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The CFPB: AUTHORITIES, ISSUES, HOT TOPICS & PREDICTIONS

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Jurisdiction of the CFPB

Larry Platt

Partner LPlatt@mayerbrown.com

Jeff Taft

Partner
JTaft@mayerbrown.com

Introduction

- It is over 5 years since the CFPB commenced operations, and most of you here already have had direct experience with the CFPB.
- By this point, if you have not yet had the pleasure of making its acquaintance it means either:
 - You are too small to get their attention
 - There are no customer complaints to put you on their radar screen
 - You are really good at what you do from a compliance perspective
 - Your business is not subject, directly or indirectly, to the CFPB's jurisdiction
 - You are invisible
 - You are lucky-very lucky

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Introduction

- We thought we would start by highlighting the jurisdiction of the CFPB.
- Remember that the CFPB has three major functions: rule making, supervision and enforcement.

Introduction

- It has a singularity of purpose to protect consumers. For example, unlike the banking agencies, it does not have direct authority to prescribe and monitor "safety and soundness" issues.
 - Note, however, that, in exercising its rule making authority, the CFPB is obligated to consider the potential benefits and costs to both consumers and providers of consumer products and services, including the potential reduction of access of consumers to products and services resulting from the rule.
- The CFPB is authorized to exercise its authorities to administer, enforce and otherwise implement the provisions of "Federal consumer financial law."

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What is a "Federal Consumer Financial Law"

- A "Federal consumer financial law" consists of:
 - "enumerated financial laws"
 - provisions of the Consumer Financial Protection Act (the "Act") (e.g., UDAAP)
 - the laws for which authorities are transferred under certain subtitles of the Act (e.g., allows the CFPB to enforce the Telemarketing Sales Rule)
 - any rule or order prescribed by the CFPB under the Act (among other topics, this includes indirect auto lending and small balance lending).

What is a "Federal Consumer Financial Law"

- Generally speaking, with certain exceptions, "enumerated consumer laws" consist of:
 - the Alternative Mortgage Transaction Parity Act of 1982;
 - the Consumer Leasing Act of 1976;
 - the Electronic Fund Transfer Act, except with respect to section 920 of that Act;
 - the Equal Credit Opportunity Act;
 - the Fair Credit Billing Act;
 - the Fair Credit Reporting Act, except with respect to sections 615(e) and 628 of that Act;
 - the Home Owners Protection Act of 1998;

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What is a "Federal Consumer Financial Law"

- · "enumerated consumer laws"
 - the Fair Debt Collection Practices Act;
 - subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (notices and acknowledgments regarding deposit accounts;
 - sections 502 through 509 of the Gramm-Leach-Bliley Act, except for section 505 as it applies to section 501(b);
 - the Home Mortgage Disclosure Act of 1975;
 - the Home Ownership and Equity Protection Act of 1994;
 - the Real Estate Settlement Procedures Act of 1974;

What is a "Federal Consumer Financial Law"

- "enumerated consumer laws"
 - the S.A.F.E. Mortgage Licensing Act of 2008;
 - the Truth in Lending Act;
 - the Truth in Savings Act;
 - section 626 of the Omnibus Appropriations Act, 2009 (directs the Federal Trade Commission to initiate rulemaking relating to unfair or deceptive acts or practices regarding mortgage loans, including loan modification and foreclosure rescue services); and
 - the Interstate Land Sales Full Disclosure Act.

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What is a "Federal Consumer Financial Law"

- So how does the CFPB issue regulations beyond implementing the provisions of the "enumerated consumer laws"?
- It has broad authority to regulate with respect to "consumer financial products and services" to satisfy specified statutory objectives to protect consumers.

What is a Consumer Financial Product or Service?

- "Consumer financial product or service" consists of a financial product or service offered or provided for use by consumers primarily for personal, family or household purposes, or delivered, offered or provided in connection with such a consumer financial product or service.
 - Note: This would exclude a business purpose product or service
- "Consumer financial products and services" include a broad litany of activities as set forth in 12 USC § 5481(15), including:

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Consumer Financial Product or Service

- Extending credit & servicing loans, "including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions)"
 - Note issue of whether "acquiring, purchasing, selling" are independent
 activities that fall within the definition or are triggered only if can fit within
 "extension of credit" (e.g., ECOA)
- · Real estate settlement services
- · Deposit taking
- Transmitting or exchanging funds or
- Selling, providing, or issuing stored value or payment instruments

Consumer Financial Product or Service

- · Check cashing
- · Debt collection
- Providing payments or other financial data processing products or services to a consumer by any technological means
- Financial advisory services (excluding services related to securities regulated by the Commission or a State Securities Commission, but only to extent acting in regulated capacity) (e.g., SEC, CFTC)
- · Consumer reporting
- Any other financial product or service that the CFPB defines by regulation if it finds
 that such financial product or service may be offered by a bank or financial holding
 company under applicable provisions of federal law <u>and</u> has, or likely will have, a
 material impact on consumers
 - One exception is insurance

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Over What Entities Does the CFPB Have Supervisory Authority?

- Subject to certain exceptions, the CFPB has authority to supervise "covered persons" for compliance with Federal consumer financial laws.
- A "covered person" is "any person that engages in offering a consumer financial product or service" and any affiliate that acts as a "service provider."
 - A "covered person" also includes "related persons," but that term is more relevant in enforcement context
- But the type of entity also determines whether CFPB has supervisory and examination authority.

CFPB Supervisory Jurisdiction: Banks

- CFPB has supervisory and examination authority over "very large banks" over \$10B in assets and affiliates (approximately 113 banks and their bank affiliates).
- Other banks (other insured depository institutions) remain subject to supervision by prudential banking regulators.
- CFPB also has supervisory and examination authority over substantial number of servicer providers for depository institutions.

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CFPB Supervisory Jurisdiction: Non-banks

- CFPB also has supervisory and examination authority over any Nonbank that:
 - Offers or provides origination, brokerage, or servicing with respect to any residential real estate loan;
 - Is a "larger participant" in a market for other consumer financial products or services as defined by regulation;
 - CFPB has reasonable cause to determine, based upon complaints or information from other sources, that person engaged in a pattern of conduct that poses undue risk to consumers with respect to a financial product or service:
 - Offers or provides any private education loan; or
 - Offers or provides any payday loan.

CFPB Supervisory Jurisdiction: Non-banks

- "Larger Participant" rules issued by CFPB
 - Auto financing
 - International money transfer
 - Student loan servicing
 - Consumer debt collection
 - Consumer reporting
- Larger participant rules use annual receipts (collection and consumer reporting) or transactions/customers (auto, money transfers and student loans) to determine coverage.
- Larger participant rules on the horizon
 - Installment loans
 - Vehicle title loans

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Exemptions from CFPB Supervisory Jurisdiction

- CFPA provides certain exemptions from CFPB supervisory authority.
- Exempted entities include merchants, real estate agents, manufactured housing sellers, accountants & tax preparers, practice of law, securities, insurance, employee benefit plans, Farm Credit Administration, charities and auto dealers.
- Each exemption is narrow, and exceptions to exemptions abound.

Could you be Subject of a CFPB Enforcement Action?

- Federal consumer financial laws
- Covered person
- Related person
- Service provider
- Substantial assistance to covered person

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Could you be Subject of a CFPB Enforcement Action?

- What is a "related person"?
 - Related persons also are "covered persons"
 - Related persons are:
 - directors, officers, employees with managerial responsibility, controlling shareholders of, or agents for, the covered person;
 - shareholders, consultants, joint venture partners, and any other person as determined by the Bureau who materially participates in the conduct of the affairs of the covered person; and
 - independent contractors (including attorneys, appraisers, or accountants) who knowingly or recklessly participate in any violation of law or regulation, or breach of a fiduciary duty.

Could you be Subject of a CFPB Enforcement Action?

 Note that the term "related persons" only relates to covered persons that are not part of a bank holding company, credit union, or depository institution.

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Could you be Subject of a CFPB Enforcement Action?

- Why?
 - Because the banking agencies have comparable authority with respect to "Institution-affiliated parties" and the statutory goal seems to have been to give the CFPB parallel authority with respect to state chartered, nondepositories.
 - Indeed, each appropriate federal banking agency must by statute make a
 referral to the CFPB when the agency has a reasonable belief that a violation
 of an enumerated consumer law, as defined in the Dodd-Frank Act, has been
 committed by any institution-affiliated party (for institution with over \$10
 billion in assets) within the jurisdiction of that agency.
 - What about a subsidiary?
- Must a "related person" independently violate a Federal consumer financial law?

Could you be Subject of a CFPB Enforcement Action?

- Are you a service provider?
 - The term "service provider" means any person that provides a
 material service to a covered person in connection with the offering
 or provision by such covered person of a consumer financial product
 or service, including a person that
 - participates in designing, operating, or maintaining the consumer financial product or service; or
 - processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

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Could you be Subject of a CFPB Enforcement Action?

- Service provider excludes a person solely by virtue of such person offering or providing to a covered person
 - a support service of a type provided to businesses generally or a similar ministerial service; or
 - recent decision found that exception applies only to those support services that require no exercise of discretion or judgment
 - time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.
- How broadly may the term be defined?

Could you be Subject of a CFPB Enforcement Action?

- Another way to be pulled into enforcement coverage is under the "substantial assistance" provisions.
- Among other provisions, the CFPA expressly prohibits a covered person or service provider from engaging in unfair, deceptive, or abusive acts or practices, or any person from knowingly or recklessly providing substantial assistance to a covered person or service provider in violation of the CFPA's UDAAP provisions or rules.
 - This gives the CFPB authority to bring a UDAAP claim against persons that are NOT covered persons or service providers.
 - Is this the hook to go after loan purchasers and warehouse lenders? (Remember First Alliance)
 - It also is routinely used by the CFPB as a count against "related persons."

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Could you be Subject of a CFPB Enforcement Action?

- · What is "knowingly or recklessly"?
 - "Severe recklessness is limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it."

Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, No. 1:15-CV-00859-RWS (N.D. Ga. Sept. 1, 2015)

- What is "substantial assistance"?
 - Must allege that "the defendant in some sort associated himself with the venture, that
 the defendant participated in it as something that he wished to bring about, and that he
 sought by his action to make it succeed.

Could you be Subject of a CFPB Enforcement Action?

- Note that the CFPB, like the FTC and federal banking agencies, have used UDAAP to bring the functional equivalent of substantial assistance claims.
 - FTC does not have aiding and abetting authority so must rely on UDAAP.
 - Banking agencies have used UDAP as an aiding and abetting-type claim with respect to banking services--notion that banks have duty to prevent their corporate customers from violating applicable law (e.g., banking payday lenders).
 - Analogy is DOJ's Operation Choke Point.

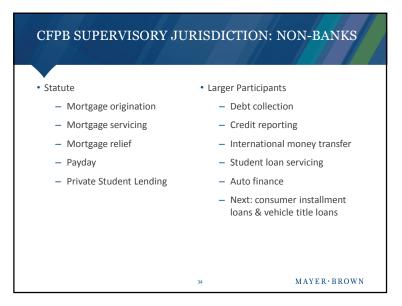
CFPB Tools & Enforcement Priorities

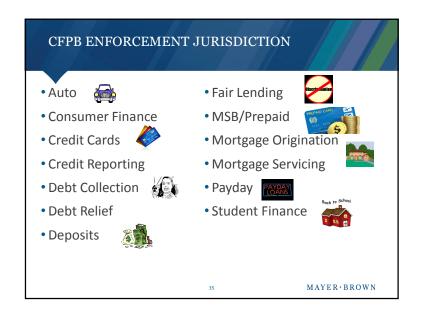
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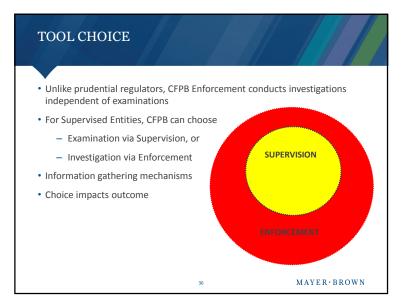
Partner

OLev@mayerbrown.com









SUPERVISION PRIORITIES

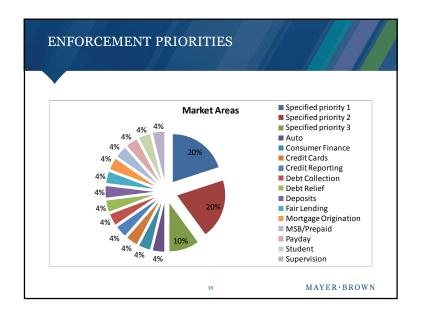
Date	Institution	Product Line
Q1	XYZ Bank	Mortgage Organization
Q1	ABC Non Bank	Baseline Fair Lending
Q2	ABC Bank	Auto Finance
Q2	XYZ Non Bank	Student Loan Servicing
Q3	ABC Bank	Mortgage Servicing

- Supervision establishes exam schedule based on risk-based analysis of Institution Product Lines (IPLs)
- Finite (though large) number of IPLs subject to supervisory authority
- IPLs are risk weighted based on market risk (consumer harm potential) and entity risk (supervisory rating, consumer complaints)
- Result is examination schedule identifying specific IPLs to be examined in coming year.

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ENFORCEMENT PRIORITIES

- Unlike Supervision, Enforcement does not identify institutions as specific targets of investigation as part of strategic planning process
- Instead, Enforcement seeks to identify market areas & practices it wants to address
- Goal: targeted resource allocation
- All suggested enforcement investigations both organic and referrals from Supervision – are measured against this plan



TOOL CHOICE REVISITED

- CFPB's approach to Tool Choice is grounded in these Strategic Plans.
- Which tool to use if issue identified?
- General Rule:
 - If IPL is on Supervision exam schedule in next 12 months, strong presumption for Supervision examination
 - If IPL not scheduled for exam in next 12 months, strong presumption for Enforcement investigation ("white space")

DIFFERENT START/DIFFERENT FINISH

- In theory, Examination and Investigation are just information gathering tools
- In practice, they often lead to different outcomes
 - Examination: exam report, MOU, or public enforcement action
 - Investigation: closure, public enforcement action
- Currently, no mechanism for confidential supervisory resolution of enforcement investigation

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UDAAP

Stephanie Robinson

Partner srobinson@mayerbrown.com



UDAP and UDAAP UDAP - Federal Trade Commission Act, § 5, 15 U.S.C. § 45(a)(1) UDAAP - Dodd-Frank Act, §§ 1031, 1036, 12 U.S.C. §§ 5531, 5536

The CFPB's UDAAP Authority

- The CFPB enforces the Consumer Financial Protection Act §§ 1031 and 1036, which
 prohibit a "covered person" or "service provider" from committing or engaging in
 an
 - unfair,
 - deceptive, or
 - abusive

act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

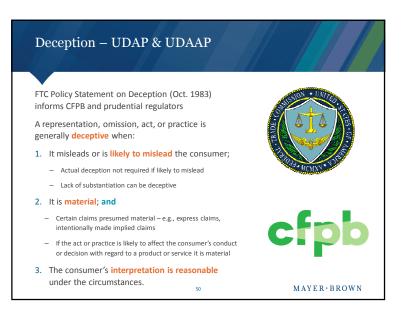
 Under § 1036, it is also unlawful for any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of § 1031's UDAAP prohibitions. The provider of such substantial assistance will be deemed to be in violation of that section to the same extent as the person to whom the assistance is provided.

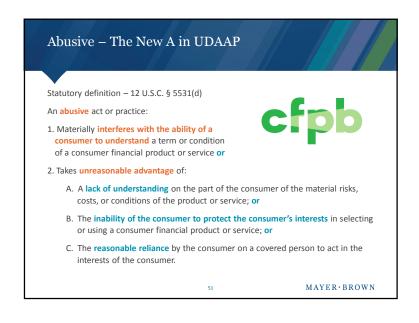
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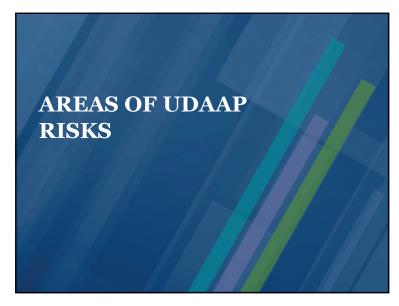
UDAAP Enforcement Trends

- The CFPB has brought over 150 enforcement actions.
- Approximately 2/3 of these actions include a UDAAP claim.
- Through enforcement and supervisory actions, it has obtained more than \$11.7 billion in total relief for more than 25 million consumers.
- Recent UDAAP cases involve debt collection, consumer loans, title loans, and sales practices.

Unfairness – UDAP & UDAAP FTC Policy Statement on Unfairness (Dec. 1980) codified in FTC Act and CFPA An act or practice is generally unfair when: 1. It causes or is likely to cause substantial injury to consumers; - May be satisfied where small harm inflicted on large number of consumers - Actual injury not required if significant risk of concrete harm 2. The injury is not reasonably avoidable by consumers; and 3. The injury is not outweighed by countervailing benefits to consumers or to competition.







UDAAP Risk: Add-On Products

- Credit card and auto add-on cases resulted in billions of dollars in restitution and civil penalties.
- Add-on products included credit monitoring, credit reporting services, debt cancellation products, payment protection, etc.
- · Unfair and deceptive practices included:
 - High-pressure sales tactics
 - Misleading oral statements relating to cost and coverage
 - Misrepresenting or omitting information about eligibility for coverage
 - Deceptive rebuttal scripts
 - Consumers were charged for products they did not receive (billing when product not activated)
 - Misrepresentations during the enrollment process

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UDAAP Risk: Deceptive Advertising

- Deceiving consumers about financial relationship between company and a veterans' organization that endorsed the lender's products
- Misrepresenting interest savings consumers would achieve through biweekly mortgage payment program
- Luring consumers into "free" checking accounts without disclosure of eligibility requirements
- Implying an affiliation with government agency or other institution
- Advertising terms that do not apply to the majority of consumers

UDAAP Risk: Debt Collection Tactics

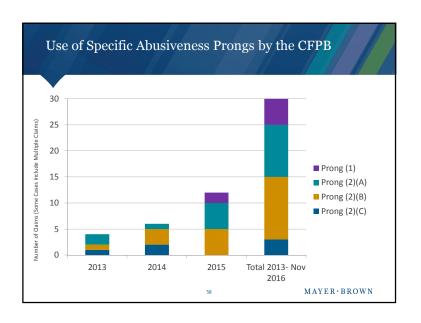
- · Harassing debt collection calls and visits
- Providing inaccurate credit information on customers to credit reporting agencies
- Debts that were "potentially inaccurate," lacking documentation
- Phony caller ID information
- · Churning out lawsuits relying on unsubstantiated evidence

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UDAAP Risk: Sales Practices

- Luring in consumers with misleading information about total cost of subscription services
- · Hitting consumers with unauthorized automatic recurring charges
- · Opening accounts without customers' knowledge or consent
- Changing type of account or service without customers' knowledge or consent
- · False representations relating to terms and conditions
- · Assigning PINs without authorization
- Engaging in unauthorized transactions

Most abusiveness claims involve conduct that can be (and usually has been) categorized as unfair or deceptive Selling consumers goods that are not in their best interest has been found to be abusive Loans likely to default or that a consumer can't repay Services for which a consumer doesn't qualify or from which she is unlikely to benefit Payday and installment lending Cycle of debt: pressuring overdue borrowers to take out additional loans they could not afford Includes allegations of deceptive statements and deceptive tactics to stop consumers from backing out of transactions Predatory student lending Pushing students into high-cost loans that were likely to default



Prong (1) — "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service."

- Only 5 CFPB cases invoke Prong (1).
- Generally involves misrepresentations that prevented consumers from understanding a term or condition of a financial product.
- In one recent case, minimizing the amount of time that the consumer had to view a key document was used to support a Prong (1) claim.
- Prong (1) has generally been used in combination with other abusiveness prongs, as part of a "kitchen sink" or "belt and suspenders" approach.

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Prong (2)(A) — "takes unreasonable advantage of ... a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service."

- 10 cases invoke Prong (2)(A).
- (2)(A) can be thought of as Deception Plus.
- A deceptive statement or omission is often the basis for the consumers' "lack
 of understanding," and then accepting money from the consumers often
 constitutes "taking unreasonable advantage" of the consumers' lack of
 understanding.

Prong (2)(A) — "takes unreasonable advantage of ... a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service."

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 Example of (2)(A): company that offered pension advances "obscured the true nature of the credit transaction by denying that their product was a loan and ... failed to disclose or denied the existence of an interest rate and fees associated with the loans..."

Military Pension

Have you considered tapping into your military pension funds to help pay down some major bills? Existing pension funds can be a viable option, and many military pensioners are seeking pension advice from Pension Funding LLC.

We are one of the few reputable and established military person fund firms specializing in the challenges facing our military personnel and veterans. Pension Funding LLC, for example, offers a way where military vets can receive a lump sum pension buyout (that acts like an advance and not a loan) by selling a portion of their future military pension psyments. If the vets choose, they can use the new pension funds to pay off their other, more costly debt or use it for life changing purchase opportunities. What makes us elite is that none of this is treated as debt or has an adverse effect on your credit standing.

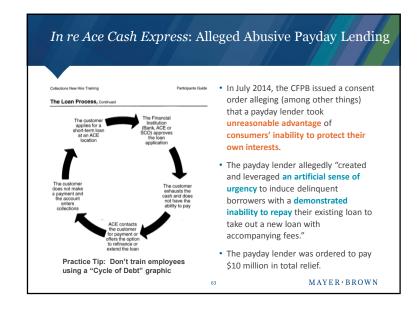
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Prong (2)(B) — "takes unreasonable advantage of ... the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service."

- 12 cases invoke Prong (2)(B).
- (2)(B) can be thought of as Unfairness Plus.
- The consumer's "inability" to protect her interests under (2)(B) is very similar to a substantial injury that is "not reasonably avoidable" by consumers under unfairness doctrine.
- Example of (2)(B): Contracts of adhesion
 - "Even if consumers read and understood..."
- Example of (2)(B): Inability to pay
 - "Artificial sense of urgency" to induce delinquent consumers with "demonstrated ability to repay their existing loan"

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- Pressure to take out loans likely to default



Prong (2)(C) — "takes unreasonable advantage of ... the reasonable reliance by the consumer on a covered person to act in the interests of the consumer."

- Only 3 cases invoke Prong (2)(C).
- Cases so far have tended to focus on schools and student loan counselors, who induce students' trust and then allegedly take advantage of that trust by advising the students to purchase financial products that are not haneficial
- (2)(C) might also apply in other contexts where the defendant has a relationship of trust with vulnerable consumers or where defendant induces consumer reliance.

PHH and Litigation

Debra Bogo-ErnstPartner

DErnst@mayerbrown.com



PHH Corporation v. CFPB: D.C. Circuit Court Decision

- In January 2014, the CFPB filed a Notice of Charge against PHH
 - CFPB alleged that PHH violated RESPA by referring borrowers to certain mortgage insurance companies allegedly in exchange for a percentage of insurance premiums
 - An ALJ found that PHH had violated RESPA, concluded statute of limitations does not apply in administrative action, and found disgorgement penalty of \$6.44 million in fees
 - Director Richard Cordray affirmed the decision on an administrative appeal and increased disgorgement to \$109 million with injunction
- PHH Corporation challenged administrative action by CFPB in DC Circuit Court

PHH Corporation v. CFPB: D.C. Circuit Court Decision

- The DC Circuit Court found that the CFPB's structure is unconstitutional in part
 - Currently, CFPB has single director with 5 year term, removable by President only "for cause"
 - · Violates separation of powers principles
 - "The CFPB's concentration of enormous executive power in a single, unaccountable, unchecked Director not only departs from settled historical practice, but also poses a far greater risk of arbitrary decision-making and abuse of power, and a far greater threat to individual liberty, than does a multi-member independent agency."
 - Voided the unconstitutional for-cause removal provision, granting the President power to remove the CFPB director at will and to supervise and direct the director.
 - Rejected several of the CFPB's interpretations of RESPA (won't address today in detail)
 - Held the CFPB's attempts to apply its view of RESPA retroactively violated due process, and
 - Clarified that RESPA's three-year statute of limitations applies to CFPB's enforcement actions, whether in court or before an administrative law judge.
- CFPB could seek review by the en banc DC Circuit (rehearing petition due Nov. 25, 2016)

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PHH Decision: Congressional Reaction

- Texas congressman Jeb Hensarling, the Republican chairman of the House Financial Services Committee, called the ruling "a good day for democracy, economic freedom, due process and the Constitution."
- "The second highest court in the land has vindicated what House Republicans have said all along, that the CFPB's structure is unconstitutional."
- · Oct. 19, 2016: Hensarling letter to Cordray:
 - "As you may be aware, President Obama and past Presidents have issued several Executive Orders governing the rulemaking activities of executive agencies. Because some of these executive orders were advisory rather than mandatory for independent regulatory agencies, you and your staff may have been previously under the impression that these orders do not apply to the CFPB. However, the PHH decision makes clear that the Constitution requires that the CFPB be treated as an executive agency, and that the CFPB is not, and may no longer be considered to be, an independent regulatory agency. Consequently, it is also clear that Executive Orders applicable to executive agencies apply in full to the CFPB."



Financial CHOICE Act

- "Economic Growth for All, Bank Bailouts for None" Chairman of Financial Services Committee, Jeb Hensarling (R-TX)
- Passed House Financial Services Committee on September 13, 2016
- Many components of Financial CHOICE Act, but our focus today is:
 - Proposed changes affecting CFPB

Financial CHOICE Act: Proposed CFPB Changes

- Change the name of the CFPB to the "Consumer Financial Opportunity Commission (CFOC)," and task it with the dual mission of consumer protection and competitive markets, with a cost-benefit analysis of rules performed by an Office of Economic Analysis.
- Replace the current single director with a bipartisan, five-member commission which is subject to congressional oversight and appropriations.
- · Establish an independent, Senate-confirmed Inspector General.
- Require the Commission obtain permission before collecting personally identifiable information on consumers.
- Repeal authority to ban bank products or services it deems "abusive" and its authority to prohibit arbitration.
- · Repeal indirect auto lending guidance

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Financial CHOICE Act: Proposed CFPB Changes: Bi-Partisan 5 Member Commission, Section 311

- TITLE III—EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE
- Subtitle A, Section 311: Consumer Financial Opportunity Commission
 - (b)(1) IN GENERAL: 5 members appointed by the President, by and with the advice and
 consent of the Senate, from among individuals who (A) are US citizens; and (B) have
 strong competencies related to consumer financial products and services.
 - · Maximum of 3 from any one political party (Section 311(c))
 - (2) <u>STAGGERING</u>: The members shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 3, 4, and 5 years, respectively.
 - (3) <u>TERMS</u>: (A) Each member of the Commission, including the Chair, shall serve 5 years;
 (B) REMOVAL: The President may remove any member for inefficiency, neglect of duty, or malfeasance in office; and (C) VACANCIES: If appointed to fill a vacancy occurring before expiration of a term, shall be appointed for remainder of the term.

Financial CHOICE Act: Proposed CFPB Changes: Bi-Partisan 5 Member Commission: Section 311 (cont'd)

- (D) CONTINUATION OF SERVICE: Each member of the Commission may continue to serve after the expiration of term except not more than 1 year after expiration date of term.
- (E) OTHER EMPLOYMENT PROHIBITED: No member shall engage in any other business, vocation, or employment.
- Chair of the Commission (Section 311(d)):
 - Appointed by the President from among members of the Commission.
 - · Chair is the principal executive officer of the Commission
 - Authority: exercises all of the executive and administrative functions, including (i) appointment and supervision of personnel employed under the Commission, (ii) distribution of business among personnel appointed and supervised by the Chair and among administrative units of the Commission, and (iii) use and expenditure of funds.

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Financial CHOICE Act: Proposed CFPB Changes: Inspector General (Section 313)

- SEC. 313: Establishes Inspector General, subject to Senate confirmation
 - Section 313(d): the Inspector General of the Commission shall appear, upon invitation, before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings.

Financial CHOICE Act: Proposed CFPB Changes: Office of Economic Analysis (Section 316)

- SEC. 316: COMMISSION DUAL MANDATE (Consumer Protection & Competitive Markets) AND ECONOMIC ANALYSIS: Establishes Office of Economic Analysis:
 - REVIEW AND ASSESSMENT OF PROPOSED RULES AND REGULATIONS: The Office of Economic Analysis shall: (A) review all proposed rules and regulations of the Commission; (B) assess the impact of such rules and regulations on consumer choice, price, and access to credit products; and (C) publish a report on such reviews and assessments in the Federal Register.
 - MEASURING EXISTING RULES AND REGULATIONS: The Office of Economic Analysis
 shall: (A) review each rule and regulation issued by the Commission after 1, 2, 5, and 10
 years; (B) measure the rule or regulation's success in solving the problem that the rule
 or regulation was intended to solve when issued; and (C) publish a report on such
 review and measurement in the Federal Register.

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Financial CHOICE Act: Proposed CFPB Changes: Sections 327, 328, 337 & 338

- SEC. 327: REQUIREMENT TO VERIFY INFORMATION IN THE COMPLAINT DATABASE BEFORE IT MAY BE RELEASED TO THE GENERAL PUBLIC
 - The Chair may not make any information about a consumer complaint in such database available to the public without first verifying the accuracy of all facts alleged in such complaint.
- SEC. 328: COMMISSION SUPERVISION LIMITED TO BANKS, THRIFTS, AND CREDIT UNIONS WITH GREATER THAN \$50 BILLION IN ASSETS
- SEC. 337: REMOVAL OF "ABUSIVE" AUTHORITY
 - Repeal agency authority to ban bank products deemed "abusive"
- SEC. 338: REPEAL OF AUTHORITY TO RESTRICT ARBITRATION
 - Repeal authority to prohibit arbitration clauses in financial services contracts

Financial CHOICE Act: Proposed CFPB Changes: Indirect Auto Financing Guidance (Section 334)

• SEC. 334: REFORMING INDIRECT AUTO FINANCING GUIDANCE

- Bulletin 2013–02 of the Bureau of Consumer Financial Protection (published March 21, 2013) shall have no force or effect.
 - Bulletin included Limiting Fair Lending Risk in Indirect Auto Lending: Institutions subject to CFPB jurisdiction, including indirect auto lenders, should take steps to ensure that they are operating in compliance with the ECOA and Regulation B as applied to dealer markup and compensation policies, e.g., imposing controls on dealer markup and compensation policies, monitoring and addressing the effects of those policies or eliminating dealer discretion
- In proposing and issuing guidance primarily related to indirect auto financing, the Commission shall: (A) provide for a public notice and comment period before issuing the guidance in final form; (B) make available to the public, including on the website of the Commission, all studies, data, methodologies, analyses, and other information relied on by the Commission in preparing such guidance. (Section 334(b)(8))

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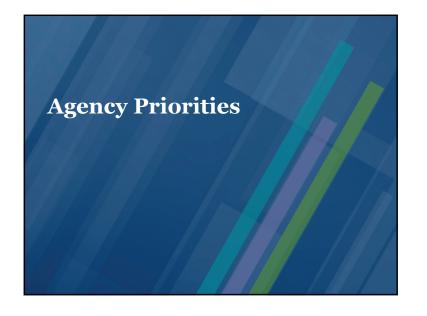
Agency Priorities and Election Results

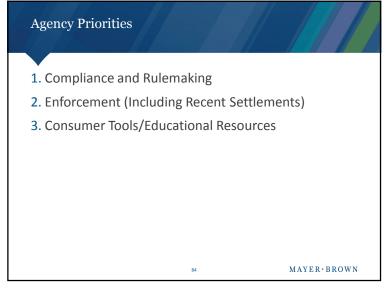
Thomas Delaney

Partner
TDelaney@mayerbrown.com

Steven M. Kaplan

Partner
SKaplan@mayerbrown.com





Compliance and Rulemaking

- · Current Agency Rulemaking
 - Supervision of Larger Participants in Installment Loan and Vehicle Title Loan Markets – Proposed Rule – June 2, 2016
 - Business Lending Data (Regulation B)
 - Debt Collection Rule Outline June, 2016
 - Overdraft August, 2016
 - Payday Loans and Deposit Advance Products Proposed Rule June 2016
 - Arbitration Proposed Rule May 24, 2016
 - Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)
 - Gramm-Leach-Bliley Act (GLBA) (Regulation P) Proposed Rule- June 27, 2016
 Proposed Rule July 28, 2016

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Compliance and Rulemaking

- Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z) - Proposed Rule- July 22, 2016 – Threshold Adjustments
- Restatement of Federal Consumer Financial Law Regulations
- Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) – Final Rule – October 5, 2016
- The Expedited Funds Availability Act (Regulation CC)
- Consumer Financial Civil Penalty Fund
- Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) – Final Rule – August 4, 2016
- Procedure Governing Submissions Under the Interstate Land Sales Full Disclosure Act - Final Rule – May 2, 2016
- Civil Penalty Inflation Adjustment Rule Interim Final Rule June 14, 2016

Compliance and Rulemaking Long-Term Actions Agenda Stage of Rulemaking Alternative Mortgage Transaction Parity (Regulation D) Defining Larger Participants in Certain Consumer Financial Product and Service Markets Consumer Reporting Student Loan Servicing



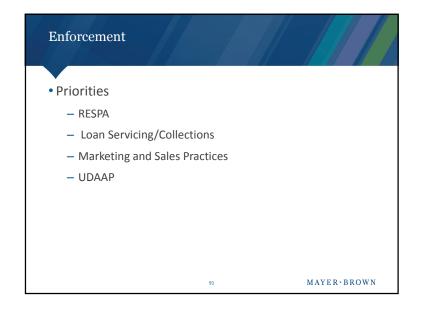
Enforcement

- · Recent Settlements
 - Navy Federal Credit Union—false threats about debt collection to servicemembers; \$23 million in consumer redress and \$5.5 civil money penalty
 - Flurish, Inc., d/b/a LendUp—company did not give consumers opportunity to build credit as it claimed it would; consumer redress of about \$1.83 million and \$1.8 million civil money penalty
 - TMX Finance LLC—luring consumers into costly loan renewals with misleading information, and used unfair debt collection tactics; \$9 million civil money penalty
 - Bridgepoint Education, Inc.—deceiving students into taking private loans that cost more than advertised; \$23.5 million in consumer relief and \$8 million civil money penalty
 - A Large National Bank—cross selling; \$100 million to the CFPB, \$35 million to OCC, and \$50 million to City and County of Los Angeles

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Enforcement

- First National Bank of Omaha—deceptive marketing of debt cancellation and credit card add-on products; \$27.75 million consumer relief and \$4.5 million civil money penalty
- A Large National Bank—illegal private student loan servicing practices, UDAAP; \$410,000 consumer relief and \$3.6 civil money penalty
- Santander Bank, N.A.—telemarketing vendor deceptively marketed overdraft services; \$10 million civil money penalty





Legislative Outlook

- · President-elect Trump promised to repeal the Dodd-Frank Act
 - What is this likely to mean in the short term?
 - CFPB
 - Political face of Dodd Frank
 - Constitutional Status
 - Chairman
 - What is that likely to mean longer term?
 - Rollback of the Volcker rule?
 - · FSOC relaxation?
 - How does all this jibe with HFSC Chairman Hensarling's Financial CHOICE Act?

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Legislative Outlook Following Election

- Financial CHOICE Act may be modified or scaled back
- GOP platform has a plank on restoring Glass-Steagall, but President-elect Trump never campaigned on this issue
 - Hensarling was a primary staffer to then-Senator Phil Gramm in the run-up to passage of GLBA
- GSE Reform (Fannie Mae and Freddie Mac)
 - President-elect Trump did not campaign on this either, but it is a big area of interest for Republicans in Congress

Transition Team, Potential Appointees & Timing

- · David Malpass coordinating transition for Treasury
 - Founder and president of Encima Global LLC, an economic research and consulting firm
 - Served as Deputy Assistant Treasury Secretary under President Ronald Reagan and as Deputy Assistant Secretary of State under President George H. W. Bush
- · Atkins coordinating transition for independent agencies
 - CEO of Patomak Global Partners LLC, [which provides consulting services regarding financial services industry matters
 - Served as an SEC commissioner from 2002-08; and also served on the staff of two former SEC Chairmen, Richard Breeden and Arthur Levitt (1990-94)
- · Trial balloons being floated re: possible appointees
- · Secretary of the Treasury: Steve Mnuchin; Wilber Ross; or Jeb Hensarling
- Transition always takes longer than people initially anticipate, so while there will be a big change, it won't happen at the end of January.
 - Other than CFPB, financial services, not a first 100 day topic

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Election Impact on House and Senate Leadership

- Senate Republican majority shrinks from 54-46 to 52-48*
 - Mitch McConnell (R-KY) to remain Majority Leader
 - Chuck Schumer (D-NY) to become Minority Leader, replacing retiring Senator Harry Reid (D-NV)
 - Banking Committee
 - . Michael Crapo (R-ID) to become Chairman, replacing Senator Richard Shelby (R-AL)
 - · Senator Sherrod Brown (D-OH) to remain Ranking Member
- House of Representatives Republican Majority drops by 8 seats* to 239 to 193
 - Paul Ryan (R-WI) to remain Speaker of the House (for now)
 - Nancy Pelosi (D-CA) to remain Minority Leader (for now)
 - House Financial Services Committee
 - Jeb Hensarling (R-TX) to remain Chairman, unless persuaded to become Secretary of the Treasury
 - · Maxine Waters (D-CA) to remain Ranking Member

* A runoff race in LA is required to decide one Senate seat and two House seats 9Åll are likely to go Republican. A winner has also not yet been declared in one House race in CA.

Potential Supervision Enforcement Environment Under President-elect Trump

- Possible that some agencies (OCC, CFPB, FDIC) will become less aggressive under new leadership
- Law Enforcement environment, at least with respect to financial sector likely to be altered significantly
 - If Giuliani is AG, keep in mind that his views were significantly influenced by 9/11
 - Republicans are not happy with the Iran deal, and sanctions could be ratcheted up because of this
 - Money laundering, terrorist financing and sanctions prosecutions are likely to remain high priorities in the Trump administration

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