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## Federal Issues

Office of the Comptroller of the Currency Issues Final Rule to Implement Numerous Dodd-Frank Provisions. On July 20, the Office of the Comptroller of the Currency (OCC) issued a final rule implementing several provisions of the Dodd-Frank Act that generally became effective on July 21, 2011 (with certain exceptions), including the transfer of functions of the Office of Thrift Supervision (OTS) to the OCC and revisions to the OCC's rules on federal preemption and visitorial powers. Under the Dodd-Frank Act, the OCC assumed responsibility for the ongoing examination, supervision, and regulation of federal savings associations on July 21.

Pursuant to the final rule, the preemption and visitorial powers amendments will:

Eliminate the extension to operating subsidiaries of entity-level preemption enjoyed by national banks and federal savings banks;

Apply to federal thrifts the same preemption standard (a conflict preemption standard rather than the "occupation of the field" standard that previously applied) that applies to national banks, and apply to federal thrifts the visitorial powers standards applicable to national banks;

Amend the preemption standards in OCC regulations to more clearly reference the standards set forth in *Barnett Bank v. Nelson*, 517 U.S. 25 (1996) by removing language from OCC rules that provides that state laws that "obstruct, impair, or condition" a national bank's powers are preempted; and

Revise the OCC's visitorial powers rule to conform to the Supreme Court's *Cuomo v. Clearing House Association, L.L.C.* decision, recognizing the ability of state attorneys general to bring enforcement actions in court to enforce applicable laws against national banks as authorized by such laws.

In response to public comments, the preamble to the final rule expands the discussion of the preemption and visitorial powers. In particular, the preamble notes that the OCC has reconsidered its position concerning prior preemption

determinations that relied on the "obstructs, impairs, or conditions" standard. To the extent that an existing preemption precedent relies exclusively on the phrase "obstructs, impairs, or conditions" as the basis for a preemption determination, the preamble states that the validity of the precedent would need to be reexamined to ascertain whether the determination is consistent with the conflict preemption analysis set forth in the *Barnett* decision.

The final rule also revises OCC rules to address the OCC's new role as regulator of federal thrifts, including collection of assessments. Following a transition period through the next two semiannual assessment periods (September 2011 and March 2012), the final rule provides a single assessment schedule for both national banks and federal savings associations.

As part of the integration of the OTS functions into the OCC, the OCC also plans to issue an interim final rule, with a request for comments, that republishes certain OTS regulations as new OCC rules, renumbered and issued with nomenclature and other technical amendments to reflect OCC supervision of federal savings associations. The OCC will consider more comprehensive substantive amendments to these regulations later this year. For a copy of the press release, including a web link to the final rule, please see <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-95.html>.

FTC Issues Summary of Staff Interpretations; Withdraws Commentary. On the eve of the transfer of primary enforcement authority for the Fair Credit Reporting Act (FCRA) to the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission issued a staff report that summarizes its interpretations of FCRA. The report, entitled "Forty Years of Experience with the Fair Credit Reporting Act" incorporates many positions that the FTC previously took in its 1990 Commentary on FCRA (which the FTC rescinded when it released the staff report) and in staff interpretation letters. Of particular interest to the consumer finance industry, the staff report: (i) expands upon the previous Commentary's "joint user" interpretation that consumer report information can be shared with another person to effectuate a consumer-initiated transaction (although the term "joint user" is no longer used); (ii) states that the "review" permissible purpose applies to both open-end and closed-end accounts when the creditor is considering taking action with respect to that account, but not to the use of credit reports in marketing the creditor's other products or services; (iii) incorporates the holdings related to credit bureau prescreening in *Cole v. U.S. Capital, Inc.*, 389 F.3d 719 (7th Cir. 2004), and *Murray v. New Cingular Wireless*, 523 F.3d 719 (7th Cir. 2008), that an "offer of credit may not be a 'sham offer' used as a ruse to engage in target marketing," but that "a solicitation may be a firm offer of credit even if the solicitation does not set forth the terms of the offer or includes a term that is variable"; (iv) clarifies that only the "credit prong" of the FCRA definition of "adverse action," which incorporates the Regulation B definition of the term including the "accepted counteroffer" exception, applies to applications for credit; and (v) adopts the FTC's previous position that a report for commercial purposes is a "consumer report," thus requiring a permissible purpose, but that an application for business credit can provide a permissible purpose when the credit report is obtained on an individual who will be personally liable for the debt. An FTC press release containing links to the staff report and the rescission of the Commentary is available at <http://www.ftc.gov/opa/2011/07/fcra.shtm>.

Federal Reserve System and Treasury Department Inspectors General Issue Report on CFPB's Implementation Planning - Including Brief Summary of CFPB Powers Prior to a Director Being Approved. As required under the Dodd-Frank Act, the

Offices of the Inspector General (OIGs) of the Board of Governors of the Federal Reserve System and the Department of the Treasury issued a report on July 15 entitled "Review of CFPB Implementation Planning Activities." The report provides a brief summary of which CFPB powers went into effect on July 21 and which powers must await the appointment of a Director of the CFPB. The Treasury report takes the position that, on the designated transfer date, subtitle F grants CFPB the authority to:

Prescribe rules, issue orders, and produce guidance related to the federal consumer financial laws that were, prior to the designated transfer date, within the authority of the Board, OCC, OTS, FDIC, and NCUA;

Conduct examinations (for federal consumer financial law purposes) of banks, savings associations, and credit unions with total assets in excess of \$10 billion, and any affiliates thereof;

Prescribe rules, issue guidelines, and conduct a study or issue a report (with certain limitations) under the enumerated consumer laws that were previously within the authority of the Federal Trade Commission prior to the designated transfer date;

Conduct all consumer protection functions relating to the Real Estate Settlement Procedures Act of 1974, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and the Interstate Land Sales Full Disclosure Act that were previously within the authority of the Secretary of HUD prior to the designated transfer date;

Enforce all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective prior to the designated transfer date by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred to CFPB, with respect to a bank, savings association, or credit union with total assets in excess of \$10 billion, and any affiliates thereof; and

Replace the Board, OCC, OTS, FDIC, NCUA, and HUD in any lawsuit or proceeding that was commenced by or against one of the transferor agencies prior to the designated transfer date, with respect to a consumer financial protection function transferred to CFPB.

However, the Treasury report acknowledges that neither the CFPB nor the Treasury Secretary has the authority to perform certain newly established CFPB authorities if there is no Director by the designated transfer date. The report states that if there is no Director by the designated transfer date, in general, the Treasury Secretary is not permitted to exercise the authority to:

Prohibit unfair, deceptive, or abusive acts or practices under subtitle C in connection with consumer financial products and services;

Prescribe rules and require model disclosure forms under subtitle C to ensure that the features of a consumer financial product or service are fairly, accurately, and effectively disclosed both initially and over the term of the product or service;

Prescribe rules under section 1022 relating to, among other things, the filing of limited reports to CFPB for the purpose of determining whether a nondepository institution should be supervised by CFPB;

Supervise nondepository institutions under section 1024, including the authority to (a) prescribe rules defining the scope of nondepository institutions subject to CFPB's supervision, (b) prescribe rules establishing recordkeeping requirements that CFPB determines are needed to facilitate nondepository supervision, and (c) conduct examinations of nondepository institutions.

For a copy of the report, see [http://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-088%20\(Review%20of%20CFPB%20Implementation%20Planning%20Activities\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-088%20(Review%20of%20CFPB%20Implementation%20Planning%20Activities).pdf).

CFPB Releases Report Examining Differences in Credit Scores Provided to Consumers and Lenders. The Consumer Financial Protection Bureau (CFPB) issued a report, required by the Dodd-Frank Act, on the differences between credit scores that are provided to consumers and scores that lenders use to make credit decisions. The report identifies the reasons why a credit score purchased by a consumer from a Credit Reporting Agency (CRA) might differ from the scores obtained by lenders. One main reason, according to the report, is the simple fact that different scoring models are used to create different consumer credit scores. The report also notes that consumers can be confused by variations in scores between different CRAs, or from the same CRA at different points in time. Consumer confusion over credit scores, according to the report, can potentially affect a consumer in numerous adverse ways, including where a consumer is denied credit, thinking their score is better than the one used by a lender, or where a consumer does not apply for or pursue loans with more favorable credit terms, thinking their score is worse than that used by the lender. The report was mandated by Section 1078 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which required the CFPB to conduct a study by July 21, 2011, on the "nature, range, and size of the variations" between scores used by lenders and those obtained by consumers. While the report provides a lengthy narrative on the credit scoring regime and identifies various issues for consumers, it leaves the analytical work for another time. The report notes that the CFPB is still in the process of building a database of credit reports and scores that will allow it to compile a true assessment of credit score variations, and their potential impact on consumers. A press release announcing the report is available at <http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-report-examines-differences-between-credit-scores-consumers-and-lenders-receive>; the report is available at [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_20110719\\_CreditScores.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110719_CreditScores.pdf).

FTC Issues Final Policy Statement on Methods for Collecting Debts of Deceased Consumers. On July 20, the Federal Trade Commission (FTC) issued a final Statement of Policy (Policy Statement) regarding permissible methods to be used by debt collectors attempting to collect the debts of deceased consumers, which will not result in enforcement action by the FTC under the FTC Act or the Fair Debt Collection Practices Act (FDCPA). The Policy Statement permits debt collectors to contact a deceased's spouse, administrator or executor of the deceased's estate, or anyone authorized to pay debts from the estate. Debt collectors may not mislead anyone into believing that the individual has authority to use assets of the estate to pay the debt if he or she does not have such authority, and may not create the impression that someone authorized to pay debts from the estate is personally liable for the debts or might have to pay using his or her own assets or assets jointly held with the deceased to pay. Collectors also may not contact individuals at unusual or inconvenient times or places. The Policy

Statement reconciled the FDCPA with changes in state probate laws, which might not provide for a formal executor or administrator of an estate. The Policy Statement will become effective on August 29, 2011. For a copy of the FTC's press release, please see <http://www.ftc.gov/opa/2011/07/fdcpa.shtm>; for a copy of the final Policy Statement, please see <http://www.ftc.gov/os/2011/07/110720fdcpa.pdf>.

NMLS Releases Report Compiling Q1 Licensing Data. On July 19, the National Mortgage Licensing System & Registry (NMLS) published *A Nationwide View on State-Licensed Mortgage Entities*, a report compiling various metrics regarding NMLS licensees and registrants from the first quarter of 2011. The report supplies a snapshot of the industry by providing an overview of (i) the number of licensees in the industry, (ii) the types of business conducted by licensees, (iii) the average size of licensees, (iv) the geographic range of licensees, and (v) the typical legal organization of licensees. Additionally, the report breaks down licensing activity by state, covering several categories of activity, including application approvals and suspensions. For a copy of the report, please see <http://mortgage.nationwidelicencingsystem.org/about/Documents/Quarter-1-2011-Licensing-Data.pdf>.

GAO Releases Report on Dodd-Frank's Impact on Mortgage Market. On July 19, the Government Accountability Office (GAO) released a report analyzing the potential effects of the Dodd-Frank Act on the primary and secondary residential mortgage markets. Applying the Dodd-Frank Act's standards to historical mortgage data since 2001, the GAO found that most mortgages would meet five of the nine criteria for "qualified mortgages." The GAO also noted that several provisions of the Dodd-Frank Act - including securitizer risk retention, home ownership counseling, and regulation of high-cost loans - may improve outcomes for some borrowers, but their effects are difficult to assess before key regulatory decisions are made. For a copy of the report, please see <http://www.gao.gov/new.items/d11656.pdf>.

FTC Issues Final Rule Regarding Mortgage Advertisements. On July 19, the Federal Trade Commission (FTC) issued a final rule banning deceptive claims regarding consumer mortgages in advertising or other types of commercial communications. Examples of deceptive advertising include (i) the existence, nature, or amount of fees or costs to the consumer associated with the mortgage; (ii) the type of mortgage offered; and (iii) the variability of interest, payments, or other terms of the mortgage. This final rule, which is effective August 19, 2011, applies to all entities within the FTC's jurisdiction, including mortgage lenders, brokers, and servicers. It does not apply to banks, thrifts, and federal credit unions, which are outside the FTC's jurisdiction. The FTC, the Consumer Financial Protection Bureau, and the states all will have authority to enforce this rule. For a copy of the press release, please see <http://www.ftc.gov/opa/2011/07/mortgageads.shtm>.

Consumer Financial Protection Bureau Reports on Progress of Agency. On July 18, the Consumer Financial Protection Bureau (CFPB) issued a report highlighting the accomplishments of the agency during its first year. The report, titled "Building the CFPB: A Progress Report," discusses the implementation of various initiatives, such as the "Know Before You Owe Project" (an ongoing project to combine the Truth in Lending Act and Good Faith Estimate mortgage loan disclosures), hosting the CARD Act Conference in February, engaging with public stakeholders (banks, nonbanks and consumer advocates) across the country, and technology initiatives to reach the public. For a copy of the press release on the report, please see

<http://www.treasury.gov/press-center/press-releases/Pages/tg1245.aspx>; for a copy of the report, please see [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_BuildingTheCfpb1.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_BuildingTheCfpb1.pdf).

[FTC Announces Stay on Provisions of MARS Rule for Real Estate Professionals Helping Consumers Obtain Short Sales](#). On July 15, the Federal Trade Commission (FTC) announced that it will not enforce most provisions of its Mortgage Assistance Relief Services (MARS) Rule against real estate brokers and their agents who assist consumers in obtaining short sales. The MARS Rule, which was issued pursuant to authority granted by Congress in 2009, was prompted by several FTC and state enforcement actions against companies that engaged in misleading mortgage rescue services. The Rule requires companies that offer these mortgage assistance services to disclose certain information about the services they provide, bans certain fees, and prohibits false or misleading claims. After the rule was enacted, some real estate professionals criticized the Rule because some of the disclosures may be inaccurate in some contexts or the disclosures may confuse consumers. Because of the stay announced on July 15, real estate professionals who assist distressed consumers with short sales will not have to make disclosures required by the MARS rule that may inadvertently mislead or confuse consumers who seek short sales, and the stay lifts the MARS ban on collection of advance fees (though not state law limitations). The stay applies to real estate professionals who: (i) are licensed and in good standing; (ii) comply with state laws governing the practices of real estate professionals; and (iii) assist or attempt to assist consumers in obtaining short sales in the course of securing the sales of their homes. The stay does not apply to real estate professionals that provide other types of mortgage assistance relief, such as loan modifications. A copy of the announcement is available at <http://www.ftc.gov/opa/2011/07/mars.shtm>.

[Federal Reserve Board Repeals Regulation Q](#). Recently, the Federal Reserve Board announced its decision to repeal Regulation Q, which had prohibited the payment of interest on demand deposits by member institutions of the Federal Reserve System. The change effectively implements Section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which repealed the portion of the Federal Reserve Act under which the Board had promulgated Regulation Q. A copy of the final rule repealing Regulation Q is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-18/pdf/2011-17886.pdf>.

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## State Issues

[Illinois Adds New Exemption to the Residential Mortgage Licensing Act](#). On July 14, Illinois enacted Senate Bill 1603, which amended the Residential Mortgage Licensing Act of 1987 (the Act) by adding to the list of individuals and entities that are exempt from the Act's licensing requirements for those engaged in the residential mortgage business. "Exempt person or entity," as defined in subsection (d) of Section 1-4 of the Act, now includes individuals and entities that (1) do not originate mortgage loans in their ordinary course of business; (2) but make or acquire residential mortgage loans with their own funds or for their own investment; and (3) do not intend to make, acquire, or resell more than three residential mortgage loans in one calendar year. Furthermore, under amended Section 1-3(a) of the Act, the new exemption is retroactive to January 1, 2011. For a copy of the bill, please see <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=097-0143>.

[Connecticut Expands Processing and Underwriting Licensing Requirements](#). On July 13, Connecticut enacted a law that, among other things, requires a broader range of loan processors and underwriters to obtain a license. Previously, loan processors or underwriters who were independent contractors were required to obtain a license, but the act expands the licensing requirement to include processors and underwriters who are not employed by a licensed mortgage lender, correspondent or broker or other person exempt from the licensing requirement. Loan processors and underwriters employed by mortgage lenders, correspondent lenders, mortgage brokers or exempt entities remain exempt from the licensing requirements. The law also permits exempt entities to register on the National Mortgage Licensing System and Registry as an exempt registrant for purposes of sponsoring a mortgage loan originator or loan processor or underwriter without impacting their exempt status. Finally, the law amends the licensing act's educational requirements and surety bond requirements. The pertinent provisions of the act take effect October 1, 2011. A copy of the act can be found at <http://www.cga.ct.gov/2011/ACT/Pa/pdf/2011PA-00216-R00SB-01110-PA.pdf>.

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## Firm News

[Andrew Sandler](#) and [Jonice Gray Tucker](#) will speak with former Arizona Attorney General Terry Goddard and Michelle Canter at the "Mortgage Servicing Under Fire: Regulatory, Litigation, and Enforcement Trends Stemming from the Foreclosure Crisis and More" webinar, sponsored by the American Bar Association. This 90-minute program will be held on July 21, at 1 PM.

[Andrew Sandler](#) will be speaking at the ACI's Consumer Finance Class Actions & Litigation Conference on Thursday, July 28. Mr. Sandler's panel is: "Class Action Developments: What Recent Cases and Pending Policy Changes Mean for Your Litigation, Investigation and Settlement Strategies."

[Andrew Sandler](#) and [Jonice Gray Tucker](#) will speak on recent trends in fair lending litigation at the American Bar Association's Annual Conference in Toronto, Canada on August 5. Mr. Sandler also will be speaking on issues related to the Dodd Frank Act in a separate session.

[James Parkinson](#) will speak on the Foreign Corrupt Practices Act as a Visiting Lecturer at Universidad Panamericana, Mexico on August 25.

[Jonice Gray Tucker](#) will be moderating a panel focusing on Regulatory and Litigation Developments in Servicing at the California Mortgage Bankers' Servicing Conference on August 29 in Las Vegas.

[Benjamin Klubes](#) will be moderating a panel focusing on Preparing for and Responding to New and Emerging Federal and State Enforcement Actions at the ACI's Residential Mortgage Litigation and Regulatory Enforcement Conference on Tuesday, September 20.



[Andrew Sandler](#), [Benjamin Klubes](#) and [Jonice Gray Tucker](#) will be speaking at the Mortgage Bankers Association's Regulatory Compliance Conference which will be held in Washington, D.C. from September 25 through September 27. Mr. Sandler will be addressing enforcement priorities. Mr. Klubes will address litigation and enforcement trends relating to loan originations and Ms. Tucker will speak on developments in mortgage servicing.

[James Parkinson](#) will be speaking at two International Bar Association training sessions as part of the IBA's Anti-Corruption Strategy for the Legal Profession (<http://www.anticorruptionstrategy.org/>) on September 27 (Sao Paulo, Brazil), and on September 29 (Caracas, Venezuela).

## **FIRM PUBLICATIONS**

[Elizabeth E. McGinn](#), [Sasha Leonhardt](#) and [Gastón Kuperschmit](#) authored *[From Pickpockets to Playstations: Evolving Data Privacy Threats and Federal and State Responses](#)* which was published on July 11 in *Bloomberg Law Reports*.

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## **Mortgages**

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## Consumer Finance

FTC Issues Summary of Staff Interpretations; Withdraws Commentary. On the eve of the transfer of primary enforcement authority for the Fair Credit Reporting Act (FCRA) to the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission issued a staff report that summarizes its interpretations of FCRA. The report, entitled "Forty Years of Experience with the Fair Credit Reporting Act" incorporates many positions that the FTC previously took in its 1990 Commentary on FCRA (which the FTC rescinded when it released the staff report) and in staff interpretation letters. Of particular interest to the consumer finance industry, the staff report: (i) expands upon the previous Commentary's "joint user" interpretation that consumer report information can be shared with another person to effectuate a consumer-initiated transaction (although the term "joint user" is no longer used); (ii) states that the "review" permissible purpose applies to both open-end and closed-end accounts when the creditor is considering taking action with respect to that account, but not to the use of credit reports in marketing the creditor's other products or services; (iii) incorporates the holdings related to credit bureau prescreening in *Cole v. U.S. Capital, Inc.*, 389 F.3d 719 (7th Cir. 2004), and *Murray v. New Cingular Wireless*, 523 F.3d 719 (7th Cir. 2008), that an "offer of credit may not be a 'sham offer' used as a ruse to engage in target marketing," but that "a solicitation may be a firm offer of credit even if the solicitation does not set forth the terms of the offer or includes a term that is variable"; (iv) clarifies that only the "credit prong" of the FCRA definition of "adverse action," which incorporates the Regulation B definition of the term including the "accepted counteroffer" exception, applies to applications for credit; and (v) adopts the FTC's previous position that a report for commercial purposes is a "consumer report," thus requiring a permissible purpose, but that an application for business credit can provide a permissible purpose when the credit report is obtained on an

individual who will be personally liable for the debt. An FTC press release containing links to the staff report and the rescission of the Commentary is available at <http://www.ftc.gov/opa/2011/07/fcra.shtm>.

Federal Reserve System and Treasury Department Inspectors General Issue Report on CFPB's Implementation Planning - Including Brief Summary of CFPB Powers Prior to a Director Being Approved. As required under the Dodd-Frank Act, the Offices of the Inspector General (OIGs) of the Board of Governors of the Federal Reserve System and the Department of the Treasury issued a report on July 15 entitled "Review of CFPB Implementation Planning Activities." The report provides a brief summary of which CFPB powers went into effect on July 21 and which powers must await the appointment of a Director of the CFPB. The Treasury report takes the position that, on the designated transfer date, subtitle F grants CFPB the authority to:

Prescribe rules, issue orders, and produce guidance related to the federal consumer financial laws that were, prior to the designated transfer date, within the authority of the Board, OCC, OTS, FDIC, and NCUA;

Conduct examinations (for federal consumer financial law purposes) of banks, savings associations, and credit unions with total assets in excess of \$10 billion, and any affiliates thereof;

Prescribe rules, issue guidelines, and conduct a study or issue a report (with certain limitations) under the enumerated consumer laws that were previously within the authority of the Federal Trade Commission prior to the designated transfer date;

Conduct all consumer protection functions relating to the Real Estate Settlement Procedures Act of 1974, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and the Interstate Land Sales Full Disclosure Act that were previously within the authority of the Secretary of HUD prior to the designated transfer date;

Enforce all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective prior to the designated transfer date by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred to CFPB, with respect to a bank, savings association, or credit union with total assets in excess of \$10 billion, and any affiliates thereof; and

Replace the Board, OCC, OTS, FDIC, NCUA, and HUD in any lawsuit or proceeding that was commenced by or against one of the transferor agencies prior to the designated transfer date, with respect to a consumer financial protection function transferred to CFPB.

However, the Treasury report acknowledges that neither the CFPB nor the Treasury Secretary has the authority to perform certain newly established CFPB authorities if there is no Director by the designated transfer date. The report states that if there is no Director by the designated transfer date, in general, the Treasury Secretary is not permitted to exercise the authority to:

Prohibit unfair, deceptive, or abusive acts or practices under subtitle C in connection with consumer financial products and services;

Prescribe rules and require model disclosure forms under subtitle C to ensure that the features of a consumer financial product or service are fairly, accurately, and effectively disclosed both initially and over the term of the product or service;

Prescribe rules under section 1022 relating to, among other things, the filing of limited reports to CFPB for the purpose of determining whether a nondepository institution should be supervised by CFPB;

Supervise nondepository institutions under section 1024, including the authority to (a) prescribe rules defining the scope of nondepository institutions subject to CFPB's supervision, (b) prescribe rules establishing recordkeeping requirements that CFPB determines are needed to facilitate nondepository supervision, and (c) conduct examinations of nondepository institutions.

For a copy of the report, see [http://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-088%20\(Review%20of%20CFPB%20Implementation%20Planning%20Activities\).pdf](http://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-088%20(Review%20of%20CFPB%20Implementation%20Planning%20Activities).pdf).

CFPB Releases Report Examining Differences in Credit Scores Provided to Consumers and Lenders. The Consumer Financial Protection Bureau (CFPB) issued a report, required by the Dodd-Frank Act, on the differences between credit scores that are provided to consumers and scores that lenders use to make credit decisions. The report identifies the reasons why a credit score purchased by a consumer from a Credit Reporting Agency (CRA) might differ from the scores obtained by lenders. One main reason, according to the report, is the simple fact that different scoring models are used to create different consumer credit scores. The report also notes that consumers can be confused by variations in scores between different CRAs, or from the same CRA at different points in time. Consumer confusion over credit scores, according to the report, can potentially affect a consumer in numerous adverse ways, including where a consumer is denied credit, thinking their score is better than the one used by a lender, or where a consumer does not apply for or pursue loans with more favorable credit terms, thinking their score is worse than that used by the lender. The report was mandated by Section 1078 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which required the CFPB to conduct a study by July 21, 2011, on the "nature, range, and size of the variations" between scores used by lenders and those obtained by consumers. While the report provides a lengthy narrative on the credit scoring regime and identifies various issues for consumers, it leaves the analytical work for another time. The report notes that the CFPB is still in the process of building a database of credit reports and scores that will allow it to compile a true assessment of credit score variations, and their potential impact on consumers. A press release announcing the report is available at <http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-report-examines-differences-between-credit-scores-consumers-and-lenders-receive>; the report is available at [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_20110719\\_CreditScores.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110719_CreditScores.pdf).

FTC Issues Final Policy Statement on Methods for Collecting Debts of Deceased Consumers. On July 20, the Federal Trade Commission (FTC) issued a final Statement of Policy (Policy Statement) regarding permissible methods to be used by debt collectors attempting to collect the debts of deceased consumers, which will not result in enforcement action by the FTC under the FTC Act or the Fair Debt Collection Practices Act (FDCPA). The Policy Statement permits debt collectors to contact

a deceased's spouse, administrator or executor of the deceased's estate, or anyone authorized to pay debts from the estate. Debt collectors may not mislead anyone into believing that the individual has authority to use assets of the estate to pay the debt if he or she does not have such authority, and may not create the impression that someone authorized to pay debts from the estate is personally liable for the debts or might have to pay using his or her own assets or assets jointly held with the deceased to pay. Collectors also may not contact individuals at unusual or inconvenient times or places. The Policy Statement reconciled the FDCPA with changes in state probate laws, which might not provide for a formal executor or administrator of an estate. The Policy Statement will become effective on August 29, 2011. For a copy of the FTC's press release, please see <http://www.ftc.gov/opa/2011/07/fdcpa.shtm>; for a copy of the final Policy Statement, please see <http://www.ftc.gov/os/2011/07/110720fdcpa.pdf>.

Consumer Financial Protection Bureau Reports on Progress of Agency. On July 18, the Consumer Financial Protection Bureau (CFPB) issued a report highlighting the accomplishments of the agency during its first year. The report, titled "Building the CFPB: A Progress Report," discusses the implementation of various initiatives, such as the "Know Before You Owe Project" (an ongoing project to combine the Truth in Lending Act and Good Faith Estimate mortgage loan disclosures), hosting the CARD Act Conference in February, engaging with public stakeholders (banks, nonbanks and consumer advocates) across the country, and technology initiatives to reach the public. For a copy of the press release on the report, please see <http://www.treasury.gov/press-center/press-releases/Pages/tg1245.aspx>; for a copy of the report, please see [http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_BuildingTheCfpb1.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_BuildingTheCfpb1.pdf).

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