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CFPB Update: June-July 2015

Developments at the Consumer Financial Protection Bureau

By Julius L. ("Jerry") Loeser

1. On June 9, 19 trade associations wrote to House Financial Services Committee Chairman Jeb Hensarling (R-TX) and Ranking Member Maxine Waters (D-CA) urging them to pass H. R. 2213 that would delay enforcement of the CFPB's Truth in Lending Act – Real Estate Settlement Procedures Act **integrated disclosure rule** that becomes effective August 1. The letter notes that 250 Congressmen and 41 Senators had also written to the CFPB urging similar action.

2. Also on June 9, the prudential banking agencies, the CFPB, and the SEC issued final **diversity** and inclusion standards for the firms they regulate effective June 10. Firms will not be examined for compliance with the standards, and the agencies recognize that the standards will not apply to all firms in the same way depending on size, number of employees, revenues, number of customers, contract volume, location, and community. The standards suggest that firms make information available not only to regulators, but also to the public. The agencies invited further comment on information collection by August 10.

3. Also on June 9, Reuters published an article about the anticipated negative effect an expected CFPB rule on **overdrafts** may have on regional bank earnings. The article named SunTrust Bank, Regions Bank, and TCF Bank. The CFPB has not yet said what the overdraft rules would provide and there has been speculation whether they will cap overdraft fees, require an ordering of check processing that does not maximize such fees, limit the number of overdraft charges, or require a credit analysis of a customer before permitting an overdraft. Overdraft fees constitute non-interest income which some might say has been under regulatory attack as regulators and Congress have limited credit card late fees and debit card processing fees. Low interest rates imposed by Federal Reserve monetary policy has simultaneously reduced bank interest income. The CFPB's interest in restraining overdraft fees may be an example of its mission conflicting with the safety and soundness mission of the prudential bank regulators.

4. On June 10, the House Appropriations Committee outlined details of its Financial Services and General Government Operations **spending bill** and disclosed that the bill, among other things, would transition funding for the CFPB to the Congressional appropriations process. The bill also would more than double a $350 million 2014 cut to the budget of the Internal Revenue Service's budget, providing the IRS $10.1 billion (cutting $838 million from its budget) and prohibit the IRS from implementing the individual mandate under ObamaCare. The bill would also reduce the Federal Communications Commission's 2015 budget by $25 million and prohibit it from implementing net neutrality. It also would prohibit travel to Cuba educational exchanges that do not involve academic study in a degree program and also bar the use of funds for abortions or the advancement of marijuana legislation.

5. Also on June 10, the CFPB adopted a final larger participant rule for **auto finance** companies, subjecting such companies to examination and potential reporting requirements. Simultaneously, the CFPB issued examination procedures for auto finance firms, suggesting a focus on ancillary products, such as extended service contracts, leasing (particularly termination fees and disclosure of lease terms), advertising, payment allocation, and information-sharing.

6. On June 11, the CFPB released an *amicus* brief that it filed in Hawkins v. Community Bank of Raymore, a case pending before the U. S. Supreme Court addressing the issue whether the Equal Credit Opportunity Act (**ECOA**) applies to guarantors. Both lower courts ruled that ECOA did not apply to guarantors as guarantors are not "applicants" under ECOA. (ECOA prohibits discrimination on the bases of race, marital status, etc. against "applicants." Regulation B, which implements ECOA, expressly defines the term "applicant" to include a guarantor, but the Eighth Circuit U.S. Court of Appeals declined to defer to the agency that adopted the regulation when the agency's definition contradicts the unambiguous text of a statute. The CFPB's brief argues that it is entitled to "great deference" under the *Chevron* case and that Congress' failure to amend the definition of "applicant" despite the long-standing definition in Regulation B and numerous other Congressional amendments to ECOA should be construed as tacit Congressional approval of the Regulation B definition.

7. Also on June 11, Senator David Vitter (R-LA), Chairman of the Senate Small Business and Entrepreneurship Committee, wrote the Comptroller General at the Government Accountability Office (GAO) about the CFPB's impending proposed **payday lending** rule. Senator Vitter asks the GAO to examine the CFPB's conduct during the forthcoming rulemaking process. Particularly, he is concerned that the Dodd-Frank Act requires the CFPB to seek direct input from small entities during its rulemaking process and wishes the GAO to consider:

a. how the CFPB selects small entity representatives,

b. whether the representatives receive adequate information to enable them to provide constructive input,

c. whether they are given enough time to do so before a rule is drafted,

d. whether the process the CFPB follows allows the CFPB to consider the small business views adequately,

e. whether the CFPB's analysis of how proposed rules would affect cost of small business credit is adequate,

f. whether the process adequately included Small Business Administration and Office of Management and Budget participation,

g. what steps the CFPB took to minimize impact on small businesses, and

h. whether the small business representatives believe:

i. their respective industries were adequately represented,

ii. materials distributed to them adequately prepared them,

iii. their views were accurately reported by the CFPB, and

iv. their views were adequately considered by the CFPB.

8. On June 12, the CFPB filed a memorandum with the federal court in New York supporting its joint motion for approval of a $68 million settlement of its "cramming" case against **Sprint** Corp. The memorandum explained that $50 million of the $68 million would go to pay refunds to consumers, $6 million will pay a fine to resolve claims by the Federal Communications Commission, and $12 million in fines would go to State Attorneys-General. Also, under the terms of the settlement, Sprint would change its third-party billing practices to prevent "cramming," requiring express informed consent before permitting third-party charges to be imposed by consumer telephone bills, also provide consumers with a confirmation after the transaction, and permit consumers to block such charges. The settlement also permits consumers to pursue their own claims against Sprint according to the CFPB memorandum.

9. Also on June 12, a federal judge in the Eastern District of California denied a motion to dismiss two counts in a consumer class action (Cabrales v. Castle & Cooke Mortgage, LLC, No. 1:14-cv-01138-MCE-JLT). The class action was based on a mortgage company's consent order entered into with the CFPB in November, 2013 settling allegations that the firm had violated the CFPB's loan originator compensation rule. Under the consent order, the company had agreed to pay $9.2 million in restitution to borrowers. The named plaintiff in the class action had received a check for $795.02 from the CFPB. The decision is a reminder that CFPB consent orders do not protect against **civil liability** even if the consent orders provide for restitution payments.

10. On June 13, *The New York Times* published an editorial applauding the CFPB's issuance of its larger participant in **auto finance** rule because auto loans "have long been a bastion of predatory lending and racial discrimination" and because, until now, lending by nonbank finance companies escaped federal regulation altogether." The editorial also said that "[g]reater scrutiny of banks by the bureau since 2013 has resulted in … payments totaling $136 million to 425,000 black, Hispanic, and Asian borrowers who were charged higher auto loans interest rates than comparable white borrowers." The editorial further explained that "[m]ost auto dealer profits are made by not selling cars but by making auto loans that often contain hidden finance charges and other essentially useless add-ons like credit insurance" and that dealer discretion in setting interest rates has led to minority borrowers paying higher interest rates. The editorial did not explain that auto finance lenders are, and long have been, subject to the full panoply of consumer finance regulation (Regs Z and B, FCRA, FDCPA) and that the $136 million payments related to a single settlement (Ally Bank), and that less than $1 million has even been paid out to consumers by the CFPB because it cannot identify any real minority victims of the practices that the editorial describes.

11. On June 15, the *American Banker* published a story entitled "CFPB Grapples with Spikes in **Employee Bias** Complaints." The story reports that, despite news stories and a Congressional investigation that led to changes in the CFPB's employee rating system, employee morale has not significantly improved at the CFPB. The story quotes a gay employee whose discrimination claim was denied by the CFPB and who now plans on filing a civil suit against the agency. Last year, employee complaints were of discrimination in evaluations. This fiscal year, the CFPB has had 24 equal employment opportunity (EEO) complaints, whereas the Federal Reserve Board had had only ten and the OCC has had only 17. The FDIC, which has more than four times the number of employees (6,600) than the CFPB (1,400) has, received 47 EEO complaints so far this year. Some of the CFPB EEO complaints were tied to the CFPB's old performance review system which has been replaced by a temporary pass-fail system until the CFPB and the union reach agreement on a permanent system.

12. On June 16, the CFPB published notice of the availability of its **service contract inventory**. Among the largest contracts were a $6 million contract for advertising and a $4.3 million contract for economic analysis, including fair lending analysis.

13. On June 17, the CFPB sued Security National Automotive Acceptance Company, an Ohio-based auto lender operating in more than 24 states, for its **debt collection** tactics, i.e. allegedly illegal threats to contact commanding officers (and actually doing so) and deceptive claims about the consequences of failing to pay, against servicemembers who borrowed from it to purchase used cars. Allegedly, the company told customers that failure to pay could result in action under the Uniform Code of Military Justice, demotion, loss of promotion, discharge, denial of re-enlistment, loss of security clearance, or reassignment, all of which were extremely unlikely. The company's contacts of commanding officers were permitted by the contracts the servicemembers signed, but the CFPB alleged that many members were unaware of the provisions and, thus, the provisions were unfair. The CFPB also alleged that the company had threatened garnishments, but garnishments could not be done without a court order, and the threats were made before the company had decided to sue. Similarly, the CFPB alleged that the company improperly threatened legal action before it had decided to sue.

14. Also on June 17, Rohit Chopra, 33, the CFPB's **student loan** ombudsman, sent a letter of resignation. He will be replaced in the interim by Seth Frotman, his assistant. Chopra was a harsh critic of private student loans, disregarding, his critics noted, problems in the federal student loan area. He analogized student loan servicing problems to those experienced in the mortgage servicing industry. *The Wall Street Journal* has reported that Senator Elizabeth Warren (D-MA) has suggested to New York Governor Andrew Cuomo that the Governor should appoint Mr. Chopra to replace outgoing New York Superintendent of Financial Services Benjamin Lawsky.

15. Also on June 17, the CFPB announced that it would delay the effective date of the new Truth in Lending Act – Real Estate Settlement Procedures Act **integrated disclosure**

rules from August 1, 2015 to October 1, 2015. Experts had predicted that 40% of mortgage lenders would not be able to comply by August 1, and 250 Congressmen and others had urged the CFPB to postpone the effective date until January 1, 2016, which CFPB Director Cordray has declined to do. However, Director Cordray, in announcing the postponement to October 1, explained that the postponement is to correct an administrative error that the CFPB just discovered "in meeting the requirements under federal law, which would have delayed the effective date of the rule by two weeks."

16. Also on June 17, the CFPB released its **Semi-Annual Report** to the President and Congress. The report indicates that, for the six months between October 1, 2014 and March 31, 2015, the CFPB examiners required financial firms to pay more than $114 million to more than 700,000 consumers in redress for wrongdoing by the firms. Enforcement actions during that period resulted in an additional $19 million in such relief and another $32 million in civil money penalties.

17. Also on June 17, 19 U. S. Senators and 67 Congressmen signed a letter to CFPB Director Cordray expressing their concerns about the CFPB's **arbitration** study that is to serve as the basis for CFPB rulemaking. The letter characterized the process that led to the CFPB's report of the study as unfair. The letter asserts that the CFPB "ignored" Congressional information requests about the study's process and topics and failed to provide the general public an opportunity for input. The letter further asserts that the study failed to provide the most basic comparisons needed to evaluate arbitration agreements, e.g. estimating the transaction costs associated with a claim in federal court as compared to arbitration and also comparing the ability of a consumer to proceed without a lawyer in federal court or in arbitration. Finally, the letter calls on the CFPB to reopen the study process.

18. On June 18, *Politico* reported that the House Appropriations Committee approved an amendment to the FY 2016 Financial Services Appropriations bill that would prohibit the CFPB from issuing a rule on **arbitration** unless the CFPB produced a peer-reviewed study on arbitration and determined that the benefits of such a rule outweigh the cost. The amendment was introduced by Congressmen Steve Womack (R-AR) and Tom Graves (R-GA). In March, the CFPB released a study of arbitration, and it is considering proposing a rule prohibiting pre-dispute arbitration provisions in consumer finance agreements.

19. Also on June 18, the CFPB's Student Loan Ombudsman released a report that found that 90 percent of requests for release of co-signers are rejected even though many student lenders advertise options to release co-signers. **Student loan** borrowers complain that they do not have information as to the criteria used by lenders to act on requests for such releases. A 2012 joint CFPB – Department of Education study found that 90 percent of private student loans were co-signed, often by a parent or grandparent. Student loans may go into default even though they are performing if a co-signer passes away or files for bankruptcy. The report mentions that, between October 1, 2014 and March 31, 2015, student loan complaints increased by 34 percent compared to the same time period last year. The CFPB's apparent concern for relieving co-signer responsibilities may be another example of the CFPB's mission conflicting with the safety and soundness concerns of the prudential bank regulators.

20. Also on June 18, the CFPB filed a complaint against Syndicated Office System, LLC dba Central Financial Control, which collects medical debts for health care providers, alleging violations of the **Fair Credit Reporting Act** (the FCRA) and the **Fair Debt Collection Practices Act** (the FDCPA). The FCRA requires a company to respond within 30 days when a consumer disputes information that the company provided to credit reporting agencies. The FDCPA requires a debt collector to provide a consumer debtor a "debt validation notice" (notice of the consumer's right to get information about the debt being collected in order to assess the validity of the claim and to dispute it) within five days of initial communication with the debtor. The CFPB alleges that the firm failed to investigate or respond to more than 13,000 credit reporting disputes and failed to send debt validation notices to nearly 10,000 consumers. Apparently, the firm did not have proper compliance policies and procedures in place and has now consented to pay $5.4 million in relief to consumers and a $500,000 fine. Medical debt collection has been a concern of the CFPB's as insurance reimbursements and medical billing procedures may cause confusion and delay, such that consumers may be unsure of how much to pay and to whom.

21. Also on June 18, it was reported that "Economic Impact on Small Lenders of the Payday Lending Rules Under Consideration by the CFPB," a report by Charles River Associates prepared for the Community Financial Services Association of America, found that CFPB rules being considered would reduce revenues of small **payday** lenders by 82 percent, resulting in losses for five of six lenders and would most adversely affect lenders in rural areas. Individual payday loan offices currently average a profit of $37,000 annually; the study found that would turn to an average loss of $28,000 should the CFPB adopt final rules as currently being considered.

22. On June 19, *Auto Finance News* reported that, in a bow to the CFPB, BB&T Dealer Financial Services will switch to flat fees from dealer markup as a means of compensating auto dealers for originating **auto loans**, the first Top 20 auto lender to do so. (BMO Harris Bank, Chicago, switched to flat fees in April, 2014.) BB&T had tested flat-fee products for the last two years starting shortly after the CFPB issued guidance about its concern that dealer markups gave rise to fair lending issues. The new fee arrangement will begin July 1, 2015, and the new flat fee reportedly will be three percent of the amount financed, up to a maximum of $2,500. The National Automobile Dealers Association expressed concern about government pressure that a particular compensation model be adopted.

23. Also on June 19, *Housing Wire* reported that Bankrate disclosed in a filing with the SEC that the CFPB is investigating its **mortgage rate comparison tool**, Bankrate.com. The CFPB has issued Civil Investigative Demands about the company's quality control process. Ironically, the CFPB offers its own mortgage rate checker as part of its "borrower education tool," which some might say competes with Bankrate. When the CFPB introduced its mortgage rate checker, some complained that it did not comply with the CFPB's own disclosure rules.

24. On June 22, the CFPB's Assistant Director and Student Loan Ombudsman, Rohit Chopra, wrote to Google,

Bing, and Yahoo to alert them that student debt relief scammers might be targeting **student loan** borrowers using their search engines, charging consumers large upfront fees to enroll borrowers in plans that can be enrolled in for free. Google had previously cooperated with the CFPB in 2011 to help stop other debt relief scammers.

25. On June 23, the CFPB released the eighth edition of its *Supervisory Highlights*, covering the first four months of 2015. This publication reports periodically on **violations of law** cited by CFPB examiners. The report cites one mortgage servicer's violations of the CFPB's year-old mortgage servicing rules concerning trial modifications of mortgages; the servicer sent foreclosure notices to borrowers approved for trial modifications. Another servicer requested documents that were inapplicable or that had already been provided, and other servicers failed to send notices of receipt of modification requests within five days of receipt of the requests. Examiners also found debt collectors that did not track complaints or review and resolve them and other debt collectors that did not investigate disputes. CFPB examiners also found quality control problems at credit reporting agencies with at least one CRA not regularly monitoring furnishers of information. Other examiners found firms that discouraged mortgage applications by those on public assistance. Across all industries, examiners required remediation of $11.6 million to 80,000 consumers in those four months.

26. On June 27, Ed Mierzwinski, the Consumer Program Director of the U. S. Public Interest Research Group, submitted an electronic comment to the CFPB's website release of narratives in **consumer complaints**. He commented, not entirely accurately, that companies have the option of providing their side of the story. He said that most choose not to do so, which he called "churlish behavior."

27. On June 30, the *American Banker* reported that three of the nation's largest indirect **auto lenders**, American Honda Finance Corp., Toyota Motor Credit Corp., and Nissan Motor Acceptance Corp., will limit by half discretionary prices for dealers to 100 or 125 basis points after the CFPB and the Department of Justice accused them of racial discrimination. While the draft consent orders require payment of remuneration to consumers, changing their practices would enable the defendants to avoid civil money penalties.

28. Also on June 30, The Pew Charitable Trust released a report on **prepaid cards** that the Trust characterized as demonstrating the need for the CFPB to finalize its proposed rules on prepaid cards. The report found that prepaid card use is increasing and that low-income unbanked cardholders use them like checking accounts to control their spending and do not want to overdraw.

29. On July 1, the CFPB announced action against Affinion Group Holdings, Inc. and Intersections Inc., two vendors of **credit card add-on products**, alleging that both charged consumers for benefits that the consumers did not receive. Add-on services include credit monitoring and identity theft protection sold by credit card issuers to their cardholders. Affinion allegedly enrolled customers by phone but could not provide the benefits absent written authorization that, in many cases, it did not receive or even pursue.

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Developments at the Consumer Financial Protection Bureau

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1. On July 2, *The Wall Street Journal* published an op-ed piece by Newt Gingrich, about the CFPB, entitled "A Government Snoop That Puts the NSA to Shame." Former House Speaker Gingrich cited passage of a statute in early June stopping the NSA from collecting information on Americans' phone calls, even though that was being done to protect Americans from terrorism; he then described the CFPB's 12 **data-mining** programs collecting monthly data on almost 600 million credit card accounts and plans to monitor 95% of all credit card transactions by 2016. He suggested that the information that one can glean about an individual from his or her credit card bill is more than one can glean from telephone metadata, and all will be scooped up by the CFPB. University researchers have demonstrated an ability to re-identify both anonymous telephone numbers and anonymous credit card data. When that data is added to data the CFPB collects on 22 million mortgages, 5.5 million student loans, 2 million bank accounts with overdraft fees, and hundreds of thousands of auto sales, credit scores, and deposit advance loans, detailed profiles of individual citizens may be compiled, according to Speaker Gingrich. He acknowledges that the purpose of the collection is to help the agency determine what are unfair, deceptive, and abusive practices, but he suggests that may not be as important as trying to prevent another 9/11. He acknowledges that private businesses data-mine to serve consumers better, but suggests that the CFPB is doing it to deprive consumers of the right to choose those services they prefer that the CFPB may deem harmful. He cites a June Zogby poll for the U. S. Consumer Coalition that found that only 20% of consumers believe that the CFPB should be able to gather credit card statements without consumers' knowledge. In closing he cites the irony of the government now needing a warrant to obtain phone records of suspected terrorists, but not to obtain a consumer's credit card statement.

2. On July 9, the CFPB outlined principles for protecting consumers as the private sector develops new faster **payment systems**. Those principles relate to security, transparency, accessibility, and affordability, as well as fraud protection and error resolution, privacy, consumer control, and funds availability.

3. On July 13, twenty trade associations wrote to U. S. Senators Tim Scott (R-SC) and Joe Donnelly (D-IN) thanking the Senators for introducing S. 1711 that would provide a hold-harmless period to the end of the year after the October 3 effective date of the CFPB's 1,888 page Truth in Lending Act – Real Estate Settlement Procedures Act integrated disclosure rule (**TRID**).

4. Also on July 13, CFPB Director Cordray spoke at the White House Conference on Aging and said that the CFPB will issue an advisory later this year to help banks prevent **elder financial abuse**. Most recently, the CFPB has warned about how elderly homeowners are confused about reverse mortgages.

5. On July 14, the CFPB and the U. S. Department of Justice announced resolution of an action against American Honda Finance Corporation. The government agencies asserted that Honda had discriminated against minorities by charging higher interest rates to them. Honda agreed to change its pricing and compensation system to reduce **auto dealer** discretion in setting interest rates and to pay $24 million in restitution. In the past, Honda dealers had discretion to charge a higher interest rate than set by Honda, by as much as 2.25 percent. Honda agreed to reduce that discretion to 1.25 percent above the rate set by Honda, and, thus, the agencies did not impose a penalty upon Honda.

6. Also on June 14, a federal judge in Atlanta denied a law firm's motion to dismiss a claim filed against it by the CFPB for violations of the **Fair Debt Collection Practices Act**. The CFPB had sued a Georgia law firm, Frederick J. Hanna & Associates, and three of its partners for operating a "mill that uses illegal tactics to intimidate consumers into paying debts they do not owe," i.e. suing consumers to collect debts without verifying whether the debts were actually owed. The law firm's principal defense was that the Dodd-Frank Act expressly withholds enforcement authority from the CFPB for activity performed by a lawyer as part of the practice of law (12 U.S.C. 5571(a)(1)). However, the court noted that there is an exception for the offering of a consumer financial product that is otherwise offered by the attorney in question with respect to a consumer who is not receiving legal services from the attorney with respect to such financial product (12 U.S.C. 5517(e)(2)) and found it applicable although it is not clear that the law firm was offering a consumer financial product. Another noteworthy aspect of this decision is that the CFPB had argued that it is not subject to any statute of limitations, but the court rejected that argument and determined that the CFPB was subject either to a one-year or three-year statute of limitation.

7. Also on July 14, the U. S. Court of Appeals for the District of Columbia held, in *Koch v. S.E.C.*, that the Securities and Exchange Commission could not employ certain remedial provisions in the Dodd-Frank Act to punish an investment adviser **retroactively** for conduct that preceded enactment of the Act, which the Sullivan & Cromwell law firm has suggested could provide a basis to object to certain sanctions sought by the CFPB. In the *Koch* case, the S.E.C. has long had authority to bar investment advisers engaged in misconduct from associating with brokers, dealers, and other investment advisers. The Dodd-Frank Act expanded that to permit the S.E.C. to bar investment advisers engaging in improper conduct from associating with municipal advisers and credit rating agencies. In Koch, the S.E.C. barred an investment adviser that engaged in misconduct in 2009 prior to enactment of Dodd-Frank in 2010, from associating with municipal advisers and credit rating agencies, but the D. C. Circuit held that was an improper retroactive application of the S.E.C.'s new authority. Similarly, the Dodd-Frank Act gave the CFPB authority over unfair, deceptive, and abusive practices (UDAAP), as well as

authority to impose civil money penalties for RESPA violations; similarly certain Truth in Lending Act (TILA) amendments did not become effective until after enactment of Dodd-Frank. Thus, the *Koch* case suggests that the CFPB may not be able to assert that pre-2010 conduct constituted UDAAP violations or to impose civil money penalties for pre-2010 RESPA violations, or to pursue pre-2010 violations of 2010 TILA amendments.

8. On July 15, CFPB Director Cordray, at a Senate Banking Committee hearing, was questioned about (a) **data collection**, (b) the CFPB's recent actions against **indirect auto lenders**, (c) a possible **arbitration** rule, and (d) the integrated Truth in Lending Act-Real Estate Settlement Procedures Act rule (the **TRID** Rule"), the first in light of the data breach at the Office of Personnel Management. (a) Director Cordray assured the Senators that data that the CFPB receives has been scrubbed of personal identifiers before the CFPB receives it; it uses that data to detect patterns in the industry. He said that the only personal information that the CFPB possesses is the information that consumers voluntarily disclose to it in the complaint process. (b) Committee Chairman Shelby (R-AL) said that a recent enforcement action against American Honda Finance Corp. and pending ones against financing arms of Toyota and Nissan, seeking to limit the amount of pricing discretion they give auto dealers in negotiating interest rates on loans to customers, appear to be a "backdoor effort to regulate the auto dealers," over whom the CFPB does not have jurisdiction. Director Cordray questioned the logic of the exemption of auto dealers from its jurisdiction, but insisted that the CFPB was honoring it. He disclaimed any intent to raise interest rates on auto loans. (c) On arbitration, Director Cordray said that the CFPB would be moving forward with rulemaking. (d) Finally, on the TRID Rule, which becomes effective on October 3, he assured the Senators that, while the CFPB did not delay the effective date until year-end as many had urged, the CFPB would show some leniency; he said that early examinations will be diagnostic and corrective, pointing out errors and how they should be corrected rather than being punitive.

9. On July 16, the CFPB announced that it would hold a public forum on **eClosing** on Wednesday, August 5, at 1 p.m. ET at its auditorium at 1275 First Street NE in Washington, D. C.

10. On July 17, CFPB Deputy Director Steve Antonakes announced his **resignation**; he had previously served as a Massachusetts Commissioner of Banking and as CFPB Deputy Director since 2013. His family had remained behind in Boston, and his resignation e-mail message said that he had "missed entirely too many class plays, teacher conference meetings, and little league games" and that he intended to "pursue opportunities that will ensure that I am home for dinner with my wife and family and to assist my five children with their homework." He has been well-regarded. His Deputy Director position will be filed temporarily by Meredith Fuchs, the CFPB General Counsel who has also advised that she will leave the agency soon. Mr. Antonakes also held the position of Director of the CFPB's Supervision, Enforcement, and Fair Lending Office, and his departure will leave two senior positions vacant. The position of Ms. Fuchs' Principal Deputy is also currently vacant, and, thus, with the departure of these two senior officials, the CFPB will have four senior positions to fill.

11. Also on July 16, the CFPB published its first monthly report on trends on **consumer complaints** about financial service firms. A consumer advocate from the U. S. Public Interest Research Group commented that the report identifies the "worst companies." The report ranks firms based on the volume of complaints, ranking Equifax (946) and Experian (885), credit reporting agencies, as first and second, and Bank of America (802), as third. The Consumer Bankers Association called this "the shaming of banks business" and analogized it to David Letterman's Top 10 List, noting that obviously the largest firms would have the most complaints. It also noted, as has been noted before, that there is no substantiation of complaints reported. The most complaints received during the month were about debt collection (7,474) (32% of all complaints) , and the second most were about mortgages (4,702), followed by credit reporting (4,379) and bank accounts (1,987). Student loans received only 625 complaints, and payday loans only 464 complaints. Thirty-seven percent of debt collection complaints were of continued attempts to collect debt not owed.

12. On July 20, the CFPB announced that it had sent letters to sellers of goods to **servicemembers** asking that such sellers review their websites and advertising concerning acceptance of payment by "military allotment." The military permits servicemembers to direct that a portion of their paychecks be paid to specific persons, but such allotments do not contain the same legal protections that payment by Automated Clearing House provides. Therefore, last year, the Department of Defense prohibited use of new allotments to purchase or lease personal property, such as vehicles, appliances, or electronics. The CFPB is concerned that sellers of these types of goods may be misleadingly suggesting to servicemembers that such servicemembers may pay for goods using allotments.

13. Also on July 20, it was reported that Selling Source, LLC and one of its employees petitioned the CFPB in June to set aside a **Civil Investigative Demand** from the CFPB on the bass that the notification provided by the CFPB was inadequate, evasive, and misleading; the purpose of any enforcement proceeding was not within the scope of the CFPB's statutory authority; and, since the CFPB has already resolved to initiate a proceeding, the use of the CID is for discovery, but does not provide protocols and protections that would accompany a legitimate discovery request. Selling Source, LLC is a lead generator and, thus, argues that it is not a "service provider" or "covered person" under Dodd-Frank.

14. Also on July 20, it was reported that the Covington & Burling LLP law firm had sued the CFPB under the **Freedom of information** Act in U. S. District Court in the District of Columbia seeking information relating to the CFPB's report on credit reports. The firm seeks to analyze the quality of the CFPB's methodology in the report, particularly selection of focus group participants, their responses, and their demographic data. Covington had requested the records from the CFPB, but the CFPB withheld 1,197 pages of pertinent records on the basis that such records were confidential financial information, deliberative, or related to personal privacy.

15. On July 21, the CFPB ordered Citibank, N. A. and its

subsidiaries to provide $700 million in relief to seven million consumers harmed by allegedly illegal deceptive practices related to marketing of **credit card add-on** products (debt protection in case of job loss, disability, or hospitalization; and credit monitoring). An example cited by the CFPB was confusing text on pin-pad offer screens at point of sale that increased the likelihood that consumers applying for a credit card at a retailer would unwittingly apply for both a credit card and debt protection. Allegedly, a Citibank subsidiary also deceptively charged expedited payment fees to 1.8 million consumer accounts during collection calls. In addition, Citibank and its subsidiaries agreed to pay a $35 million civil money penalty to the CFPB. This was the tenth credit card add-on case that the CFPB has brought.

16. Also on July 21, the Department of Defense issued a final rule expanding the types of credit products covered by a 36 percent rate cap and other protections in the **Military Lending Act**, and CFPB Director Cordray issued a statement congratulating the Department. Assistant CFPB Director Holly Petraeus issued a statement that said "[w]hen I drive down the strip outside a military installation and count 20 fast-cash lenders in less than 4 miles, that's not a convenience, that's a problem."

17. Also on July 21, U. S. Senator Ted Cruz (R-TX), a candidate for President, called for **abolishment** of the CFPB and, with Congressman John Ratcliffe (R-TX) introduced legislation that would do that. Senator Cruz cited the CFPB's lack of accountability to Congress. The legislation, which has 46 co-sponsors in the House, was introduced on the fourth anniversary of the establishment of the CFPB, and Senator Cruz said "let's celebrate the CFPB's fourth and final anniversary." Texas Republican Congressmen Randy Neugebauer and Roger Williams charged in the *American Banker* that CFPB regulations are harming economic growth and stifling opportunity.

18. On July 22, the CFPB formally delayed the effective date of its new Truth in Lending- Real Estate Settlement Procedures Act integrated disclosure (**TRID**) rule to October 3, 2015.

19. Also on July 22, Meredith Fuchs, the CFPB's General Counsel, was appointed **Acting Deputy** Director, effective when Steve Antonakes leaves the Deputy Director post on July 31. Ms. Fuchs had previously announced her resignation as General Counsel effective when a replacement is appointed. Before joining the CFPB in 2011, Ms. Fuchs was Chief Investigative Counsel to the House Energy and Commerce Committee.

20. Also on July 22, the CFPB entered into a settlement with Discover Financial Services. The CFPB alleged that Discover Bank engaged in illegal **debt collection** practices related to student loans, and Discover agreed to pay $18.5 million, $16 million in refunds to more than 100,000 customers and a $2.5 million penalty. Specifically, the CFPB alleged that Discover overstated minimum amounts due on billing statements, denied information to consumers needed for tax return preparation, and contacted consumers on their cellphones at prohibited times. (Mobile phones taken to different time zones create a recurring debt collection problem.) CFPB Director Cordray said that "Discover created student debt stress." Discover said that it had committed significant resources to compliance, changes in regulatory expectations, interpretations, or practices that could increase the risk of enforcement actions.

21. On July 23, the full D. C. Circuit declined to rehear a dispute over the **constitutionality** of the CFPB, leaving intact a ruling that an attorney that used the services of Morgan Drexen Inc., a litigation support firm that was the target of CFPB enforcement for its collection of upfront fees for debt relief services, lacked standing to sue.

22. Also on July 23, the CFPB asked the U. S. District Court for the Eastern District of California to approve a **settlement** with Student Financial Aid Services, Inc. (SFAS). SFAS, for a fee, helps students complete applications for financial aid. The settlement calls for SFAS to pay $5.2 million to the CFPB for the CFPB to distribute to customers harmed by the SFAS's allegedly unlawful practice of charging unauthorized recurring charges. SFAS denies the allegations and said that it has helped 2.2 million students without a single complaint to the CFPB, including tens of thousands of low-income students *pro bono*. The CFPB asserted that SFAS charged students $85 a year without their consent or adequate disclosure. The settlement contemplates a civil money penalty of one dollar as the $5.2 million settlement left SFAS with insufficient resources to pay a larger civil money penalty.

23. Also, on July 23, the CFPB's Inspector General released an executive summary of **information security problems** with the CFPB's consumer complaint database. The IG found that patches were not installed in a timely manner, password expiration and user access requirements were not fully enforced, and security events were not always logged and reviewed.

24. On July 24, *Law 360* reported that **law firms** are ramping up in response to the CFPB. In the article a legal recruiter is quoted to the effect that law firms that are not in the consumer finance space, but want to be in it, find that bringing someone in from the CFPB is a "lightning rod to jump-start the practice."

25. Also on July 24, the U. S. Court of Appeals for the D.C. Circuit unanimously reversed a district court ruling that State National Bank of Big Sandy, Texas did not have standing to challenge the **constitutionality** of the CFPB and the appointment of Director Cordray. The court said that, because the bank is subject to the CFPB's rulemaking powers, the bank is regulated by the CFPB, and, thus, has standing to challenge its constitutionality.

26. On July 28, during a House Financial Services Committee hearing on the effect of the Dodd-Frank Act on economic prosperity, Committee members said that the CFPB's **qualified mortgage rule** has made it harder for low- and moderate-income Americans and minorities to buy homes.

27. Also on July 28, the CFPB charged two affiliates (a payment processor and a mortgage servicer) of Western Union and Fidelity National Financial with **deceptive advertising**. The affiliates advertised an "Equity Accelerator" program that would enable consumers to realize "tens of thousands of dollars in interest savings" by making more frequent mortgage payments, but charged a $295 enrollment fee and a $2.50

transaction fee for each payment. The firms did not make the more frequent payments, though, according to the CFPB. In addition, one of the firms advertised average savings of $33,000 but had no supporting evidence for that claim and only a tiny percentage of customers saved that amount. The firms agreed to pay $33.4 million to affected consumers and $6.1 million in fines.

28. On July 29, the House Financial Services Committee reported out, with bipartisan support, four **bills** related to the CFPB. First, H. R. 1210, the Portfolio Lending and Mortgage Access Bill, creates a safe harbor, from the mortgage ability to repay rules, for mortgages that remain in an originator's portfolio so long as they comply with prepayment penalty phase-out requirements. Second, H. R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, nullifies the CFPB's March, 2013 guidance on this subject (that suggested that giving auto dealers discretion to negotiate interest rates on auto loans leads to unlawful discrimination) and requires the CFPB, if it wishes to proceed, to follow rulemaking procedures; make supporting studies available to the public; consult with the Federal Reserve Board, FTC, and Justice Department; and study the impact on consumers and small businesses. Third, H. R. 1941, the Financial Institutions Examination Fairness and Reform Act, establishes deadlines for the CFPB and other bank regulators to hold examination exit interviews and issue final exam reports, as well as establish a formal Office of Independent Examination Review. Last, H. R. 3192, the Homebuyers Assistance Act, provides a hold harmless period until February 1, 2016 for the TRID rule that is scheduled to become effective October 3 despite industry and Congressional calls for delay. All four bills are expected to pass the full House.

29. Also on July 29, the CFPB issued a **Spanish** version of its home loan toolkit.

30. On July 30, both Wells Fargo and Prospect Mortgage announced that they would exit all marketing services agreements as such agreements are a concern of the CFPB under **RESPA**. RESPA generally prohibits the payment of referral fees in connection with residential mortgage services, but contains an exemption for the payment of bona fide compensation for goods and services actually provided, and the mortgage industry has long considered, with the tacit approval of HUD, the former enforcer of RESPA, payments for marketing services to be covered by that exemption. However, the CFPB has taken enforcement action against such agreements. The Mortgage Bankers Association has cited this as an example of the CFPB adopting what are, in effect, rules by enforcement action, rather than by formal rulemaking procedures with opportunity for public comment and bank regulatory agency review.

31. Also on July 30, the CFPB announced a settlement of an enforcement action against a Texas mortgage servicer, Residential Credit Solutions Inc. (RCS). RCS specializes in **servicing** delinquent and other high risk loans, often taking on such loans from other servicers. RCS allegedly failed to honor mortgage modifications agreed to by prior servicers, requiring consumers to requalify for modifications to which the consumers already had a legal right. Often, allegedly, RCS would require those consumers to waive certain rights in order to receive a modification. RCS agreed to pay $1.5 million in restitution and a $100,000 civil penalty.

32. Also on July 30, the Texas Bankers Association (TBA) announced that it had filed a **Freedom of Information** Act request with the CFPB for all documentation that the CFPB has requested from bank software processors on bank customer **overdrafts**. We previously reported that the CFPB has asked these processors for this information and that the processors planned to pass on to banks customers the cost of responding to the CFPB requests. The TBA announcement said it objected, on both legal grounds and customer privacy grounds, to the CFPB's search and believed that the CFPB should have merely sampled data rather than demand information from every major processor.

33. Also on July 30, the CFPB announced that it would conduct financial management **training** for seniors and their caregivers at a senior living community in Springfield, Virginia on Monday, August 17. Director Cordray will speak as will the Attorney General of Virginia.

34. On July 31, the Inspector General of the Federal Reserve Board and the CFPB issued an audit report on the CFPB's **headquarters construction costs**; that report concluded that such costs appear reasonable compared to comparable building renovations and below budget and that controls are adequately designed, although the IG did not test their effectiveness and also the initial decision to renovate was made before those controls were put in place. The IG did find that the CFPB had not complied with the Investment Review Board (IRB) guidance for approving renovation costs and should submit a business case to the IRB for optional investments before obligating funds.

35. On August 3, at the behest of PHH Corporation, a defendant in an action by the CFPB for alleged RESPA violations in which CFPB Director Cordray, on appeal, required $109 million in disgorgement, instead of $6 million as initially required by the CFPB's Administrative Law Judge, the U. S. Court of Appeals for the District of Columbia stayed the CFPB's decision. PHH is arguing not only that the CFPB has misconstrued RESPA, but also that its structure is **unconstitutional** because its single director 's authority, shielded from Presidential control and Congressional power, to issue final decisions violates the separation of powers doctrine. Two lower federal courts have rejected this argument.

36. On August 4, the CFPB issued a compliance bulletin on private mortgage insurance (**PMI**) cancellation and termination to help servicers by explaining requirements of the Homeowners Protection Act (HPA) of 1998 and providing examples of what the CFPB considers violative procedures. The HPA is intended to ensure that borrowers are able to cancel PMI at such time as they reach a certain level of equity in the property financed.

37. Also on August 4, the CFPB announced a lawsuit against NDG Enterprise, an online **payday** lender, alleging that NDG collected loan amounts and fees that were void (because they violated state usury caps and licensing laws) and not legally repayable, as well as falsely (because NDG had no real intention to sue) threatened consumers with lawsuits and imprisonment. The CFPB also alleged that NDG used unlawful wage assignment clauses.

38. On August 5, the CFPB released a report on what it learned from a pilot project on electronic closings of residential real estate mortgage loans (**eClosing**). EClosing borrowers scored higher than paper borrowers on measures of "empowerment" (the consumer's ability to feel like he or she is playing a more active role in the closing process), perceived understanding, and efficiency, and early delivery and review of documents contributed to better outcomes. Seven lenders participated in the project.

CFPB Update: August-September 2015

Developments at the Consumer Financial Protection Bureau

By Julius L. ("Jerry") Loeser

1. On August 3, the Mercatus Center at George Mason University published a Working Paper on "The Consumer Financial Protection Bureau's Arbitration Study" by Todd Zywicki, Foundation Professor of Law at George Mason University School of Law, and Jason Scott Johnston, Professor of Law at the University of Virginia School of Law. The Paper concludes that the CFPB's own study shows that **arbitration** is relatively fair and successful at resolving a large range of disputes and that limiting the use of arbitration will likely leave consumers worse off. The CFPB study, which many fear will be used by the CFPB as a basis for prohibiting the use of predispute arbitration clauses, used poor methodology according to Professors Zywicki and Johnston. For example, the CFPB did not have access to information about the terms of arbitration settlements, making it difficult to compare the benefits of such settlements with the benefits of class action settlements. Also the CFPB findings on the benefits of class action settlements are based on settlements in fewer than twelve large class actions, which likely do not accurately reflect settlements in smaller class actions as to which many consumers do not take the time or trouble to complete claim forms. In any event, the large class action settlements considered by the CFPB mostly involved debt collection, which does not normally afford consumers the alternative of arbitration.

2. On August 6, CFPB Director Cordray denied another petition to set aside a **civil investigative demand** (CID), this one served upon Selling Source, LLC, a firm that generated sales leads for financial institutions. Selling Source had argued that the CFPB did not have jurisdiction over it, but Director Cordray rejected that argument on the basis that it is a substantive defense to claims that the CFPB has yet to assert, not a defense to enforcement of a CID. Director Cordray has yet to rule to asset aside a CID.

3. On August 7, the Inspector-General of the Federal Reserve Board, who also is the **Inspector-General** of the CFPB, released his Work Plan. The Plan reflects 12 ongoing projects at the CFPB and seven planned new projects. The twelve ongoing projects include

- audit of the CFPB's contract management process,
- audit of the CFPB's distribution of funds from its Civil Penalty Fund,
- audit of the CFPB's public consumer complaint database,
- evaluation of the CFPB's hiring process,
- audit of the CFPB's space-planning activities,
- evaluation of the effectiveness of the CFPB's examination workpaper documentation,
- 2015 audit of the CFPB's information security program,
- audit of the CFPB's travel card program,
- evaluation of the CFPB's coordination with external organizations to implement targeted consumer education,
- security control review of the CFPB's public website,
- security control review of a representative subset of the CFPB's information systems, and
- audit of the CFPB's advisory board and councils.

The seven planned projects include:

- audit of the CFPB's contract solicitation, selection, and award process,
- audit of the CFPB's privacy data and personally identifiable information program,
- CFPB security control reviews,
- evaluation of the CFPB's Enforcement Office's processes for protecting confidential information,
- evaluation of the CFPB's compliance with the requirements for issuing civil investigative demands,
- evaluation of the CFPB's risk assessment framework for prioritizing examination activities, and
- risk assessment of the CFPB's purchase card program.

4. On August 10, U. S. Senator Elizabeth Warren (D-MA) wrote to CFPB Director Cordray asking for her staff to be briefed about new communication tools created by **Symphony** Communications LLC, supported by a "$70 billion" investment by 14 large banks, hedge funds, and other financial firms. The letter quotes Symphony's website as boasting that it will "prevent government spying," that "there are no back doors," and that Symphony can guarantee "that data deletion is permanent." Senator Warren's concern, which echoes that previously expressed by the New York Department of Financial Services, is that such a communications system can circumvent compliance controls and regulatory review, citing enforcement authorities' discovery of chat rooms and text messages that enabled them to prosecute the unlawful fixing of LIBOR.

5. On August 11, the stock price of World Acceptance, a **payday** lender, dropped by more than a third after the company confirmed in an SEC filing that it is under investigation by the CFPB.

6. On August 12, the *Auto News* published an article "A Former CFPB Lawyer on How Lenders Can Stay Clean with the Bureau." In the article, former CFPB attorney Gerald Sachs is quotes as saying that the CFPB will not care if a firm has 3 million consumers and only 100 consumer complaints and that it will being an **enforcement** action to benefit the 100 consumers because every single consumer matters to the CFPB.

7. Also on August 12, the CFPB, in its first enforcement action in the **deposit** area, and the federal prudential bank regulators ordered Citizens Bank to refund at least $14 million to 475,000 affected accounts and pay $20.5 million in fines for

failing to correct errors made by depositors on their deposit slips where the error was for more than $25. The bank explained that the amounts under-credited and over-credited were approximately equal, but customers over-credited would be allowed to keep the excess funds. The bank's account disclosures suggested that the bank would verify deposits. The CFPB was alerted to the issue by a whistle-blower.

8. On August 13, the CFPB and the Federal Trade Commission filed an *amicus* brief in the Third Circuit U. S. Court of Appeals on the question whether the **Fair Debt Collection Practices Act** prohibits a debt collector from filing a debt collection lawsuit without meaningful attorney involvement. The CFPB and FTC argued that the statute does prohibit such a filing because the statute literally prohibits making a false representation or implication that any communication is from an attorney. The *amici* assert, as the lower court found, that filing a lawsuit without meaningful attorney review misrepresents the attorney's involvement. In the particular case, an attorney spent four seconds reviewing the case.

9. Also on August 13, the *American Banker* published an op-ed piece by Georgetown University law professor Adam Levitin entitled "The CFPB's **Data Collection** is to be Applauded." He states that CFPB critics have veered off into "black helicopter paranoia" and that their criticism is politically motivated. He suggests that much of the data gathered by the CFPB is publicly available in mortgage filings in county land records or car sales with DMVs or is commercially available. He adds that very little of the data is publicly identifiable, and the CFPB anonymizes that data. He further suggests that the CFPB collects account-level data showing account balances, interest rates, and fees, not transaction level data and so the CFPB does not know about "subscriptions to Ashley Madison." Credit card data collected by the CFPB, he says, does not include names, addresses, account numbers, expiration dates, or security codes, and, therefore, is useless to criminals. He also suggests that the traditional bank regulators have been collecting this kind of data for years. Finally, he suggests that most of the data collection is to support specific rulemakings, and the public should support evidence-based rulemaking.

10. Also, on August 13, Luther Strange, the Attorney-General of the State of Alabama, wrote the CFPB opposing new regulations that would force the closure of some storefront **payday** lenders. Payday lenders serve minority groups, the poor, and the elderly, and many states regulate such lenders. General Strange complained that the CFPB would preempt state laws tailored to local credit markets.

11. Also on August 13, *Automotive News* reported that the minimum payment that would be made by Ally Financial to eligible consumers for Ally's conduct of permitting **auto dealers** set interest rates on indirect auto loans, challenged by the CFPB and the Department of Justice as unlawfully discriminatory, will be $225. In 2013 Ally consented to the payment of $98 million, $80 million in consumer compensation to 235,000 consumers and $18 million in penalties. To be eligible, a claimant must be part of a racial minority group (or a co-buyer must be part of such a group).The CFPB alleged that minority borrowers paid 0.2 - 0.29 percent more than non-minority borrowers (which works out to about $300 over the life of the loan), but its evidence as to which borrowers were minorities was based on the borrower's surname and address.

12. On August 14, the CFPB and other bank regulatory agencies ordered Citizens Bank to refund $14 million to consumers and pay fines of $20.5 million. Allegedly, the bank had a policy of not investigating and correcting **deposit** discrepancies under $50, later changed to $25. The CFPB action triggered a subsequent editorial in *The New York T*imes that concluded "that bank regulators like the [CFPB] are a necessary defense against a system prone to abuses."

13. On August 17, CFPB Director Cordray launched the second phase of the CFPB's initiative "Managing Someone Else's Money," a guide for caregivers of **older citizens**. The second phase is the publication of six new guides tailored to specific fiduciary duties in six states owed by persons with powers of attorneys, guardians and conservators, trustees under revocable living trusts, and agency-appointed managers of income benefits. The six states are Arizona, Florida, Georgia, Illinois, Oregon, and Virginia, which the CFPB believes have higher concentrations of elderly citizens.

14. Also on August 17, *AutoFinance News*, in an article entitled "New Avenue of Attack for the CFPB?," suggested that the CFPB possible **enforcement action** against Santander Consumer USA for possible violations of the Equal Credit Opportunity Act may not only be based on statistical disparities in interest rate markups by automobile dealers to protected groups, which has been the basis of previous enforcement actions against auto finance firms, but may also be based on a failure to treat public assistance income the same as other income.

15. Also on August 17, the CFPB posted a blog warning **student loan** borrowers experiencing financial distress about potential pitfalls with income-driven repayment plans that cause "payment shock." The blog indicated that the CFPB would send a letter to student lenders asking for information on what the lenders do to provide information to consumers concerning annual recertification of income. When a student loan borrower that has refinanced into an income-driven repayment plan fails to provide the necessary recertification on a timely basis, the amount of the required monthly payment may jump considerably. The Department of Education estimates that more than 50 percent of student loan borrowers needing to recertify actually do so.

16. On August 18, the Clearing House released a report calling for the CFPB to regulate **data security** practices of startups and tech companies in the same manner as it regulates data security practices of banks. The report cites information security failings of Google Wallet and an app of PayPal's and practices of social networks like Twitter and Facebook that partner with startups to process payments.

17. On August 19, the CFPB, in an **enforcement action**, ordered Springstone Financial, LLC to pay $700,000 to consumers, alleging that Springstone misled consumers into signing up for deferred interest loans at dental offices to pay for dental work by leading consumers to believe that the loans were interest-free.

18. On August 20, the CFPB initiated an **enforcement**

action by joining the New York Department of Financial Services in suing California-based Pension Funding LLC and Pension Income LLC in the U.S. District Court in Santa Ana, California. The defendants lent on-line to retirees and military veterans in exchange for pension checks, claiming that the borrowing costs were less than those associated with credit cards or home equity lines of credit and even advertising "our program is not a loan." However, the interest rates averaged 28.56 percent. Census Bureau data shows that in households led y persons 65 or older, mean debt rose from $29,000 in 2000 to $82,0000 in 2011. Benjamin Lawsky, the former Superintendent of Financial services, said, in 2013, when the defendants were previously subpoenaed, that the loans "appear to be nothing more than payday loans in sheep's clothing."

19. On August 24, eighty-four Congressmen wrote to the CFPB urging it to expedite rulemaking implementing Section 1071 of the Dodd-Frank Act. Section 1071 requires financial institutions, in the case of applications for credit from women-owned, minority-owned, and **small businesses**, to inquire whether the business is women-owned or minority-owned and to maintain a record of the responses, submit them to the CFPB annually, and make them publicly available.

20. On August 24, Navient Corp. (formerly SLMA), the largest student loan servicer, in an SEC filing, reported that the CFPB is considering **enforcement action** against Navient, possibly for its late fee practices. Last year, Navient was the target of an enforcement action by the FDIC for allegedly processing payment sin a way that maximized late fees. Navient services student loans originated by the U. S. Department of Education, among others.

21. On August 25, the CFPB released its monthly consumer **complaints** "snapshot." The "snapshot" revealed that, from June to July, there was a 56% increase in the number of complaints about credit reporting. The majority (77%) of those complaints involved incorrect information on the reports. 97% of the credit reporting complaints were about the three nationwide credit reporting agencies, Equifax, Experian, and Transunion. However, the most-complained-about activity was debt collection, representing 31% of complaints submitted, followed by credit reporting, followed by mortgages. Fourteen percent of consumer complaints came from California.

22. On August 26, the Inspector General of the Federal Reserve Board issued a report calling for improvements in the CFPB's **hiring** process as hiring controls were not always followed by its Office of Human Capital, and compliance with those controls was not monitored. Ninety percent of the forms to be used to document the knowledge, skill, and abilities needed to fill vacancies did not receive managerial approval, and 45% did not have any approval, suggesting that essential knowledge, skills, and abilities are not being considered by the CFPB when it is hiring. In June, the union official who represents CFPB employees and the senior equal employment specialist at the CFPB's Office of Civil Rights told the House Oversight and Investigations Subcommittee that unlawful racial and sexual discrimination was "pervasive" at the CFPB.

23. On August 31, the American Bankers Association (the "ABA") delivered a comment letter to the CFPB in response to the CFPB's request for information regarding best practices for "normalizing" ("mak[ing] raw complaint data more meaningful by supplementing that data with a context") data in the CFPB's **consumer complaint database**. The ABA suggested that "normalization" should not proceed until the CFPB takes steps to ensure the accuracy of published complaints, noting that the CFPB purports to wish to use the complaint database to inform consumers and the marketplace.

24. Also on August 31, the CFPB's larger participant in **automobile financing** rule went into effect, allowing the CFPB to supervise the 34 nonbank finance companies that originate at least 10,000 auto loans or leases a year, accounting for 90 percent of nonbank auto loans and leases. It is anticipated that auto dealers that have been pressured on dealer reserve discretionary interest rate markups as compensation by bank auto lenders previously subject to CFPB authority will face increased pressure now on that subject from their nonbank lenders now subject to CFPB jurisdiction.

25. On September 1, *The Wall Street Journal* carried a front-page article about the CFPB entitled "Bias Fight Lifts Costs of Some Auto Loans." The article reported that the CFPB had reached more than $200 million in antidiscrimination agreements with large **auto financing** companies over allegations that dealers charged 0.2 – 0.3 percentage points higher interest rates to minorities, leading to higher payments of $200 - $300 over the life of a loan. Reportedly some large auto makers are responding by increasing loan pricing in order to support their dealers. Honda's new pricing policy, after settling with the CFPB, would require borrowers with high credit scores of 760 or above to pay a wholesale rate of 3.4% on a new car loan, up from 2.3%. Adding in a 0.5% dealer markup would lead to the borrower paying an additional $586 in additional interest payments over the life of a 4-year $25,000 loan.