Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

October 12, 2012

TOPICS COVERED THIS WEEK

FEDERAL ISSUES

FTC Settles Charges Related to Sale and Use of Consumer Mortgage Payment Data. On October 10, the FTC announced that a major consumer reporting agency (CRA) agreed to settle charges that it improperly sold lists of consumers who were late on their mortgage payments. The CRA will pay $393,000to resolve allegations that it violated the FTC Act by failing to implement procedures to prevent the sale of lists of consumer information to firms that should not have received them. In a separate but related case, which the DOJ pursued under a referral from the FTC, a data reseller and its affiliates settled charges that the companies violated the FTC Act and FCRA by (i) obtaining prescreened lists without having a permissible purpose, (ii) reselling the reports without disclosing to the consumer reporting agency that provided them who the end users would be, (iii) failing to maintain reasonable procedures to ensure that prospective users had a permissible purpose to get them, (iv) to the extent that firm offers of credit were made, failing to maintain a record of the criteria used to select consumers for these offers, and (v) failing to control access to sensitive consumer financial information. The resellers agreed to pay a $1.2 million civil penalty and will be barred from using or selling prescreened lists without a permissible purpose, or in connection with solicitations for debt relief or mortgage assistance relief products or services.

Senator Seeks Information from Data Brokers. On October 10, Senator Rockefeller (D-WV), Chairman of the Senate Commerce Committee, sent letters to nine data brokers seeking information about how those companies compile and sell consumer information. For example, Mr. Rockefeller asked that, by November 2, 2012 the data brokers (i) provide a list of the sources from which the brokers have collected or received data from or about consumers over the past four years, (ii) describe the methods of data collection employed, (iii) identify the consumer data collected during that period, and (iv) list the products or services offered to third parties. This follows similar requests made in August by a bipartisan group of members of the House of Representatives. Because the data brokers targeted by members of the respective chambers of Congress overlap only in part, a total of fourteen companies have been asked to produce information and materials to Congress.

CFPB Releases Additional Credit Card Complaints. On October 10, the CFPB added credit card complaints dating back to December 1, 2011 to its publicly available consumer complaint database. The CFPB launched the database in June 2012, but until now had only provided data for complaints received after June 1, 2012. The CFPB is collecting complaints regarding a number of other consumer products and services, including auto and student loans, but the CFPB has not indicated when it will make those complaints available through the public database. The CFPB also announced that the public database is no longer in "beta" form and released a snapshot of the consumer complaint process to date, including an analysis of complaints received through September 30, 2012.

DOJ Sues Mortgage Lender Over Alleged Fraudulent Certification of FHA Loans. On October 9, the U.S. Attorney for the Southern District of New York and the U.S. Department of Housing and Urban Development (HUD) announced a civil fraud suit against a mortgage lender alleged to have falsely certified loans under the FHA's Direct Endorsement Lender Program. The suit, filed in coordination with the Financial Fraud Enforcement Task Force (FFETF), claims that from May 2001 through October 2005, the lender regularly and knowingly engaged in reckless origination and underwriting of FHA loans, while certifying to HUD that those loans met the FHA Direct Endorsement Lender Program requirements and were therefore eligible for FHA insurance. Further, the suit alleges that the lender failed to conduct adequate quality control, failed to comply with HUD self-reporting requirements, and later attempted to cover up its reporting failures. The government claims that it was required to pay, and will continue to have to pay, FHA benefits on defaulted loans that contained material violations, and seeks treble damages and penalties under the False Claims Act, as well as Financial Institutions Reform, Recovery, and Enforcement Act penalties. The government also seeks compensatory damages under the common law theories of breach of fiduciary duty, gross negligence, negligence, unjust enrichment, and payment under mistake of fact. This suit follows the settlements earlier this year of several other cases involving similar claims. One other similar suit is currently pending.

DOJ Announces Results of Year-Long Mortgage Fraud Initiative. On October 9, the DOJ, HUD, the FTC, and the FBI announced the results of the DistressedHomeowner Initiative, a year-long national effort to coordinate federal and state investigation and prosecution of alleged mortgage fraudsters. The Initiative was carried out under the Mortgage Fraud Working Group of the FFETF. Between October 1, 2011 and September 30, 2012, the unit's work resulted in 285 criminal indictments and informations against 530 defendants. The announcement described many of the Working Group's investigative tactics, including undercover operations, and explained the reasons behind the Working Group's focus on Southern California. The Working Group expects more enforcement actions to result from ongoing investigations, and the FFETF has several other active working groups, including the Residential Mortgage-Backed Securities Working Group that recently sued a major bank over alleged fraudulent misrepresentations and omissions in the sale of RMBS to investors.

FinCEN Publishes Mortgage Fraud Update and SAR Activity Review, Updates Electronic Filing Specifications. This week FinCEN published a new SAR Activity Review and a Mortgage Loan Fraud Update. This issue of the semiannual SAR Activity Review provides (i) the results of a survey of readers of the Trends, Tips & Issues and By the Numbers publications, (ii) an article on foreign-located money services businesses that have registered with FinCEN, (iii) feedback on FinCEN data from state and local law enforcement agencies, and (iv) articles focused on changes to SAR reports and tips for writing more effective narratives. The SAR Activity Review also provides an industry perspective on the AML risks presented by business funded prepaid cards. In the Mortgage Loan Fraud Update, FinCEN provides data regarding recent mortgage SAR activity during the second quarter of 2012. Overall, FinCEN experienced a 41% decrease in mortgage fraud SARs over the previous year, but SARs regarding foreclosure rescue scams continued to grow. FinCEN believes the growth in foreclosure-related filings could be attributed to a growing awareness of such scams and real estate market conditions.

On October 10, FinCEN issued updates to its electronic filing requirements for Currency Transaction Reports, Suspicious Activity Reports, and Designation of Exempt Person Forms. The updates do not include any new or deleted fields but do provide clarifications in the instructions for certain fields and other technical changes.

Federal Regulators Finalize Bank Stress Test Rules. On October 9, the OCC and the FDIC each finalized a rule to implement the company-run stress test requirements of the Dodd-Frank Act. The stress tests are exercises designed to gauge the losses that covered institutions might experience under hypothetical scenarios established by the regulators. The OCC and FDIC rules apply to covered institutions with average total consolidated assets greater than $10 billion. Covered institutions with assets over $50 billion are subject to the stress test requirements immediately. They will be required to submit results in January 2013 of stress tests based on data as of September 30, 2012 and scenarios that the FDIC and the OCC plan to publish next month. Implementation of the stress test requirements for institutions with assets of $10 billion to $50 billion will not begin until October 2013. Also on October 9, the Federal Reserve Board (FRB) finalized two stress test-related rules. The first rule establishes the stress test requirements for bank holding companies, state member banks, and savings and loan companies with more than $10 billion in total consolidated assets. As with the OCC and FDIC rules, the FRB rule delays implementation of stress test requirements for covered institutions with $50 billion or less in assets until the fall of 2013. Additionally, the results of that first test will not have to be publicly disclosed. The second FRB rule establishes the company-run stress test requirements for bank holding companies with $50 billion or more in total consolidated assets, and nonbank financial companies designated as systemically important by the Financial Stability Oversight Council. These institutions are required to conduct two internal stress tests each year, in addition to a stress test performed by the FRB. Like the OCC and the FDIC, the FRB expects to release its stress test scenarios in November.

FDIC Finalizes Large Bank Assessment Rule. On October 9, the FDIC released a final rule to revise certain definitions included in the large bank pricing assessment system for banks with more than $10 billion in assets. In February 2011, the FDIC published a large bank pricing rule that, among other things, eliminated risk categories and the use of long-term debt issuer ratings. In their place, the FDIC adopted scorecards that combine CAMELS ratings and certain forward-looking measures to assess risk posed by an institution to the FDIC insurance fund. The February rule used existing interagency guidance to define nontraditional mortgage loans, subprime consumer loans, and leveraged commercial loans, but refined the definitions to minimize reporting discrepancies. A subsequent FDIC notice added a requirement that covered institutions include nontraditional mortgage loans, subprime consumer loans, and leveraged commercial loans data in their Call Reports. In response to industry concerns that institutions generally do not maintain data on those loans consistent with the definitions in the February rule, the current final rule extensively renames and revises the definitions of (i) higher-risk consumer loans, (ii) higher-risk consumer and industrial loans, (iii) nontraditional mortgage loans, and (iv) higher-risk securitizations.

Fannie Mae Expands DU Refi Plus Financing. On October 11, Fannie Mae announced that existing mortgage loans with investor-paid mortgage insurance that was obtained to meet credit enhancement requirements for loans with LTV ratios greater than 80% are now eligible for DU Refi Plus financing if the coverage is converted to borrower-paid or lender-paid coverage. This change is effective October 13, 2012.

FHFA Finalizes Five Year Plan. On October 9, the FHFA released a final five year strategic plan for its oversight of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (the GSEs). The plan sets four strategic goals: (i) safe and sound housing GSEs, (ii) stability, liquidity, and access in housing finance, (iii) preservation and conservation of Fannie Mae and Freddie Mac assets, and (iv) preparing for the future of housing finance in the U.S. For each strategic goal, the plan establishes several "means and strategies." The strategies include several steps the FHFA already is taking, including its ongoing efforts to enhance the use of short sales, promote sound underwriting, and set guarantee fees based on actual risk, as well as its recently released proposal to build a new infrastructure for the secondary market. While the FHFA sought and received comments on the draft version of its strategic plan, it did not identify any such comments as being incorporated in the final document, though it did note that comments may be considered again during the design and implementation of the programs intended to carry out the strategic plan.

Federal Nonbank Charter Legislation Faces Opposition from State AGs. On October 5, forty-one state attorneys general (state AGs) reasserted their interest in enforcing state laws regulating short-term, small dollar lenders, including payday lenders. The National Association of State Attorneys General sent a letter to the leadership of the U.S. House of Representatives and the U.S. Senate urging them to oppose H.R. 6139, the Consumer Credit Access, Innovation, and Modernization Act. As previously reported, the Act, introduced by Reps. Luetkemeyer (R-MO) and Baca (D-CA), would allow the OCC to establish a federal charter for certain nonbanks. The state AGs charge that H.R. 6139

would preempt state laws governing consumer lending and generally would undermine states' authority with regard to consumer protection enforcement. The state AGs acknowledge that the bill would allow them to enforce violations of federal law, but argue that state laws designed for local markets would be preempted and the state AGs' ability to target abuses as they emerge would be impaired. During a July hearing on the legislation, the OCC and the Conference of State Bank Supervisors also expressed opposition to the legislation.

STATE ISSUES

South Carolina Attorney General Discusses Decision To Intervene In Case Challenging Dodd-Frank Act. On October 5th, South Carolina Attorney General (AG) Alan Wilson, in an interview with the STAGE Network, discussed the reasons why he and the AG's of Oklahoma and Michigan determined to join an earlier existing lawsuit in order to dispute the Orderly Liquidation Authority powers granted by Title II of the Dodd-Frank Act. AG Wilson also gave his perspectives on the appropriate balance between effective consumer protection and unduly burdensome regulation, and commented on the increased coordination among state AG's in financial services related investigations and litigation. A webcast featuring AG Wilson's views can be reviewed in its entirety at https://www1.gotomeeting.com/register/348234897.

COURTS

Supreme Court Passes on Appeals of Overdraft Litigation Decisions. On October 9, the U.S. Supreme Court denied the petitions for writ of certiorari filed by plaintiffs in two cases challenging the overdraft billing practices of certain banks. *Hough v. Regions Financial Corp.*, No. 12-1139, 2012 WL 3097294 (Oct. 9, 2012); *Buffington v. SunTrust Banks, Inc.*, No. 12-146, 2012 WL 3134482 (Oct. 9, 2012). In March, the U.S. Court of Appeals for the Eleventh Circuit issued two separate, but substantively similar, opinions regarding arbitration agreements at issue in the overdraft litigation. *Hough v. Regions Financial Corp.*, No. 11-14317, 2012 WL 686311 (11th Cir. Mar. 5, 2012); *Buffington v. SunTrust Banks, Inc.*, No. 11-14316, 2012 WL 660974 (11th Cir. Mar. 1, 2012). In both cases, based on the Supreme Court's holding in *AT&T Mobility v. Concepcion,* 131 S. Ct. 1740 (2011), the Eleventh Circuit vacated district court rulings that the banks' arbitration clauses were substantively unconscionable under Georgia law because they contained a class action waiver. After further proceedings on remand yielded a second appeal, the Eleventh Circuit held that, under Georgia law, an agreement is not unconscionable because it lacks mutuality of remedy. It also rejected the district court's holding that the clauses were procedurally unconscionable because the contract did not meet the Georgia standard that an agreement must be so one-sided that "'no sane man not acting under a delusion would make [it] and ... no honest man would' participate in the transaction." The U.S. Supreme Court's decision not to review the Eleventh Circuit decisions will now require the plaintiffs to arbitrate their claims against the banks.

California Federal District Court Permits FDIC Suit Against Former Bank Officers to Proceed. On October 5, the U.S. District Court for the Central District of California dismissed several affirmative defenses invoked by a group of former bank officers sued by the FDIC as receiver for a failed bank, including their claim of protection from personal liability for business decisions. *FDIC v. Van Dellen*, No. 10-4915, 2012 WL 4815159 (C.D. Cal. Oct. 5, 2012). The FDIC sued the former officers, alleging that, in pursuit of bonuses for high loan origination volumes, the officers approved homebuilder loans to unqualified borrowers. As part of their defense, the officers claimed that the court should apply the law of the state of Delaware where the bank was incorporated, and not California law where the bank had its principle place of business. The officers sought to invoke Delaware law protecting officers from personal liability for business decisions. The court disagreed and held that (i) California law applies under any choice of law test and (ii) California's business judgment rule, both as codified and its common law element, immunizes directors from personal liability but not officers. With regard to the officers' defense that the FDIC claims were time barred as allegations of professional negligence, the court held that the gravamen of the complaint actually is breach of fiduciary duty, which has a longer statute of limitations. The court also reiterated a previous ruling that the officers could not invoke any defenses that would rely on imputing the bank's pre-receivership conduct to the FDIC as receiver. The court did agree with the officers that any recoveries made by the FDIC in another case should be considered when assessing damages in this case, and that claims regarding certain loans approved by the bank's federal regulator should be reviewed by a jury.

California Federal District Court Affirms Lender's Sole Discretion to Change Rate Index for ARM Loan. On October 3, the U.S. District Court for the Northern District of California held that a lender had no duty to abandon the index to which certain adjustable rate mortgage rates were tied when the index experienced an unprecedented jump. *Haggarty v. Wells Fargo Bank, N.A.*, No 10-02416, 2012 WL 4742815 (N.D. Cal. Oct. 3, 2012). The borrowers, who had entered into two adjustable rate mortgages, sued the lender when their rates increased substantially following a jump in the index to which the adjustable rates were tied. On behalf of themselves and a putative class, the borrowers claimed that the bank breached an implied covenant of good faith and fair dealing by failing to substitute a new index under a clause in the Notes that allowed the lender to choose a new index if the original index was "substantially recalculated." The court held that the Note language granting the lender "sole discretion" to determine whether the index had been substantially recalculated insulated the lender from claims that it was required to reach a certain conclusion about the index and the need to substitute a new index. Further, the court held that the borrowers' attempt to use implied covenants to add contract terms or establish a breach was preempted by the Home Owners' Loan Act, which in relevant part was intended to avoid inconsistent obligations for lenders regarding interest rate adjustments. The court granted summary judgment in favor of the lender.

MISCELLANY

UK SFO Revises Guidance on Self-Reporting. On October 9, the United Kingdom Serious Fraud Office (SFO) issued policy statements and frequently-asked-questions (FAQs) with regard to: (1) facilitation payments, (2) hospitality and gifts, and (3) self-reporting. While the bulk of the guidance reasserts existing policies, the SFO did revise its guidance on self-reporting. The new guidance makes clear SFO's position that self-reporting will not always shield a company from prosecution. The fact that a corporate body has reported itself will be a relevant consideration if it forms part of a "genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice." A decision by the SFO to prosecute will be based on the Full Code Test in the Code for Crown Prosecutors, the joint prosecution Guidance on Corporate Prosecutions and, where relevant, the Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions on the Bribery Act 2010. As explained in the FAQs, the revised statement of policy is not limited to allegations involving overseas bribery and corruption, and if the requirements of the Full Code Test are not established, the SFO may consider civil recovery as an alternative to a prosecution.

FIRM NEWS

David Krakoff will participate on a panel at The American Bar Association's Fifth Annual National Institute on the Foreign Corrupt Practices Act, being held October 17 - 19, 2012, at The Westin Georgetown. Mr. Krakoff's session on October 18, 2012 is titled "The Trial of an FCPA Case: Pitfalls and Pratfalls."

Thomas Sporkin will speak at the Securities Enforcement Forum 2012 on October 18, 2012, in Washington, DC. The Securities Enforcement Forum 2012 brings together securities enforcement and white-collar attorneys, current and former senior SEC and DOJ officials, in-house counsel and compliance executives, and other top professionals in the field.

Margo Tank will speak at the ACORD Implementation Forum in Ft. Lauderdale, FL on October 24, 2012. Ms. Tank's panel is titled "Guidelines for e-Signatures and e-Delivery in the Insurance - Cutting through the Legalese."

David Krakoff, James Parkinson, Andrew Schilling, and Thomas Sporkin will speak at the Commerce and Industry Group's seminar, "Anti-Bribery: The Changing Anti-Corruption Environment in Key Jurisdictions" on October 24, 2012, in London. The panel will examine recent developments in anti-corruption enforcement in the UK, US, and Continental Europe; it will also consider best practices to identify and mitigate exposure to corruption risk.

Ben Klubes will moderate a panel entitled "Trends in Consumer Financial Protection: Proceed with Caution" during an October 25-26 Symposium entitled "Navigating Dodd - Frank: Are We Avoiding Another Financial Crisis?" The symposium, presented by the George Washington University Law School Center for Law, Economics and Finance, will feature senior regulators, legal experts, market participants and leading academics with intimate knowledge of the financial services industry. Keynote speakers include Hon. Mary L. Schapiro, Chairman of the SEC, and Hon. John C. Dugan, Comptroller of the Currency. BuckleySandler is a proud sponsor of the symposium. To register, click here.

James Parkinson will speak at the ACI's 28th National Conference on Foreign Corrupt Practices Act in Washington, D.C. Mr. Parkinson's panel, entitled "Data and Document Management Strategies for FCPA Investigations: Practical Tools for Effectively Accessing, Obtaining and Controlling Data and Documents during an FCPA Investigation," will be held November 14.

Margo Tank will speak at The Electronic Signature and Records Association's Annual Conference, November 14-15, 2012, in Washington, DC. Ms. Tank's panel will discuss electronic signatures and mobile technology.

David Krakoff will speak at ACI's Inaugural Summit on White Collar Litigation being held January 22-23, 2013, in New York, NY. Mr. Krakoff will participate in the January 22 session entitled "The FCPA Year In Review: Assessing the Biggest Cases of the Year and What Litigators Need to Take Away to Best Protect Their Clients."

FIRM PUBLICATIONS

David Krakoff and Lauren Randall contributed "FCPA: Were the Sting Trials Doomed from the Start?" to the September 2012 Business Crimes Bulletin.

Matthew Previn, Andrew Pennacchia, and Jonathan Cannon published "Rising Tide of Operational Risk Demands Due Diligence in Vendor Selection" on September 20, 2012 in National Mortgage News.

Jonice Gray Tucker and Jeff Naimon wrote "Liability for Servicers: Localities Jump in the Game," which appears in *Mortgage Servicing News*' October 2012 issue.

About BuckleySandler LLP (www.buckleysandler.com)

With over 150 lawyers in Washington, Los Angeles, New York, and Orange County, BuckleySandler provides best-in-class legal counsel to meet the challenges of its financial

services industry and other corproate and individual clients across the full range of government enforcement actions, complex and class action litigation, and transactional, regulatory, and public policy issues. The Firm represents many of the nation's leading financial services institution. "The best at what they do in the country." (Chambers USA).

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New York: 1133 Avenue of the Americas, Suite 3100, New York, NY 10036, (212) 600-2400

Orange County: 3121 Michelson Drive, Suite 210, Irvine, CA 92612, (949)398-1360

We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes. Email infobytes@buckleysandler.com.

In addition, please feel free to email our attorneys. A list of attorneys can be found here.

For back issues of InfoBytes, please see: http://www.buckleysandler.com/infobytes/infobytes.

InfoBytes is not intended as legal advice to any person or firm. It is provided as a client service and information herein is drawn from various public sources, including other publications.

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standard that an agreement must be so one-sided that "'no sane man not acting under a delusion would make [it] and ... no honest man would' participate in the transaction." The U.S. Supreme Court's decision not to review the Eleventh Circuit decisions will now require the plaintiffs to arbitrate their claims against the banks.

California Federal District Court Permits FDIC Suit Against Former Bank Officers to Proceed. On October 5, the U.S. District Court for the Central District of California dismissed several affirmative defenses invoked by a group of former bank officers sued by the FDIC as receiver for a failed bank, including their claim of protection from personal liability for business decisions. *FDIC v. Van Dellen*, No. 10-4915, 2012 WL 4815159 (C.D. Cal. Oct. 5, 2012). The FDIC sued the former officers, alleging that, in pursuit of bonuses for high loan origination volumes, the officers approved homebuilder loans to unqualified borrowers. As part of their defense, the officers claimed that the court should apply the law of the state of Delaware where the bank was incorporated, and not California law where the bank had its principle place of business. The officers sought to invoke Delaware law protecting officers from personal liability for business decisions. The court disagreed and held that (i) California law applies under any choice of law test and (ii) California's business judgment rule, both as codified and its common law element, immunizes directors from personal liability but not officers. With regard to the officers' defense that the FDIC claims were time barred as allegations of professional negligence, the court held that the gravamen of the complaint actually is breach of fiduciary duty, which has a longer statute of limitations. The court also reiterated a previous ruling that the officers could not invoke any defenses that would rely on imputing the bank's pre-receivership conduct to the FDIC as receiver. The court did agree with the officers that any recoveries made by the FDIC in another case should be considered when assessing damages in this case, and that claims regarding certain loans approved by the bank's federal regulator should be reviewed by a jury.

CONSUMER FINANCE

FTC Settles Charges Related to Sale and Use of Consumer Mortgage Payment Data. On October 10, the FTC announced that a major consumer reporting agency (CRA) agreed to settle charges that it improperly sold lists of consumers who were late on their mortgage payments. The CRA will pay $393,000to resolve allegations that it violated the FTC Act by failing to implement procedures to prevent the sale of lists of consumer information to firms that should not have received them. In a separate but related case, which the DOJ pursued under a referral from the FTC, a data reseller and its affiliates settled charges that the companies violated the FTC Act and FCRA by (i) obtaining prescreened lists without having a permissible purpose, (ii) reselling the reports without disclosing to the consumer reporting agency that provided them who the end users would be, (iii) failing to maintain reasonable procedures to ensure that prospective users had a permissible purpose to get them, (iv) to the extent that firm offers of credit were made, failing to maintain a record of the criteria used to select consumers for these offers, and (v) failing to control access to sensitive consumer financial information. The resellers agreed to pay a $1.2 million civil penalty and will be barred from using or selling prescreened lists without a permissible

purpose, or in connection with solicitations for debt relief or mortgage assistance relief products or services.

Senator Seeks Information from Data Brokers. On October 10, Senator Rockefeller (D-WV), Chairman of the Senate Commerce Committee, sent letters to nine data brokers seeking information about how those companies compile and sell consumer information. For example, Mr. Rockefeller asked that, by November 2, 2012 the data brokers (i) provide a list of the sources from which the brokers have collected or received data from or about consumers over the past four years, (ii) describe the methods of data collection employed, (iii) identify the consumer data collected during that period, and (iv) list the products or services offered to third parties. This follows similar requests made in August by a bipartisan group of members of the House of Representatives. Because the data brokers targeted by members of the respective chambers of Congress overlap only in part, a total of fourteen companies have been asked to produce information and materials to Congress.

CFPB Releases Additional Credit Card Complaints. On October 10, the CFPB added credit card complaints dating back to December 1, 2011 to its publicly available consumer complaint database. The CFPB launched the database in June 2012, but until now had only provided data for complaints received after June 1, 2012. The CFPB is collecting complaints regarding a number of other consumer products and services, including auto and student loans, but the CFPB has not indicated when it will make those complaints available through the public database. The CFPB also announced that the public database is no longer in "beta" form and released a snapshot of the consumer complaint process to date, including an analysis of complaints received through September 30, 2012.

Federal Nonbank Charter Legislation Faces Opposition from State AGs. On October 5, forty-one state attorneys general (state AGs) reasserted their interest in enforcing state laws regulating short-term, small dollar lenders, including payday lenders. The National Association of State Attorneys General sent a letter to the leadership of the U.S. House of Representatives and the U.S. Senate urging them to oppose H.R. 6139, the Consumer Credit Access, Innovation, and Modernization Act. As previously reported, the Act, introduced by Reps. Luetkemeyer (R-MO) and Baca (D-CA), would allow the OCC to establish a federal charter for certain nonbanks. The state AGs charge that H.R. 6139 would preempt state laws governing consumer lending and generally would undermine states' authority with regard to consumer protection enforcement. The state AGs acknowledge that the bill would allow them to enforce violations of federal law, but argue that state laws designed for local markets would be preempted and the state AGs' ability to target abuses as they emerge would be impaired. During a July hearing on the legislation, the OCC and the Conference of State Bank Supervisors also expressed opposition to the legislation.

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CRIMINAL ENFORCEMENT

DOJ Announces Results of Year-Long Mortgage Fraud Initiative. On October 9, the DOJ, HUD, the FTC, and the FBI announced the results of the DistressedHomeowner Initiative, a year-long national effort to coordinate federal and state investigation and prosecution of alleged mortgage fraudsters. The Initiative was carried out under the Mortgage Fraud Working Group of the FFETF. Between October 1, 2011 and September 30, 2012, the unit's work resulted in 285 criminal indictments and informations against 530 defendants. The announcement described many of the Working Group's investigative tactics, including undercover operations, and explained the reasons behind the Working Group's focus on Southern California. The Working Group expects more enforcement actions to result from ongoing investigations, and the FFETF has several other active working groups, including the Residential Mortgage-Backed Securities Working Group that recently sued a major bank over alleged fraudulent misrepresentations and omissions in the sale of RMBS to investors.

FinCEN Publishes Mortgage Fraud Update and SAR Activity Review, Updates Electronic Filing Specifications. This week FinCEN published a new SAR Activity Review and a Mortgage Loan Fraud Update. This issue of the semiannual SAR Activity Review provides (i) the results of a survey of readers of the Trends, Tips & Issues and By the Numbers publications, (ii) an article on foreign-located money services businesses that have registered with FinCEN, (iii) feedback on FinCEN data from state and local law enforcement agencies, and (iv) articles focused on changes to SAR reports and tips for writing more effective narratives. The SAR Activity Review also provides an industry perspective on the AML risks presented by business funded prepaid cards. In the Mortgage Loan Fraud Update, FinCEN provides data regarding recent mortgage SAR activity during the second quarter of 2012. Overall, FinCEN experienced a 41% decrease in mortgage fraud SARs over the previous year, but SARs regarding foreclosure rescue scams continued to grow. FinCEN believes the growth in foreclosure-related filings could be attributed to a growing awareness of such scams and real estate market conditions.

On October 10, FinCEN issued updates to its electronic filing requirements for Currency Transaction Reports, Suspicious Activity Reports, and Designation of Exempt Person Forms. The updates do not include any new or deleted fields but do provide clarifications in the instructions for certain fields and other technical changes.

UK SFO Revises Guidance on Self-Reporting. On October 9, the United Kingdom Serious Fraud Office (SFO) issued policy statements and frequently-asked-questions (FAQs) with regard to: (1) facilitation payments, (2) hospitality and gifts, and (3) self-reporting. While the bulk of the guidance reasserts existing policies, the SFO did revise its guidance on self-reporting. The new guidance makes clear SFO's position that self-reporting will not always shield a company from prosecution. The fact that a corporate body has reported itself will be a relevant consideration if it forms part of a "genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice." A decision by the SFO to prosecute will be based on the Full Code Test in the Code for Crown Prosecutors, the joint prosecution Guidance on Corporate Prosecutions and, where relevant, the Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions on the Bribery Act 2010. As explained in the FAQs, the revised statement of policy is not limited to allegations involving overseas bribery and corruption, and if the requirements of the Full Code Test are not established, the SFO may consider civil recovery as an alternative to a prosecution.