortgagee.

HUD Announces Multifamily Low Income Housing Tax Credit Pilot Program. On February 3, HUD issued [Mortgagee Letter 2012-1](#) to launch a new pilot program to streamline FHA mortgage insurance applications for projects with equity from the Low Income Housing Tax Credit program. The program utilizes a separate application and processing system and during its first phase will provide permanent financing for low risk transactions. The Letter outlines eligibility requirements and the application process for the program and notes that the three-year rule waiver set to expire this month is extended for an additional year for tax credit projects that participate in the pilot. According to [HUD's press release](#), the pilot program is being launched in Chicago, Detroit, Boston, and Los Angeles.

Freddie Mac Releases Detailed Procedures for Tracking Expenses. On February 15, Freddie Mac published [Single Family Seller/Servicer Guide Bulletin 2012-5](#) to implement new requirements

related to the City of Chicago's Vacant Property Ordinance. [As previously reported](#), the FHFA sued Chicago over the ordinance, which requires lenders to register vacant properties and pay a \$500 registration fee per property. Whether the property has been foreclosed upon or not, the ordinance also imposes maintenance and other obligations on lenders and their agents (including servicers, Fannie Mae, and Freddie Mac), and includes fines for non-compliance. The Bulletin, which follows up on a [December 12 industry notice](#), establishes procedures for tracking and submitting expenses incurred pursuant to the ordinance and directs servicers to make required payments "under protest." The Bulletin also eliminates the requirement for servicers to obtain prior consent from Freddie Mac to decline an application for a Mortgage assumption and reinforces the requirement that the servicer, for itself and on behalf of Freddie Mac, must waive all rights to seek deficiencies for short payoffs and deed-in-lieu of foreclosure transactions on Freddie Mac mortgages that have closed in accordance with the Guide.

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Freddie Mac Updates Selling Guide Regarding Guaranteed Rural Housing and Newly Constructed Homes, Advises Sellers Regarding SEC Disclosures. On February 10, Freddie Mac issued [Bulletin 2012-4](#) with updates to the Single Family Seller/Servicer Guide regarding mortgages for newly constructed homes and mortgages under the Rural Housing Service's Guaranteed Rural Housing (GRH) loan program. Effective immediately, the terms "Newly Built Home Mortgage" and "Mortgages for Newly Constructed Homes" have been removed from the Guide as unnecessary in light of other changes. With respect to nonassumable GRH mortgages, effective as to settlements on or after June 1, 2012, such loans must be sold to Freddie Mac with recourse and with Freddie Mac's written approval in the Purchase Documents, but a minimum Indicator Score of 620 is no longer required.

On the same day, [Freddie Mac advised all sellers](#) that it had filed its initial report pursuant to a new SEC rule requiring public disclosure of information regarding asset-backed securities loan repurchase requests, including the identity of the originator. It will continue to disclose such information in quarterly reports to the SEC beginning in May 2012.

State Issues

Report Claims to Show Widespread Foreclosure Irregularities in San Francisco. On February 15, the San Francisco Assessor-Recorder, Phil Ting,

[released an audit report](#) conducted by Aequitas that found 84 percent of foreclosures sampled contained at least one violation of California's foreclosure laws. The Assessor-Recorder argues that

the results prove the need for state legislation to provide greater mortgage industry oversight, including legislation to address document recording transparency, dual tracking, and general foreclosure processes. The report sampled 382 foreclosures in San Francisco from 2009 through 2011, finding that 75 percent had a problem with the assignment of the deed of trust and 59 percent had assignments that were filed after the notice of default. The report also alleges findings of other unlawful foreclosure actions or "suspicious activity", but [Mr. Ting stressed](#) that he is not asserting that "every distressed borrower is a victim and that the mortgage industry is collectively guilty of defrauding homeowners."

New York's Chief Judge Outlines New Foreclosure Process, Announces Commercial Division Task Force. On February 14, the Chief Judge of the New York Court of Appeals, Jonathan Lippman, announced a new state foreclosure process that will involve special court parts designed to facilitate settlement conferences. Conferences will be calendared based on the identity of the lender, and each week of the month will be dedicated to a different lender's cases. Lenders will be required to assign a representative with full authority to enter into mortgage modifications for the entire week of cases, which should reduce delays in the foreclosure process. The new program, which was [announced in Chief Judge Lippman's annual State of the Judiciary address](#), is a partnership between legal service organizations and several major banks. It will start in New York City, but statewide application is planned. The Chief Judge also announced the formation of a new task force to consider possible reforms to the Commercial Division in order to "create an even more hospitable environment for business." The task force will consider (i) the process by which judges are selected for that division, (ii) options for better controlling dockets, and (iii) policies to manage the flow of cases and leverage non-judicial personnel and alternative dispute resolution.

Courts

Federal Government Obtains Settlement of False Claims Act Claims Against CitiMortgage. On February 15,

[HUD and the U.S. Attorney for the Southern District of New York announced](#) that CitiMortgage, Inc. had agreed to settle the government's claims that CitiMortgage violated the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act by failing to comply with certain requirements of the Fair Housing Administration's Direct Endorsement Lender Program. According to the press release, the defendant submitted certifications stating that certain loans were eligible for FHA mortgage insurance when in fact they were not, causing HUD to unnecessarily incur losses when those loans defaulted. As part of the settlement, which was approved by the United States District Court for the Southern District of New York, CitiMortgage agreed to pay \$158.3 million in damages to the United States.

FTC Obtains Orders Banning Alleged Mortgage Relief Scammers. On February 14, [the FTC announced](#) consent orders banning U.S. Mortgage Funding, Inc., and other related companies and individuals from conducting any mortgage relief business. [The FTC had charged](#) the defendants with violating the FTC Act and the FTC's Telemarketing Sales Rule by using direct mail, the Internet, and telemarketing to target borrowers and falsely promise successful mortgage modification programs in

exchange for an up-front fee. In addition to the bans, the orders, which were approved by the United States District Court for the Southern District of Florida, require the defendants to pay monetary judgments and forfeit certain property.

Illinois Federal Court Holds That False-CMI Claims Fail Where the CMI Is Not on the Same Webpage as the Copyrighted Text. On February 8, the U.S. District Court for the Northern District of Illinois dismissed a false-copyright management information (CMI) claim because the allegedly false CMI was not on the same webpage as the text at issue. [Personal Keepsakes, Inc. v. Personalizationmall.com, Inc., No. 1:11-cv-05177, 2012 WL 414803 \(N.D. Ill. Feb. 8, 2012\)](#). The plaintiff used a website to sell keepsake items that incorporated poetry it had written and copyrighted. Competing websites later copied that poetry and incorporated it into their own products. The plaintiff sued these competitors after discovering that their website terms and conditions suggested that they, not the plaintiff, had copyrighted the poems. The plaintiff claimed that by doing so, its competitors violated the Digital Millennium Copyright Act's prohibition on "conveying" false CMI. The court disagreed, however, and held that because plaintiff had not posted the CMI in close proximity to the poems, it was not "conveyed" with the poems and could not form the basis of a false-CMI claim as a matter of law.

Miscellany

BuckleySandler Advises EverBank on Acquisition of MetLife Bank's Warehouse Finance Business. On February 9,

[EverBank announced](#) it had reached an agreement to acquire MetLife Bank's Warehouse Finance business. The acquisition, which is expected to close in the first half of 2012, will leverage EverBank's residential lending expertise and increase EverBank's assets by approximately \$400 million. The acquisition has been approved by both parties' boards of directors and remains subject to regulatory approvals. EverBank is being advised by the law firms of Alston & Bird LLP and BuckleySandler LLP and the investment banking firm of Goldman, Sachs & Co.

Firm News

[Howard Eisenhardt](#) will be participating in an American Bar Association webinar entitled "[Privacy and Anti-Money Laundering: An Oxymoron?](#)" on February 28, 2012 from 1:00 to 2:30 PM EDT. The webinar will address how Privacy and AML can co-exist in a world of changing requirements and regulator expectations, with a focus on the interplay between the Privacy and AML laws and operationalization of those laws in the financial institution environment.

[James Shreve](#) will be participating in the panel "When the Cloud Goes Bust: Data Breaches in the Cloud" on February 28, 2012 at the [RSA Conference](#) in San Francisco, CA. The panel will examine unique issues that may arise when a data security breach involves a company's data stored in a cloud and provide guidance on addressing cloud security breach incidents.

[Margo Tank](#) will be participating in a panel at the NACHA - The Electronic Payments Association's Internet Council Meeting in Tampa, Florida on February 29, 2012. The panel will explore the beneficial and harmful effects of data collection and usage, particularly as enabled by a mobile wallet.

[Donna Wilson](#) will be speaking at the ABA Section of Litigation Insurance Coverage CLE Seminar held at the Loews Ventana Canyon Resort in Tucson, Arizona from March 1-3, 2012. Ms. Wilson will be representing the defense counsel perspective in a plenary session panel entitled "The Credit Crisis and D&O Insurance Coverage: Challenges facing Insureds, Insurers, and Regulators" on March 1 from 1:00 PM to 2:10 PM.

[Andrew Sandler](#) will be speaking at PLI's A Guide to Financial Institutions 2012 Program in New York on March 6, 2012 at 4:00 PM in a session entitled "The New Era of Consumer Protection & Enforcement: The CFPB & Other Initiatives."

[Margo Tank](#) and [James Shreve](#) will be speaking on the panel "Meeting Consumer Protection Requirements in Mobile Payments" at the International Association of Privacy Professionals Global Privacy Summit in Washington, DC on March 7, 2012. The panel will explore the unique and often complex compliance issues for those involved in mobile payments. James Shreve also will be leading the panel "Addressing the Latest Wave of Global Breach Notice Requirements" at the IAPP Summit on March 7. This panel of attorneys from several countries will explore new US and international security breach notification requirements and compliance issues in addressing cross-border incidents.

[David Baris](#) will be speaking on March 13, 2012 at the ICBA 2012 Annual Convention in Nashville, Tennessee in a session entitled "How Do Publicly Held Community Banks and Holding Companies Comply?"

[James Parkinson](#) will be chairing a panel at the International Bar Association's 10th Annual Anti-Corruption Conference in Paris, France on March 13 and 14, 2012. The panel is entitled: "The Privileged Profession: Risks faced by legal professionals advising in international transactions."

[Donna Wilson](#) will be participating in a CLE webinar entitled "[Consumer Finance Class Actions: FCRA and FACTA: Leveraging New Developments in Certification, Damages and Preemption](#)" on March 21, from 1:00pm-2:30pm EDT.

[David Baris](#) will be speaking in the ABA Business Law Section CLE panel, "[Dealing with Enforcement Actions and Insider Liability](#)," in Las Vegas on March 23, 2012.

[Jonice Gray Tucker](#) will be speaking at the [ABA Business Law Section's Spring Meeting](#) in Las Vegas on March 23, 2012 on a panel entitled "The CFPB Approaches One Year: Experiences and Exposures." The panel will include speakers from PNC Financial Services Group, PayPal, Treliant Risk Advisors, the Consumer Federation of America, and the Federal Trade Commission.

[Andrew Sandler](#) will moderate a panel at the American Conference Institute's 8th National Forum on Residential Mortgage Litigation and Regulatory Enforcement on March 29, 2012 in Washington, DC.

The panel is titled, "[Complying With and Responding to New and Emerging Federal and State Enforcement Actions](#)."

[David Baris](#) will be speaking at the 2012 Virginia Bank Directors Symposium on March 29, 2012 in Tysons Corner, Virginia. Mr. Baris will discuss how bank directors can minimize their risk of personal liability.

[David Baris](#) will be speaking at the NACD/AABD Bank Director Workshop on April 12, 2012 in Fort Lauderdale, Florida. The topic of the presentation is "Bank Director Liability and Practical Steps to Minimize It."

[Donna Wilson](#) will be moderating a panel entitled "BANKS UNDER SIEGE: The Civil, Criminal, Regulatory and Insurance Fallout from Mortgage Foreclosures and Bank Failures" at the [ABA Section of Litigation annual meeting in Washington DC, April 18-21, 2012](#).

[David Krakoff](#) will be speaking at ACI's [27th National Conference on the Foreign Corrupt Practices Act](#) in New York, NY on April 17, 2012. Mr. Krakoff's session will focus on defending executives in FCPA investigations.

[James Parkinson](#) will be speaking at a PLI program seminar entitled "Foreign Corrupt Practices Act 2012" in San Francisco, California on April 17, 2012 and in New York, New York on May 4, 2012.

[Andrew Sandler](#) will be speaking at the 2012 Marquis National Compliance Conference in Fort Worth, Texas on April 18, 2012. Mr. Sandler's session will cover the view from Washington, DC on CRA, HMDA, and Fair Lending.

[David Krakoff](#) will be speaking at the ALI-ABA Environmental Crimes Conference in Washington, DC on April 26, 2012. Mr. Krakoff's session will discuss the key issues at the outset of an environmental criminal action.

Mortgages

CFPB Issues Draft Monthly Mortgage Statement, Outlines Future Mortgage Servicing Rules.
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[the CFPB released](#) a draft model [monthly mortgage statement](#) designed to help implement Dodd-Frank Act amendments to the Truth in Lending Act that require such statements. [The CFPB acknowledges](#) that many financial institutions already provide monthly statements to borrowers. However, the Dodd-Frank Act requires specific information to be provided in regular statements, including (i) the principal amount, (ii) the current interest rate, (iii) the interest rate reset date, (iv) a description of late or prepayment fees, (v) housing counselor information, (vi) certain contact information, and (vii) other information prescribed by CFPB regulations. The CFPB has been testing the draft model statement with consumers and now is seeking broader public comment through its website. After this informal comment period ends, the CFPB will proceed to a formal rulemaking

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Report Claims to Show Widespread Foreclosure Irregularities in San Francisco. On February 15, the San Francisco Assessor-Recorder, Phil Ting, [released an audit report](#) conducted by Aequitas that found 84 percent of foreclosures sampled contained at least one violation of California's foreclosure laws. The Assessor-Recorder argues that the results prove the need for state legislation to provide greater mortgage industry oversight, including legislation to address document recording transparency, dual tracking, and general foreclosure processes. The report sampled 382 foreclosures in San Francisco from 2009 through 2011, finding that 75 percent had a problem with the assignment of the deed of trust and 59 percent had assignments that were filed after the notice of default. The report also alleges findings of other unlawful foreclosure actions or "suspicious activity", but [Mr. Ting stressed](#) that he is not asserting that "every distressed borrower is a victim and that the mortgage industry is collectively guilty of defrauding homeowners."

New York's Chief Judge Outlines New Foreclosure Process, Announces Commercial Division Task Force. On February 14, the Chief Judge of the New York Court of Appeals, Jonathan Lippman, announced a new state foreclosure process that will involve special court parts designed to facilitate settlement conferences. Conferences will be calendared based on the identity of the lender, and each week of the month will be dedicated to a different lender's cases. Lenders will be required to assign a representative with full authority to enter into mortgage modifications for the entire week of cases, which should reduce delays in the foreclosure process. The new program, which was [announced in Chief Judge Lippman's annual State of the Judiciary address](#), is a partnership between legal service organizations and several major banks. It will start in New York City, but statewide application is planned. The Chief Judge also announced the formation of a new task force to consider possible reforms to the Commercial Division in order to "create an even more hospitable environment for business." The task force will consider (i) the process by which judges are selected for that division, (ii) options for better controlling dockets, and (iii) policies to manage the flow of cases and leverage non-judicial personnel and alternative dispute resolution.

Federal Government Obtains Settlement of False Claims Act Claims Against CitiMortgage. On February 15, [HUD and the U.S. Attorney for the Southern District of New York announced](#) that CitiMortgage, Inc. had agreed to settle the government's claims that CitiMortgage violated the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act by failing to comply with certain requirements of the Fair Housing Administration's Direct Endorsement Lender Program. According to the press release, the defendant submitted certifications stating that certain loans were eligible for FHA mortgage insurance when in fact they were not, causing HUD to unnecessarily incur

losses when those loans defaulted. As part of the settlement, which was approved by the United States District Court for the Southern District of New York, CitiMortgage agreed to pay \$158.3 million in damages to the United States.

FTC Obtains Orders Banning Alleged Mortgage Relief Scammers. On February 14, [the FTC announced](#) consent orders banning U.S. Mortgage Funding, Inc., and other related companies and individuals from conducting any mortgage relief business. [The FTC had charged](#) the defendants with violating the FTC Act and the FTC's Telemarketing Sales Rule by using direct mail, the Internet, and telemarketing to target borrowers and falsely promise successful mortgage modification programs in exchange for an up-front fee. In addition to the bans, the orders, which were approved by the United States District Court for the Southern District of Florida, require the defendants to pay monetary judgments and forfeit certain property.

Banking

Legislators Move Forward on Bill to Address Non-Waiver of Privileged Documents Submitted to CFPB. On February 16, the House Financial Services Committee approved

[H.R. 4014](#), which would mandate that providing information to the CFPB for any purpose as part of the supervisory process will not be construed as waiving, destroying, or otherwise affecting any privilege applicable to such information. The bill would accomplish this by amending the Federal Deposit Insurance Act to create the same non-waiver of privilege protections already afforded to information submitted by supervised entities to federal, state, and foreign banking regulators. A substantially identical bill, [S. 2099](#), recently was introduced in the Senate by Chairman Johnson and Ranking Member Shelby of the Senate Banking Committee.

FinCEN Issues Advisory Regarding Foreign-Located Money Services Businesses. On February 15, the Financial Crimes Enforcement Network (FinCEN) [issued guidance](#) regarding anti-money laundering (AML) programs for financial institutions that provide services to foreign-located money services businesses (MSB) or engage in transactions with such businesses. The guidance follows FinCEN's [July 2011 regulations issued under the Bank Secrecy Act](#) that amended the definition of MSB to include businesses that conduct activities in the U.S. even if the business does not have any agents, agencies, branches, or offices physically located in the U.S. The advisory reviews the July regulations, reminds institutions about their obligations to file suspicious activity reports, and suggests that financial institutions update their AML programs using prior guidance on [doing business with MSBs](#) and on [informal value transfer systems](#).

Senate Banking Chairman Requests Audits of Community Bank and Credit Union Exam Processes. On February 10, [Senator Tim Johnson, Chairman of the Senate Banking Committee, sent a letter](#) to the inspectors general of the Department of Treasury, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration seeking audits of each agency's exam process for community banks and credit unions. The letter cites community bank and credit union complaints of unclear standards and inconsistent application of policies and procedures. Sen. Johnson asked that the audit review (i) the overall exam process, (ii) examination

timelines, and (iii) the ability of an institution to question or appeal exam results. The House Financial Services Committee has been considering legislation, [H.R. 3461](#), that would mandate changes to the examination process. To date, no corresponding bill has been introduced in the Senate.

Consumer Finance

CFPB Proposes Rule to Define "Larger Participants" in the Consumer Debt Collection and Consumer Reporting Markets. On February 16,

[the CFPB released a proposed rule](#) to define "larger participants" in the markets for consumer debt collection and consumer reporting, thereby beginning the process by which the CFPB will determine which such entities are subject to its supervision. In short, the proposal uses annual receipts as the metric for determining larger participants. Under the Dodd-Frank Act, the CFPB has authority to supervise, regardless of size, nonbanks that provide to consumers (i) origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (ii) private education loans; and (iii) payday loans. The CFPB also has the power to supervise "larger participants" in any other market for consumer financial products or services, and the Act grants the CFPB authority to define "larger participants." In this first effort to define larger participants in specific markets, [the CFPB proposes](#) to supervise debt collectors with more than \$10 million in annual receipts from debt collection activities, which would cover approximately 175 debt collection firms that collectively account for 63 percent of annual receipts from the debt collection market. Consumer reporting agencies with more than \$7 million in annual receipts from consumer reporting activities also would be covered, capturing approximately seven percent of consumer reporting agencies, or about 30 firms, which the CFPB estimates account for approximately 94 percent of the annual receipts from consumer reporting. Stakeholders and the public can submit comments on the proposal through April 17, 2012. The CFPB plans to issue larger participant proposed rules for other markets. Final rules for all markets must be published by July 21, 2012.

FFETF Launches Federal-State Financial Fraud Consumer Protection Working. On February 10, the [Financial Fraud Enforcement Task Force \(FFETF\)](#) launched the Consumer Protection Working Group, which is charged with coordinating federal and state law enforcement and regulatory efforts to address consumer financial fraud, including fraud targeting unemployed persons, students, active-duty military personnel and veterans. The group is co-chaired by Assistant Attorneys General Tony West and Lanny Breuer, U.S. Attorney for the Central District of California André Biotte, Director of the FTC Bureau of Consumer Protection David Vladek, and CFPB Director of Enforcement Kent Markus. The [Department of Justice's press release](#) states that meeting participants set priorities for the group as it seeks to address fraud in (i) payday lending, (ii) high-pressure telemarketing and Internet scams, (iii) business opportunity schemes, (iv) for-profit colleges, and (v) third-party payment processors. The meeting also addressed plans to establish a best-practices tool kit, policy initiatives (including legislative and regulatory proposals), and an information-sharing structure for Working Group participants.

FTC Submits Information Regarding 2011 Enforcement Actions and Planned 2012 Activities.

On February 10, [the FTC released](#) a letter it recently submitted to the Federal Reserve Board (FRB) that reviews the FTC's efforts in 2011 to enforce certain consumer financial services laws. The information provided in the letter will be used by the FRB in its 2011 Annual Report to Congress. In addition to reviewing past activity, [the letter](#) also outlines the FTC's plans to exercise new authorities provided by the Dodd-Frank Act, including new or enhanced authority with regard to payment cards, motor vehicles, and mortgage disclosures.

E-Commerce

Illinois Federal Court Holds That False-CMI Claims Fail Where the CMI Is Not on the Same Webpage as the Copyrighted Text. On February 8, the U.S. District Court for the Northern District of Illinois dismissed a false-copyright management information (CMI) claim because the allegedly false CMI was not on the same webpage as the text at issue.

[*Personal Keepsakes, Inc. v. Personalizationmall.com, Inc.*, No. 1:11-cv-05177, 2012 WL 414803 \(N.D. Ill. Feb. 8, 2012\)](#). The plaintiff used a website to sell keepsake items that incorporated poetry it had written and copyrighted. Competing websites later copied that poetry and incorporated it into their own products. The plaintiff sued these competitors after discovering that their website terms and conditions suggested that they, not the plaintiff, had copyrighted the poems. The plaintiff claimed that by doing so, its competitors violated the Digital Millennium Copyright Act's prohibition on "conveying" false CMI. The court disagreed, however, and held that because plaintiff had not posted the CMI in close proximity to the poems, it was not "conveyed" with the poems and could not form the basis of a false-CMI claim as a matter of law.

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