

Client Alert

June 9, 2016

CFPB Publishes Spring 2016 Regulatory Agenda

On June 9, 2016, the Consumer Financial Protection Bureau (CFPB) released its semi-annual regulatory agenda for Spring 2016. The agenda identifies the CFPB's priorities through April 2017. While it does not include any major surprises, the agenda does revise the projected timeline for several highly anticipated rulemaking activities. Here are the CFPB's current initiatives.

- *Arbitration.* On May 24, 2016, the CFPB published its anticipated proposed rule on arbitration agreements that would: 1) bar class action waivers, and 2) impose reporting requirements for individual arbitrations undertaken pursuant to pre-dispute arbitration agreements. Comments on the proposed rule are due by August 22, 2016. The Bureau began the rulemaking process in October 2015 by releasing an outline of two rulemaking proposals under consideration to limit the use of pre-dispute arbitration clauses in consumer financial service contracts. The CFPB also convened a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to consult with small businesses that may be affected by the policy proposals under consideration.
- *Payday and other short-term, small-dollar loans.* On June 2, 2016, the CFPB issued its proposed rule covering payday, deposit advance, and similar short-term, small-dollar loans. Comments on the proposed rule are due by September 14, 2016. The proposed rule is the first federal rulemaking focusing specifically on the short-term lending industry, which traditionally has been governed by state law, and the proposed rule also marks the first time the CFPB has used its UDAAP authority as a basis for rulemaking. The proposed rule would require lenders to make a good faith determination of borrowers' ability to repay certain short-term, small-dollar loans, and limit the allowable frequency and total number of refinancings, or "roll overs," of such loans. The CFPB outlined its proposal at a field hearing in March 2015, and convened a SBREFA panel in April 2015 to solicit input from small businesses.
- *Prepaid accounts.* The CFPB has delayed publication of its final rule on prepaid accounts several times, and currently anticipates publication in July 2016. The CFPB published its proposed rule on prepaid accounts in December 2014, covering reloadable prepaid cards, payroll cards, and similar products. Key provisions of the proposed rule include disclosures to consumers in connection with opening a prepaid account and availability of overdraft services and credit features in connection with prepaid accounts.
- *Mortgage servicing.* The CFPB proposed amendments to the TILA and RESPA mortgage servicing rules in December 2014, and the agenda indicates that the CFPB intends to finalize these amendments in July 2016. Among other things, the proposed amendments include enhanced loss mitigation requirements and new rules governing default servicing for borrowers in bankruptcy. The agenda attributes the delay, at least in part, to testing of certain disclosures. According to a May 18 release, these disclosures were periodic statements for borrowers in bankruptcy.
- *Amendments to the TILA-RESPA Integrated Disclosure rule.* Also in July 2016, the CFPB anticipates issuing a proposed rule to make clarifications and provide further regulatory guidance concerning its "Know Before You Owe" mortgage rule (also known as TRID). In response to industry concerns, the CFPB will request comment on adding new provisions and amending other provisions of Regulation Z to provide additional clarity for creditors. According to the CFPB, these amendments are intended to promote consistency in the provision of information regarding federal mortgage transactions to consumers.
- *Overdrafts on deposit accounts.* The regulatory agenda indicates that the CFPB will continue to engage in pre-rule activities regarding overdraft services in connection with checking accounts until August 2016. The

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CFPB is conducting additional consumer research and has begun consumer testing initiatives related to the “opt-in” process for debit overdrafts. This research will complement the CFPB’s June 2013 [white paper](#) and July 2014 [report](#) on overdrafts. A proposed rule on overdrafts is unlikely to emerge until late 2016.

- *Debt collection.* The CFPB is developing proposed rules to regulate debt collection practices, following its November 2013 [advance notice of proposed rulemaking](#). The CFPB is in the process of analyzing responses to its nationwide consumer survey on experiences with debt collectors and is engaged in qualitative testing to determine what information would be useful for consumers to have about debt collection and how that information should be provided to them. The regulatory agenda extends the CFPB’s period of pre-rule activity into the summer of 2016, meaning that a proposed rule on debt collection is unlikely until late 2016.
- *Larger participants in vehicle title loans and consumer installment loans.* To follow its June 2015 [final rule](#) defining larger participants in the auto lending and leasing markets, the CFPB is in the early stages of rule writing to define larger participants in the vehicle title loan and consumer installment loan markets. Once final, these rules will subject lenders that satisfy the CFPB’s definition(s) of “larger participant” in these markets to the supervisory jurisdiction of the agency. The regulatory agenda indicates that pre-rule activities on this topic are expected to continue until December 2016, with a proposed rule possible in 2017.
- *Data collection on certain business lending.* The CFPB has initiated research and outreach to support a forthcoming rule requiring collection and reporting of data on loans to women-owned, minority-owned, and small businesses. The rule is required by Section 1071 of the Dodd-Frank Act, which amended the Equal Credit Opportunity Act (ECOA). The agency suggests in its regulatory agenda that the rule under Section 1071 will to some degree resemble the recently updated Regulation C, implementing the Home Mortgage Disclosure Act. Pre-rule activities related to data collection on these types of business loans are expected to continue until December 2016, with a proposed rule possible in 2017. See our previous [alert](#) for additional analysis.
- *Annual privacy notices.* The CFPB expects to issue a notice of proposed rulemaking to amend Regulation P, which implements the Gramm-Leach-Bliley Act (GLBA) in September 2016. The notice of proposed rulemaking is the result of recently enacted legislation providing that financial institutions are no longer required to provide annual privacy notices if: (1) they have not changed their privacy policies since the last time their customers received a privacy notice, and (2) they only share customer financial information with non-affiliated third parties under exceptions to the GLBA’s notice and opt-out requirements.

In addition to the CFPB’s current initiatives, the CFPB’s [blog post](#) on the Spring 2016 regulatory agenda mentions its continued efforts to support implementation of the major mortgage rules. Specifically, the blog post mentions:

- *Home Mortgage Disclosure.* The CFPB [released](#) its [final rule](#) amending Regulation C, which implements the Home Mortgage Disclosure Act, in October 2015. The CFPB published a [small entity compliance guide](#) in December 2015, and is conducting outreach to assist industry in preparing for both the regulatory and operational changes in connection with the rule’s significant effective dates in 2017 and 2018.
- *Know Before You Owe.* Following the October 2015 [effective date](#) of the TILA/RESPA integrated disclosure rule, the CFPB has provided guides and materials to support compliance and continues to monitor ongoing compliance issues.

Lastly, the regulatory agenda addresses [long-term initiatives](#), which may result in rulemaking activity beyond 2017. These include potential rulemakings to address important issues related to credit reporting and student loan servicing.

- *Credit reporting.* The CFPB continues to consider prior research, including its December 2012 [white paper](#) on credit reporting and Federal Trade Commission reports on credit report accuracy. According to the regulatory agenda, the CFPB will evaluate possible policy responses to issues identified, including additional rules

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relating to consumer reporting. Potential topics for consideration might include accuracy of credit reports and processes for resolving consumer disputes.

- *Student loan servicing.* The CFPB published a report on potential improvements to student loan servicing in September 2015. The CFPB, together with the Department of Education and the Department of the Treasury, issued a Joint Statement on Principals on Student Loan Servicing.

TAKE HOME LESSON

- The CFPB's data collection and rulemaking initiatives will continue at a fast pace throughout 2016, 2017 and beyond.
- These initiatives will have significant ramifications for companies providing a broad range of consumer financial products and services.

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