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CFPB Enforcement Update

This update analyzes the trends and patterns in the Consumer Financial Protection Bureau's publicly available enforcement actions.

Leveraging the analysis in our December 2014 White Paper, *CFPB Enforcement by the Numbers* (2014 Report), this *White Paper* analyzes the Consumer Financial Protection Bureau's (CFPB or the Bureau) 60 publicly available enforcement actions between October 29, 2014, and October 31, 2015 (Update Period), and identifies trends, consistencies and developments in the Bureau's enforcement record.

As with our 2014 Report, our analysis is limited to publicly available information (*i.e.*, information found in press releases and public filings) and therefore does not reflect any Bureau inquiries or actions that either the Bureau or the target have not yet made public. Even with those limitations, however, the 60 publicly available enforcement actions provide us with sufficient data to evaluate trends during the Update Period, including industry sectors targeted, statutes utilized, forum chosen and remedies pursued.[1]

Among the findings, we identified a substantial uptick in the pace of enforcement actions brought by the CFPB during the Update Period —– reaching 60 enforcement actions in just one year compared with 62 total actions during its first three-and-a-half years.[2] This more than three-fold increase in the pace of enforcement actions demonstrates the Bureau's growing comfort with and interpretation of its enforcement mandate. Most notable of the developments discussed below, we identified that the Bureau's enforcement activity has been increasingly targeted at the debt-collection industry, an area barely targeted during the Bureau's first three years.

I. Overview

Like the 2014 Report, this *White Paper* breaks down the patterns in the Bureau's enforcement history over the Update Period. These trends are discussed in detail below, and include:

- **Industry Sectors:** Over the Update Period, the CFPB has continued to diversify the sectors it targets in enforcement proceedings. Although the Bureau continues to focus on the mortgage, debt-relief services, and credit cards & add-on products industries, it also brought two enforcement actions against a new industry sector for the first time: telecommunications. Moreover, the Bureau has significantly increased its attention on the debt-collection industry, bringing eight cases in this area during the Update Period, compared with just one in the prior three-and-a-half years. This uptick likely reflects a recently announced joint crackdown on illegal debt-collection practices, dubbed "Operation Collection Protection." The effort, which the Federal Trade Commission (FTC) has spearheaded, is now a joint effort with the Department of Justice (DOJ), CFPB and states' attorneys general.[3]

- **Consumer Financial Protection Laws:** The Bureau's choice of enforcement statutes has remained steady during the Review Period, and consistent with the trends in the 2014 Report. The Bureau continues to allege far more cases under the Consumer Financial Protection Act's prohibition of unfair, deceptive, or abusive acts or practices (UDAAP) than any other statute, while actions alleging violations of the Real Estate Settlement Procedures Act (RESPA), the Telemarketing Sales Rule,[4] the Truth in Lending Act/Regulation Z,[5] the MAP Rule / Regulation N[6] and Regulation O[7] continue to make up a sizeable number of cases, as they did previously. Despite these consistencies, we identified a sizeable increase in cases alleging violations of the Fair Debt Collection Practices Act (FDCPA), with the Bureau bringing nine cases during the Update Period compared with just two previously. This is unsurprising given our findings regarding the Bureau's increased focus on the debt-collection sector as part of Operation Collection Protection, mentioned above. In addition, although the Bureau continues to regularly enforce RESPA's anti-kickback provision,[8] the Bureau brought *zero* cases asserting violations of RESPA's prohibition on splitting unearned fees, a sharp drop from the 10 it brought prior to the Update Period. This may reflect a response to the Bureau's success in prior enforcement actions.

- **Enforcement Forum:** During the Update Period, the Bureau also appears to have reversed course regarding its choice of enforcement forum. Our 2014 Report noted that the Bureau's actions were roughly split between administrative proceedings and actions in federal district court, with the Bureau slightly favoring the administrative forum (54.8% brought as administrative actions; 45.2% brought in federal court). In the Update Period, the Bureau showed the opposite preference, bringing 60% of its cases in federal court and 40% as administrative actions.[9] We have not identified any facts or evidence explaining this slight shift in enforcement forum.

- **Remedies:** We also identified a shift with respect to remedies which the Bureau sought or achieved, with fewer cases involving civil penalties and more requiring restitution. As described in the 2014 Report, of the cases resulting in a judgment or consent decree during the first three-and-a-half years, 83.3% included a provision for payment of civil penalties, while only 66.7% required restitution. In the Update Period, those numbers are 75.9% and 74%, respectively. Beyond monetary relief, we also identified an uptick in the percentage of resolutions that included an injunction, Bureau monitoring, recordkeeping, and/or a requirement that the defendant report material changes to the Bureau or submit periodic compliance reports. As was the case prior to the Update Period, very few respondents in recent cases were required to admit or deny the underlying allegations of law and fact.

Our analysis of the Update Period identified five enforcement "clusters," discussed in more detail below. These include enforcement proceedings against:

- Telecommunications firms
- Debt-collection companies
- Entities targeting military service members or veterans
- Companies misrepresenting government affiliations
- Auto and mortgage lenders charged with racial discrimination in the provision of loans

II. Breaking Down the Trends

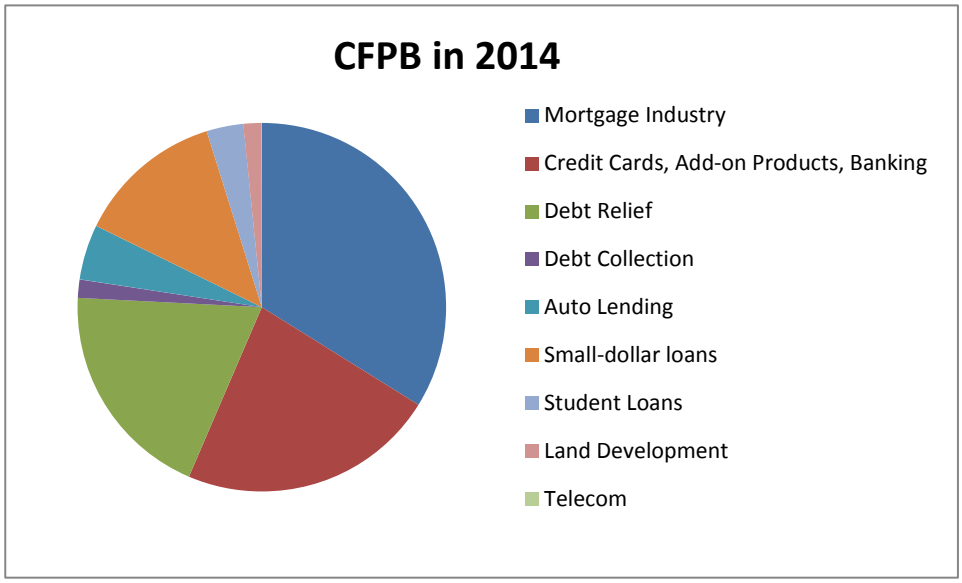
A. Industry Sectors Targeted

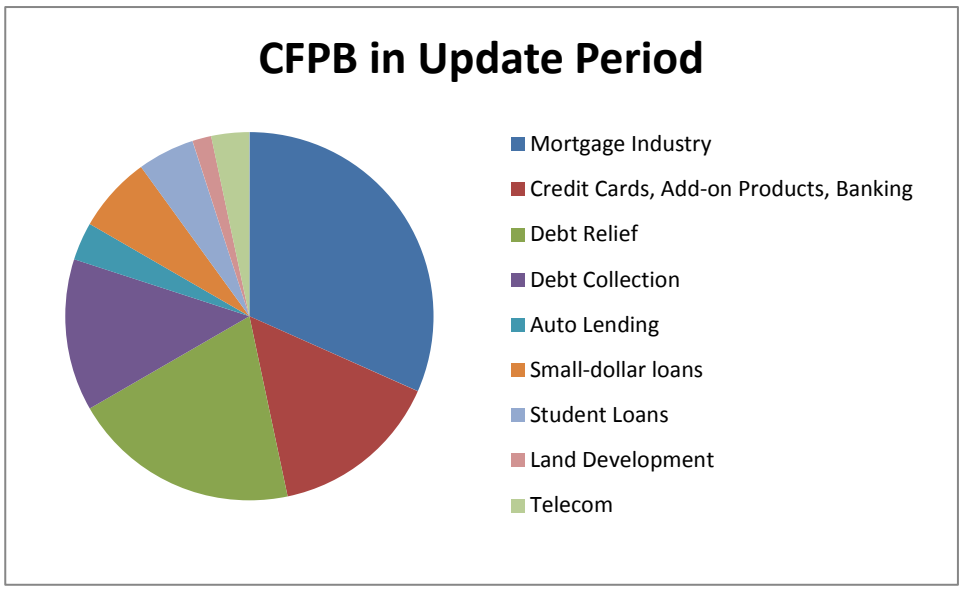
The CFPB has targeted nine industry sectors during its enforcement history: the eight sectors identified in the 2014 Report and one new sector that came into its cross-hairs during the Update Period: the telecommunications industry. Table 1 provides a visual representation of the industry sectors that the CFPB has targeted during its first three-and-a-half years, during the Update Period, and during the full, nearly five-year enforcement history.

As Table 1 illustrates, since the Bureau launched its first enforcement action in 2011, its activities have been heavily focused on the mortgage, credit card and debt-relief industries. Together, these industries represent 87 (over 70%) of all actions the Bureau has brought since 2011. When comparing the Update Period with the first three-and-a-half years of the Bureau's activities, however, we can see both consistencies and notable changes to the makeup of the Bureau's enforcement targets. For example, as it did during its first three-and-a-half years, the CFPB has continued to focus on the mortgage, credit card and debt-relief services industries during the Update Period. These three industries continue to reflect the three biggest targets of the Bureau's enforcement authority. On the other hand, although enforcement actions related to credit cards continue to be plentiful, the Bureau appears to be focusing less on this sector.

Table 1: Enforcement Actions by Industry over Time

	2014 Report	Update Period	Enforcement Trend	TOTAL
Mortgage Industry	21 cases (33.9%)	19 cases (31.7%)	↓	40 cases (32.8%)
Credit Cards & Add-on Products	14 cases (22.6%)	9 cases (15%)	↓↓	23 cases (18.9%)
Debt Relief	12 cases (19.4%)	12 cases (20%)	↑	24 cases (19.7%)
Debt Collection	1 cases (1.6%)	8 cases (13.3%)	↑↑	9 cases (7.4%)
Auto Lending	3 cases (4.8%)	2 cases (3.3%)	↓	5 cases (4.1%)
Small-dollar loans	8 cases (12.9%)	4 cases (6.67%)	↓↓	12 cases (9.8%)
Student Loans	2 cases (3.2%)	3 cases (5%)	↑	5 cases (4.1%)
Land Development	1 case (1.6%)	1 case (1.7%)	↑	2 cases (1.6%)
Telecom	0 cases (0%)	2 cases (3.3%)	↑	2 cases (1.6%)
Total	62 cases	60 cases	--	122 cases


CFPB in 2014
Mortgage Industry
Credit Cards, Add-on Products, Banking
Debt Relief
Debt Collection
Auto Lending
Small-dollar loans
Student Loans
Land Development
Telecom


CFPB in Update Period
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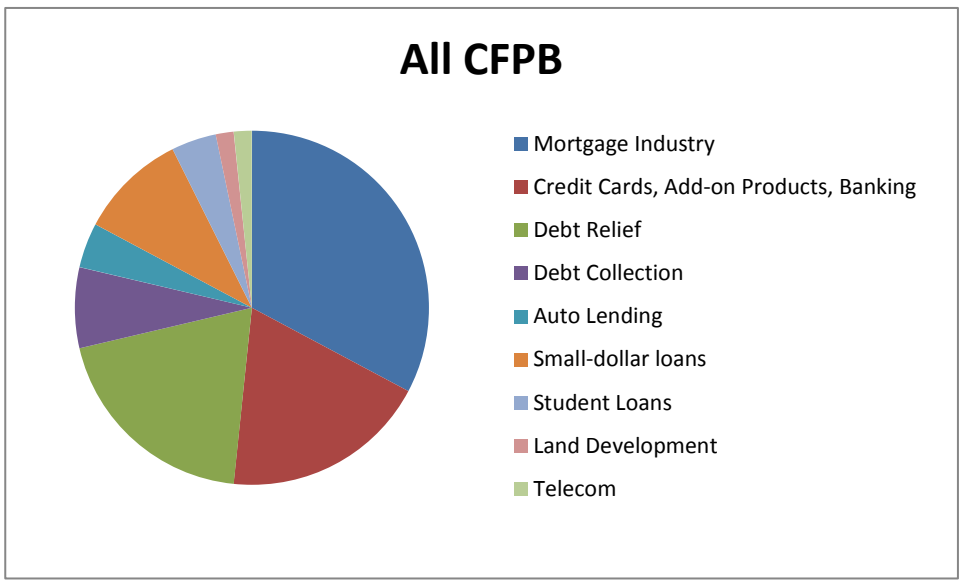
Land Development
Telecom


All CFPB
Mortgage Industry
Credit Cards, Add-on Products, Banking
Debt Relief
Debt Collection
Auto Lending
Small-dollar loans
Student Loans
Land Development
Telecom

Despite these consistencies, we also identified a number of changes with respect to the Bureau's industry targets:

- As noted above, the Bureau added the telecommunications industry to its enforcement portfolio. It pursued two major telecommunications firms for allegedly charging their wireless customers for unauthorized third-party charges. Both cases involved the same core allegations: that the defendants' billing and payment-processing systems gave third parties "unfettered access" to customers' accounts and thereby allowed third parties to "cram" unauthorized charges onto wireless bills.[10] In prepared remarks on the Bureau's enforcement actions against these telecommunications companies, Director Richard Cordray stressed that "consumers are increasingly using their phones for all sorts of financial activities, [and] they need to be able to trust that their wireless carriers and other payment processors are keeping their accounts safe."[11] The Bureau has entered into consent agreements with both companies.[12] Those orders are discussed in further detail in Section III.A, below.

- The Bureau substantially increased its focus on the debt-collection industry, bringing eight cases during the Update Period, compared to just one previously. All but one of these cases alleged that the defendants engaged in unfair, deceptive or abusive practices in violation of UDAAP, as well as violations of the Fair Debt Collection Practices Act, which also prohibits a laundry list of false or misleading practices regarding collecting a debt. As noted above, on November 4, the FTC announced a joint federal-state crackdown on the debt-collection industry joined by the CFPB and states' attorneys general, the so called Operation Collection Protection.[13] The announcement makes clear that the CFPB's focus on the debt-collection industry during the Update Period is likely to continue.

- The number of cases brought against entities in the small-dollar loan sector decreased by 50% during the Update Period (from eight to four). This decrease may be the result of self-regulation in response to the considerable attention the industry has received in the past year. Indeed, in March 2015, the CFPB outlined a proposal to end what it called "payday debt traps" by requiring lenders to take steps to ensure that consumers can pay back their loans before issuing credit.[14] The Bureau expects to release a rulemaking proposal in the first quarter of 2016.[15]

B. Use of Enforcement Statutes[16]

The Bureau continued to rely heavily on the CFPA's UDAAP provisions during the Update Period. Of the Bureau's 60 enforcement actions, 40 involved allegations of UDAAP (66.7%). This is nearly identical to its prior enforcement record (66.1% involved allegations of UDAAP).

In addition to UDAAP, the Bureau brought claims under the following statutes or regulations:

- Nine cases (15%) involved allegations of RESPA's Anti-Kickback Provision

- Nine cases (15%) alleged violations of the Fair Debt Collection Practices Act (FDCPA)

- Seven cases (11.7%) enforced provisions of the Telemarketing Sales Rule (TSR) and Regulation O (Reg. O) that prohibit charging a fee prior to settling a customer's debt[17]

- Six cases (10%) concerned alleged violations of the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z (Reg. Z)[18]

- Four cases (6.7%) enforced provisions of the Mortgage Acts and Practices Rule (MAP rule), also known as Regulation N (Reg. N)

- Four cases (6.7%) alleged violations of the Fair Credit Reporting Act (FCRA)

- Four cases (6.7%) alleged civil rights violations under the Fair Housing Act (FHA) or Equal Credit Opportunity Act (ECOA)

- Three cases (5%) enforced various provisions of the TSR unrelated to charging advanced fees

- Two cases (3.4%) enforced provisions of the Electronic Funds Transfer Act and its implementing regulation, Regulation E

- One case (1.7%) concerned alleged violations of the Mortgage Servicing provisions of Regulation X

We noticed a number of trends with respect to the statutes the Bureau leveraged, and how these statutes were used:

- The Bureau alleged UDAAP claims against the mortgage industry with increasing frequency, a trend we first identified in the 2014 Report, which appears to continue. Previously, the CFPB alleged UDAAP violations in 23.8% of mortgage sector cases (although three of those five cases were brought in the latter portion of 2014); during the Update Period, the Bureau included UDAAP allegations in 36.9% of cases against mortgage industry defendants.

- The Bureau brought an increased number of actions under the FDCPA, evidence of the Bureau's increased focus on the debt-collection sector noted above (*see* II.A, above).

- During the Update Period, the Bureau made no allegations of RESPA's prohibition on paying or accepting unearned fees, down from 10 cases in the prior three-and-a-half years.

C. Joint Enforcement

Although we noted in the 2014 Report that no federal government agency had joined the CFPB as a plaintiff since December 2013, this trend did not hold true during the Update Period. The DOJ joined two of the four cases alleging civil rights violations; in the remaining two civil rights cases, the CFPB and DOJ conducted a joint investigation, but brought separate suits.[19]

The Bureau has also continued to work alongside states' attorneys general during the Update Period. The Maryland Attorney General joined two CFPB complaints involving an alleged kickback scheme in the mortgage sector; the Florida Attorney General joined two cases in the debt-relief services sector;[20] and the Superintendent of Financial Services of the State of New York joined in a case against a small-dollar lending company. The CFPB also worked alongside a number of states' attorneys general in its two actions in the telecommunications industry.

Finally, the Bureau brought an action with a new partner during the Update Period: the Bureau partnered with the Navajo Nation in an action against companies and individuals operating an illegal tax-refund scheme.[21] While the Bureau had announced in early 2013 that it signed a Memorandum of Understanding with the Navajo Nation Department of Justice establishing a framework for coordination and cooperation between the two agencies,[22] this is the first joint action with the Navajo Nation to date.

D. Choice of Forum

During the Update Period, the Bureau shifted course to demonstrate a slight preference for federal court over the administrative adjudicatory process, bringing 36 cases in federal court and 24 administrative actions (60% and 40% respectively). This is a slight departure from the Bureau's prior record of 28 actions in federal court versus 34 administrative actions (45.2% and 54.8% respectively).[23]

On a more granular level, the Bureau also shifted its choice of forum for large, sophisticated companies. Enforcement proceedings against JPMorgan, Wells Fargo, PayPal, Sprint and Verizon were all pursued in federal court,[24] whereas prior to the Update Period, the Bureau appears to have preferred pursuing large companies in administrative proceedings.[25] (That said, the CFPB chose an administrative forum in some cases against large, sophisticated defendants during the Update Period, including CitiBank, Fifth Third Bank, Chase Bank, and American Honda.[26]) Given the Bureau's demonstrated willingness to pursue large companies in either forum, predicting where the CFPB will pursue future enforcement actions against large firms remains difficult.

Generally, we also could not determine whether the industry sector drove the Bureau's forum choice during the Update Period. See Table 2. We did note that the Bureau appears to favor a federal forum in small-dollar loan and debt-relief cases.

Table 2: Choice of Forum by Industry

	Mortgage Industry	Credit Cards & Add-ons	Telecomm	Debt Collection	Debt Relief	Student Loans	Small Loans	Land Develop-ment
Administrative Actions	6 cases	5 cases	0 cases	5 cases	3 cases	1 case	1 case	1 case
Civil Actions	13 cases	4 cases	2 cases	3 cases	9 cases	2 cases	3 cases	0 cases

E. Remedies

Of the 60 enforcement actions during the Update Period, 52 have been resolved (either via settlement or consent decree), six are pending and two resulted in a default judgment against the defendant.[27] This section sets forth our findings with respect to remedies sought or obtained during the Update Period. The pending cases are not included in our calculations.

Table 3 provides an overview of the types of penalties imposed on CFPB defendants in the four industry sectors with the most settled cases during the Update Period.[28] A majority of resolved cases involved civil penalties (75.9%) or restitution (74%), and we have generally noted an uptick in the percentage of resolutions that included an injunction, Bureau monitoring, recordkeeping, and/or a requirement that the defendant report material changes to the Bureau or submit periodic compliance reports.

When these categories are broken down by industry, however, we see notable trends:

- Civil penalties and restitution were each awarded in a much lower percentage of mortgage industry cases (73.7% and 52.6%, respectively) than they were in the debt-relief, debt-collection and credit card industries.

- 100% of resolved mortgage cases involved Bureau monitoring and reporting requirements.

- Credit card and debt-collection industries were much more likely to receive requirements for compliance plans and increased Board oversight or internal monitoring than the other main industries the Bureau targeted.

Table 3: Remedies by Selected Industries

	Mortgage Industry (% of industry cases not pending)	Debt-Relief (% of industry cases not pending)	Debt Collection (% of industry cases not pending)	Credit Cards & Add-ons (% of industry cases not pending)
Civil Penalty	14 cases (73.68%)	8 cases (88.9%)	7 cases (100%)	9 cases (100%)
Restitution or Other Equitable Monetary Relief	10 cases (52.63%)	7 cases (77.8%)	6 cases (85.7%)	8 cases (88.9%)
Injunction or Cease & Desist Order (INJ)	17 cases (89.5%)	9 cases (100%)	7 cases (100%)	9 cases (100.0%)
Compliance Plan	9 cases (47.4%)	2 cases (22.2%)	5 cases (71.4%)	7 cases (77.8%)
Disgorgement (D)	0 cases (0%)	0 cases (0%)	0 cases (0%)	0 cases (0%)
Monitoring by CFPB (M)	19 cases (100%)	8 cases (88.9%)	6 cases (85.7%)	8 cases (88.9%)
Increased BOD Oversight/Internal Monitoring Requirements	4 cases (21.1%)	0 cases (0%)	3 cases (42.9%)	7 cases (77.8%)
Record Keeping and/or Document Retention	13 cases (68.4%)	8 cases (88.9%)	6 cases (85.7%)	9 cases (100.0%)
Reporting Requirements (CFPB or Other Regulator)	19 cases (100%)	8 cases (88.9%)	6 cases (85.7%)	9 cases (100.0%)

1. Civil Penalties

During the Update Period, the Bureau has obtained smaller civil penalties than during the Bureau's first three-and-a-half years, as reflected in Table 4.

Table 4: Civil Penalty Values by Selected Industries

All values in US$	Total Update Period	Total 2014 Report	Credit Card Update Period	Credit Card 2014 Report	Mortgage Update Period	Mortgage 2014 Report
Highest	$35 million	$468.3 million	$35 million	$25 million	$21 million	$468.3 million
Mean	$3.8 million	$13.4 million	$7.1 million	$8.2 million	$2.5 million	$28.1 million
Median	$226,500	$1.1 million	$1.9 million	$4.5 million	$100,000	$462,500
Lowest	$0	$0	$70,000	$0	$0	$0

The largest civil penalty during the Update Period was US$35 million levied against Citibank, which was charged with unfair, deceptive, and abusive practices in violation of the CFPA and violations of the Telemarketing Sales Rule related to its marketing of, and billing for, credit card and add-on products. Previously, the largest civil penalty was US$468.3 million paid by Suntrust Mortgage, a firm in the mortgage sector.

In general, the penalties in the mortgage industry during the Update Period were much lower than during the 2011–2014 period, which we attribute at least in part to the following:

- The US$468.3 million penalty that Suntrust Mortgage paid in June 2014 was an outlier, and over 22 times higher than the highest mortgage penalty in the Update Period. Removing this outlier from the data set, the average civil penalty in the mortgage industry actually increased from US$2.2 million to US$2.47 million during the Update Period.

- The drop in median penalty was also impacted by a single cluster of cases in the mortgage industry that did not include a civil penalty. (See Note 2). The CFPB's enforcement action against Genuine Title regarding an alleged kickback scheme spawned a total of eight final judgments, five of which were against individual loan originators. Three of these individual defendants each received a judgment that included no civil penalty award, and the ringleader of the alleged scheme, Genuine Title, was not required to pay a civil penalty due to its financial condition. If those judgments without an award are considered a single "case" for the purposes of these calculations, the median for mortgage cases rises to US$225,000.

2. Equitable Monetary Relief

As noted above, almost 75% of resolved cases during the Update Period included some sort of equitable monetary relief, typically in the form of restitution (up from roughly 66% during the prior three-and-a-half years). These provisions generally require the defendant to deposit funds into a segregated account for the purposes of paying redress to affected customers. The Bureau often requires the target to present a redress plan to the Bureau for approval or to hire an independent consultant for the purposes of overseeing the payment of redress.

We could not draw significant conclusions regarding the restitution patterns during the Update Period. As Table 5 demonstrates, in certain industries, restitution amounts were significantly higher than our findings in the 2014 Report. In other industries, restitution amounts had significantly decreased.

Table 5: Equitable Monetary Relief Values by Selected Industries

All values in US$	Total Update Period	Total 2014 Report	Credit Card Update Period	Credit Card 2014 Report	Mortgage Update Period	Mortgage 2014 Report
Highest	$700 million	$2.1 billion	$700 million	$215 million	$48 million	$2.1 billion
Mean	$35.4 million	$75.6 million	$92.3 million	$48.4 million	$4.639 million	$153 million
Median	$3.1 million	$499,248	$4.9 million	$26.3 million	$30,000	$0 (including cases with no restitution)
Lowest	0	$0	$0	$0	$0	$0

The largest award of equitable relief was in the category of credit cards & add-on products, a US$700 million dollar penalty levied against Citibank stemming from allegations that it committed UDAAP violations and violations of the Telemarking Sales Rule in its marketing of, and billing for, credit card add-on products. As discussed above, the single biggest civil penalty was also issued against Citibank as part of the same consent order, which may indicate the Bureau's effort to send a strong signal to firms marketing credit cards and add-on products.

During the Update Period, the Bureau also apparently sought either a civil penalty or restitution, but not both, with greater frequency than during the prior period. During the Update Period, 13 cases resulted in civil penalties but no restitution; 12 cases resulted in restitution but no civil penalty. Although the 2014 Report identified many judgments that included a civil penalty but no restitution, prior to the Update Period the Bureau less frequently sought restitution as a standalone penalty. Only seven cases in the prior three-and-a-half years provided for restitution on its own, whereas 12 cases in the Update Period provided for restitution as a standalone penalty.

The Bureau's increased emphasis on restitution is particularly noticeable in the mortgage industry. The 2014 Report noted that only 33.3% of completed mortgage cases required the defendant to pay restitution, but also identified a growing trend to seek restitution in mortgage-related cases.[29] This trend continued in the Update Period, with 52.6% of settlements and judgments in the mortgage sector including restitution.

3. Disgorgement

We identified no defendants during the Update Period that were required to disgorge profits as a standalone remedy — compared with two cases during the prior period. We noted in the 2014 Report that the Bureau was seeking disgorgement as a standalone remedy less frequently over time.

Disgorgement is still mentioned in orders during the Update Period, but only appears as a clause dictating that any balance between actual restitution awarded and the penalty floor must be paid to the Bureau or the US Treasury as disgorgement. The language used in *CFPB v. Continental Finance Company, LLC*, (2015-CFPB-0003) is typical. After specifying how redress is to be determined and distributed, the order states that "[a]ny funds not used for such equitable relief will be deposited in the US Treasury as disgorgement."

4. Compliance Measures or Reporting Requirements

We also identified both upward and downward trends in various compliance-related requirements in the Bureau's resolutions during the Update Period. The inclusion of certain provisions increased, such as requirements that the defendant be subject to: (1) monitoring by the CFPB (90.8% of resolutions in Update Period; 77.1% of cases previously); (2) reporting requirements to the CFPB or another regulator (94.4% versus 81.3%). On the other hand, during the Update Period defendants were less likely to be subject to: (1) a requirement that they submit a compliance plan to the CFPB (51.85% versus 56.3%); (2) increased oversight by the Board of Directors or other internal monitoring (33.3% versus 52.1%). Inclusion of some other compliance-related requirements that appeared in a majority of cases in the first three-and-a-half years of the Bureau's activity remained relatively constant in the Update Period, *e.g.*, recordkeeping or document retention requirements (83.3% now; 79.2% then).

The reporting requirements took on many forms, but almost all of the affected orders included a provision requiring defendant entities to notify the Bureau of any developments that "may affect compliance obligations arising under this Consent Order," such as a sale or merger. Individual defendants, on the other hand, were typically required to inform the Bureau in the event of a change of address. And the Bureau sometimes, but not always, requires yearly progress reports.

5. Admission or Denial of Bureau Allegations

As in the first three-and-a-half years, almost none of the resolved cases required the respondent to admit the Bureau's allegations or findings of fact (50 of 54 cases during the Update Period).

Only two settlements or stipulated judgments required the defendant to admit the allegations in the complaint.[30] (The final two cases were default judgments where the court made findings of facts in the Bureau's favor.) Although it is difficult to discern a clear pattern distinguishing these cases, a few common elements stand out:

- Neither case involved a large monetary penalty. In one, the consent order included no monetary penalty, and in the other, the majority of the penalty was suspended based on the defendant's financial condition.

- Both cases may have involved clear-cut violations of law that may have been more difficult to defend. For example, the sole case brought under the Interstate Land Sales Full Disclosure Act (ISLA), *CFPB v. International Land Consultants*, required the defendant to admit the underlying findings of fact and conclusions of law. Making an untrue statement of material fact in connection with an interstate land sale is a violation of ISLA. The defendants in International Land Consultants had made numerous representations in reports to HUD and Florida Public Offering Statements that lacked a factual basis. Similarly, in *CFPB v. Morgan Drexen, Inc.* the CFPB alleged that Morgan Drexen charged and retained up-front fees in the provision of a debt-relief service before taking any steps to renegotiate, settle or reduce the debt, a clear-cut violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)(i) and (ii). The Bureau's willingness to forego or seek a reduced monetary penalty combined with the strength of the Bureau's case may have induced both parties to admit the allegations of fact and law.

The data revealed no trends in the language used in the clauses regarding admissions or denials of law and fact during the Update Period. As discussed in the 2014 Report, the following three phrases were the most commonly found in the settlement documents: "without admitting or denying," "neither admits nor denies," or "do not admit or deny" (the object of these statements was typically "findings of fact or conclusions of law" or "allegations set forth in the complaint").

As discussed in more detail in Section III, our analysis did reveal a trend towards allowing parties charged with violations of the civil rights laws to actively deny wrongdoing. In three of the four cases that charged a party with violating the FHA or ECOA, the consent order included a statement by the defendant vehemently denying the allegations of fact and conclusions of law.

III. Enforcement Clusters in the Update Period

As in the 2014 Report, in addition to the Bureau-wide trends discussed above, we also identified five "clusters" of enforcement activity during the Update Period, each of which is explored in detail below. These clusters include:

- Telecommunications: For the first time, the CFPB charged two telecommunications firms with UDAAP violations stemming from third-party providers' billing practices.

- Debt-Collection Cases: The Bureau brought a number of cases against debt-collection companies, all but one of which alleged UDAAP violations.

- Entities Targeting Military Service Members or Veterans: The CFPB brought enforcement actions against three mortgage companies, a debt-collection firm, and a debt-relief services company for engaging in unfair and deceptive practices targeted at service members or veterans.

- Companies Misrepresenting Government Affiliations: The Bureau charged three mortgage companies with misleading consumers through advertisements implying US government affiliation or approval.

- Racial Discrimination in Auto and Mortgage Lending: The Bureau charged two mortgage servicers and two auto lending companies with violations under ECOA and/or FHA.

A. Telecommunications

As noted above, during the Update Period the Bureau brought two cases for the first time against firms in the telecommunications industry using the UDAAP provisions of the CFPA.

Specifically, the Bureau alleged problematic practices regarding unauthorized third-party charges on the wireless bills of the firm's customers. The Bureau claimed that both defendants' billing and payment-processing systems gave third parties "unfettered access" to customers' accounts, allowing third parties to "cram unauthorized charges onto wireless bills." Because both defendants automatically enrolled customers into this billing system without the customers' knowledge, customers were unaware of these charges, which in the aggregate totalled millions of dollars each year. The Bureau alleged that each defendant profited from this billing system because each retained a percentage of the gross revenue collected from the third-party charges.[31]

Although neither party was required to pay a civil penalty or disgorgement, both defendants (Sprint and Verizon) were required to pay significant restitution (US$50 million and US$35-US$70 million).[32] Both defendants were also required to reform the way third-party products are marketed and billed through their respective platforms. In particular, the order enjoins Sprint and Verizon from making paid third-party products available through their messaging systems, and requires they obtain "express informed consent" before a consumer is charged for any third-party charge, defined as "an affirmative act or statement giving unambiguous assent to be charged."[33] To the same end, both companies were required to implement a system whereby consumers are sent a purchase confirmation separate from their normal bills informing the consumer of the third party charge. Sprint and Verizon are also now subject to monitoring, recordkeeping and reporting requirements. Neither defendant, however, was required to admit the underlying facts or conclusions of law.

B. Debt-Collection Cases

As mentioned above (see Section II.A), the Bureau brought significantly more cases against debt-collection companies during the Update Period than during its first three-and-a-half years. Indeed, the sector went from being one of the least targeted sectors (one case prior to the Update Period), to one of the most targeted sectors (eight cases in the Update Period).

Seven of eight cases alleged UDAAP violations stemming from allegedly deceptive, abusive or unfair practices in collecting a debt. In general, the cases often involved some combination of the following practices:

- Threatening to take legal action or refer a debtor to the District Attorney

- Implying that failing to pay a debt could result in imprisonment

- Making harassing phone calls
- Implying that the debt-collector is an attorney or affiliated with the government
- Attempting to collect time-barred debt
- Buying and attempting to collect debt that the defendant knows contains significant inaccuracies.

Not surprisingly, all but two cases also alleged violations of the FDCPA, which, among other things, prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with collecting a debt.[34] (Five cases alleged both.) In most cases the UDAAP charge essentially overlapped with the FDCPA charge. The FDCPA prohibits a number of false or misleading practices with respect to collecting a debt, such as threatening to take an action that cannot be legally taken or providing a false representation about a debt amount. These practices can also form the basis of an allegation that a party engaged in deceptive or unfair practices under the CFPA.[35]

The only case against a debt-collection agency that did not implicate UDAAP alleged violations of the Fair Credit Reporting Act in addition to the FDCPA. The Bureau alleged that the defendant — a debt-collection agency — failed to respond to consumer disputes regarding information furnished to credit reporting agencies within 30 days as the FCRA requires. The Bureau also alleged that the defendant frequently failed to send consumers a debt validation notice within five days of contacting consumers as the FDCPA requires. The fact that the alleged violations were largely procedural in nature likely explains why the Bureau did not charge the company with UDAAP violations as well.

Monetary penalties were both frequent and substantial in the debt-collection cases during the Update Period. Of the seven concluded cases, all but one included both a civil penalty and restitution. The average civil penalty in the debt-collection sector was US$7.7 million and the average restitution award was US$20.6 million, compared to overall averages of US$3.75 million and US$35.4 million, respectively. In addition to these substantial financial penalties, companies in the debt-collection sector often faced extremely detailed forward-looking injunctions and compliance requirements, typically described in detail in the consent documents. Common requirements include:

- Specific prohibitions on (i) making any representation unless it can be substantiated; (ii) selling debt; (iii) filing misleading affidavits; (iv) attempting to collect time-barred debt; or (v) filing any lawsuit without an intent to prove the debt, if challenged.
- The development of compliance plans spelling out in detail the policies and procedures that will be implemented to ensure compliance with all applicable laws.
- Increased external and internal monitoring by the company's Board of Directors (three of seven cases). These provisions generally require the Board to authorize and oversee the implementation of the policies and procedures required to comply with the order.
- External monitoring by the CFPB (six of seven cases). These provisions typically require the defendant to submit additional compliance reports upon the Bureau's request, and allow the Bureau to interview employees with the employee's consent.

Although the penalties in this area were some of the most severe of any sector, no company was required to admit the conclusions of law or facts underlying the allegations.

C. Entities Targeting Military Service Members and Veterans

Our review of the Bureau's enforcement activity also identified a cluster of five cases in the Update Period alleging UDAAP violations related to mortgage products, debt-relief services and debt-collection practices aimed at veterans. (The 2014 Report described a similar cluster of enforcement activity. In those cases, the Bureau charged auto lenders with UDAAP violations in connection with loans made to members of the armed forces.)

During the Update Period, the Bureau brought three cases in just two months alleging deceptive advertising practices in the mortgage industry. In two cases, the Bureau alleged that the defendants' advertisements suggested an affiliation with the Federal Housing Administration or Department of Veterans Affairs, when in fact no such affiliation existed. In the third case, the CFPB alleged that a mortgage lender failed to disclose kickbacks it paid to a veterans' association in exchange for the association's endorsement, while providing other substantive reasons for the endorsement (*e.g.*, because of their "high standards for service").

In addition to alleging UDAAP violations in each of these three cases, the Bureau also alleged violations of the MAP Rule (two cases) and RESPA's anti-kickback provision (one case). The facts forming the basis of UDAAP allegations largely overlapped with the MAP and RESPA claims.

Financial penalties tended to be relatively small in this cluster, with an average civil penalty of just US$470,000. None of the companies were required to pay redress. That said, each company in the cluster was subject to forward-looking compliance requirements. In particular, each was required to create a compliance plan, agree to CFPB monitoring, and undertake reporting and recordkeeping requirements.

The Bureau's crackdown on perceived exploitation of service members during the Update Period was not limited to the mortgage sector. Two other cases, one involving debt collection and another involving debt relief, also focused on businesses targeted at veterans or active service members. The debt-relief case is particularly notable because it involved a standalone UDAAP claim stemming from the way the respondent charged fees on military payroll deductions called allotments. The CFPB has since issued a statement and sent letters to a number of companies that sell goods to military personnel advising them to review their policies on allotments.[36] This crackdown may be a trend to watch over the next year.

D. Companies Misrepresenting Government Affiliation

The Bureau settled four cases in the Update Period stemming from allegations under UDAAP and the MAP rule that companies in the mortgage sector misrepresented an affiliation with, or approval by, a government agency. At least three of these actions stemmed from a joint "sweep" the CFPB and FTC conducted in which the agencies reviewed a randomly selected sample of 800 mortgage-related ads.[37] In each case, the Bureau alleged that the companies took affirmative steps to suggest a government affiliation in advertisements, such as using government logos and frequently mentioning federal programs and agencies, while simultaneously obscuring the fact that no actual affiliation existed. Two of these cases were brought against companies that targeted veterans, as discussed above.

The Bureau settled all four cases in this cluster and obtained civil penalties averaging US$143,250 with no restitution. In addition to these relatively modest financial penalties, each company was subject to forward-looking compliance requirements. In particular, each was required to create a compliance plan, agree to CFPB monitoring, and undertake reporting and recordkeeping requirements. Given that a joint CFPB/FTC sweep sparked these investigations, it is difficult to predict whether this cluster reflects a trend to watch or a more ephemeral focus on a specific form of misrepresentation during the Update Period.

E. Racial Discrimination in Auto and Mortgage Lending

The final cluster of cases during the Update Period involved alleged civil rights violations by lenders in the mortgage and auto lending industries. According to the Bureau, three lenders violated ECOA and/or the FHA by permitting third-party brokers to mark up residential or auto loans, which allegedly resulted in minorities being charged higher rates. A fourth case in this area charged a large bank with structuring its business to avoid or discourage residents in majority-black-and-Hispanic neighborhoods from accessing mortgages, a process known as "redlining."

All four cases involved allegations that the entities engaged in a pattern or practice of lending discrimination against minorities. In three of the cases the Bureau focused on each lender's practice of giving brokers considerable discretion in marking up loans. The Bureau's investigation found statistically significant disparities in the mark ups applied to minority borrowers compared with similarly situated white borrowers. The Bureau based its enforcement actions on each lender's policies regarding broker fees, and the lenders' failure to detect and remedy racial disparities in fees and interest charges.

The case against American Honda Finance Corporation (AH), an automobile lender, demonstrates the hazards that lenders face when they use third-party brokers to generate business. Based on our understanding of the case, AH itself does not appear to have collected racial data on loan applications forwarded by dealerships. However, the government alleged that brokers were nonetheless charging higher interest rates to minority buyers, a result possible because of the discretion AH afforded to brokers.

To determine whether there were racial disparities in interests rates, the DOJ and Bureau assigned race and national origin probabilities to loan applicants based on the applicant's name and geographical origin using a process known as the Bayesian Improved Surname Geocoding method. Based on this methodology, the Bureau determined that minority borrowers (as determined by name and geographical proxies) were charged a statistically higher interest rate. (We note that the DOJ used the same method in one case discussed in the 2014 Report.). Based on this analysis, the Bureau claimed that AH's practice of "allowing dealers to mark up a consumer's contract rate...and then compensating dealers from that increased interest revenue without adequate controls and monitoring...constitutes discrimination against applicants on the basis of race and national origin in violation of ECOA."[38] The AH case demonstrates the Bureau's willingness to engage in creative investigative techniques and extrapolation that, while imperfect, appear sufficient to form the basis of an enforcement action.

The Bureau settled all four cases in this cluster, and garnered significant financial penalties in each case. One of the entities paid a civil penalty of US$5.5 million, while the remaining three paid a significant amount in restitution (US$9 million, US$18 million and US$24 million).

In addition to monetary penalties, each company was required to adopt detailed compliance plans to ensure that their compensation arrangements with brokers did not incentivize marking up loans in a way that could lead to overall racial disparities. Based on our review, most settlements requiring compliance plans (across all industries) have allowed the respondents to draft the plan, subject to CFPB approval. However, in two cases in this cluster, the Bureau provided respondents with three compliance plan options from which the company could choose. Each of the options required the respondents to implement a new compensation policy that limits the amount of discretion dealers or brokers have in marking up loans, and each required external monitoring by the DOJ.

The fourth case in the civil rights cluster also included one of the most detailed and onerous injunctive-relief provisions identified in the Update Period. To remedy what the CFPB alleged was a pattern or practice by Hudson City Savings Bank of structuring and managing its business to avoid servicing minority neighborhoods, the consent decree required the bank to open or acquire two new full-service

branches in majority-black-and-Hispanic neighborhoods in the affected areas. In addition, the consent decree required the bank to (1) invest US$25 million in a Loan Subsidy Program to increase the amount of credit extended to majority-black-and-Hispanic neighborhoods; (2) spend US$200,000 per year in targeted advertising directed at affected areas; (3) spend US$100,000 per year on educational programs to help identify and develop qualified loan applicants from majority-black-and-Hispanic neighborhoods; and (4) spend US$750,000 and partner with a community-based organization to aid the bank in establishing a physical presence in majority-black-and-Hispanic neighborhoods.

Finally, three of the four companies in this cluster were allowed to include a statement in the consent order explaining their position on the allegations.[39] Each company vigorously denied the allegations and claimed that any difference in pricing was due to legitimate, non-discriminatory factors or third party actions outside the company's control. As discussed in the remedies section above, most CFPB settlements typically include provisions stating that the defendant "neither admits nor denies" the underlying allegations. These are the only three civil rights cases we have identified in the Bureau's enforcement record to date that allowed defendants to vehemently deny the allegations in a consent order.

IV. Conclusion

As evident in this *White Paper*'s findings, the CFPB remains assertive in enforcing the nation's consumer financial protection laws. Last year the Bureau brought almost as many cases as it did in its first three-and-a-half years combined, a sharp increase in the overall pace of enforcement. The Bureau continues to expand the number of industries it targets and to shift its focus to what it considers pressing needs, as the sharp increase in actions related to debt collection demonstrates. We will continue to monitor the Bureau's dynamic approach to enforcing these laws.

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Endnotes

1 There were two cases pending at the time the 2014 Report was published that have since settled. These cases are included in the Update Period figures because data is now available about remedies in those matters. As a result, this affects comparisons between the prior period and the Update Period, as these two cases are included in both data sets.

2 In one notable cluster of cases during the Update Period, the CFPB brought concurrent federal and administrative actions against the same parties stemming from the same set of facts (the "Kickback Cluster"). The Bureau filed two complaints in Federal District Court, one against Genuine Title and various loan officers, and one against Wells Fargo, JPMorgan, and a loan officer who worked at Wells Fargo. The CFPB also brought administrative actions against Wells Fargo and JPMorgan. The CFPB alleged that Genuine Title paid kickbacks to loan officers, some of whom worked at Wells Fargo and JPMorgan, in exchange for referrals, in violation of RESPA's anti-kickback provision. When all was said and done, the district court entered a total of eight different orders: five against individual defendants, one against Genuine Title, and one each against Wells Fargo and JPMorgan. In addition, both JPMorgan and Wells Fargo entered into administrative consent orders in conjunction with their final court orders.

For the purposes of this *White Paper*, we are "counting" the consent order and stipulated judgments entered into by JPMorgan and Wells Fargo only once. This reduces the total number of orders stemming from the Kickback Cluster from 10 to eight, and ensures that each defendant is only counted once. That said, the existence of eight cases still has the potential to skew the data. Periodically throughout this *White Paper*, we note how this methodology affects our calculation, and we provide alternative calculations.

3 Yuka Hayashi, *Regulators Ramp Up Debt-Collection Crackdown*, WALL ST. J., Nov. 4, 2015, http://www.wsj.com/articles/regulators-ramp-up-debt-collection-crackdown-1446680985.

4 16 C.F.R. 310 (2015).

5 12 C.F.R. 226 (2015).

6 12 C.F.R. 1014 (2015).

7 12 C.F.R. 1015 (2015).

8 As noted in more detail in Section II.B, even prosecutions under the anti-kickback provision may be in decline. All but one case in this area stemmed from the kickback cluster. The case generated eight different orders from only two separate complaints because of a proliferation of settlements with individual defendants. If those orders are aggregated to be considered just twice

(once for each complaint), then RESPA's anti-kickback provision was actually one of the least utilized statutes in the Update Period.

[9] Even if we collapse the kickback cluster and consider it as two cases (one for each complaint filed in federal court), the Bureau still brought 30 of 54 cases (55.6%) in federal district court, which is almost precisely the percentage of cases it brought in front of an administrative tribunal during the 2011-2014 period.

[10] Complaint, *CFPB v. Sprint Corp.*, No. 14-cv-9931 (S.D.N.Y. Dec. 1, 2014); Complaint, *CFPB v. Cellco Partnership d/b/a Verizon Wireless* (D. N.J. May 12, 2015).

[11] Richard Cordray, *Prepared Remarks of CFPB Director Richard Cordray on the Sprint and Verizon Enforcement Action*, Consumer Financial Protection Bureau Newsroom (May 12, 2015), http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-on-the-sprint-and-verizon-enforcement-action/.

[12] *CFPB v. Sprint Corp.*, No. 14-cv-9931 (S.D.N.Y. June 30, 2015); *CFPB v. Cellco Partnership d/b/a Verizon Wireless* (D. N.J. June 9, 2015); *See* Section III.A for further discussion.

[13] Yuka Hayashi, *Regulators Ramp Up Debt-Collection Crackdown*, Wall St. J., Nov. 4, 2015, http://www.wsj.com/articles/regulators-ramp-up-debt-collection-crackdown-1446680985.

[14] Newsroom, *CFPB Considers Proposal to End Payday Debt Traps*, Consumer Financial Protection Bureau (Mar. 26, 2015), http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-end-payday-debt-traps/.

[15] Blog, *Fall 2015 rulemaking agenda*, Consumer Financial Protection Bureau (Nov. 20, 2015), http://www.consumerfinance.gov/blog/fall-2015-rulemaking-agenda/.

[16] In the 2014 Report, we wrote that the Bureau only enforced seven statutes or their implementing regulations in its first three-and-a-half-years. That statement failed to account for five additional statutes or regulations that were enforced — EFTA, FCRA, the MAP rule, the Mortgage Servicing Rule and TILA/Reg. Z — which, with the exception of TILA, were each enforced only once in cases that also alleged violations of the CFPA's UDAAP provision.

[17] Of these, four were brought under Regulation O, and three were brought under the TSR.

[18] Regulation Z prohibits a wide range of conduct and requires various disclosures. Two of the six cases enforced Reg. Z's prohibition on tying a loan originator's compensation to the terms of a loan. Three cases concerned alleged violations of Reg. Z's disclosure provisions. A single case enforced a provision of Reg. Z that caps the amount of fees a credit card issuer can charge during the first year at 25% of the credit limit.

[19] The two cases where the CFPB and DOJ filed jointly are *CFPB v. Hudson City Savings Bank, F.S.B*, 15-cv-7056 (D. N.J. Nov. 4, 2015) and *United States v. Provident Funding Assocs., L.P.*, 15-cv-2373 (N.D. Cal. June 18, 2015). The two cases where the CFPB and DOJ jointly investigated but filed separately are *In the Matter of Am. Honda Finance Corp.*, 2015-CFPB-0014 (filed July 14, 2015) and *In the Matter of Fifth Third Bank*, 2015-CFPB-0025 (filed Sept. 28, 2015).

[20] *CFPB v. College Educ. Serv.*, No. 14-cv-3078 (M.D. Fl. Jan. 15, 2015); *CFPB v. Michael Harper*, 14-cv-80931 (S.D. Fl. May 5, 2015).

[21] *CFPB v. S/W Tax Loans, Inc.*, No. 14-cv-00299 (D. N.M. Apr. 14, 2015).

[22] Kent Markus, *Partnering in an information sharing agreement with the Navajo Nation to protect tribal consumers*, Consumer Financial Protection Bureau Blog (Feb. 12, 2013) http://www.consumerfinance.gov/blog/partnering-in-an-information-sharing-agreement-with-the-navajo-nation-to-protect-tribal-consumers/.

[23] The proliferation of civil judgments from the kickback cluster pads the number of cases brought in a federal forum, but even if we collapse the cluster and consider it only two cases, the Bureau still brought 55.6% of cases in federal district court.

[24] As noted in Note 2, however, the Bureau pursued both administrative and civil actions against JPMorgan and Wells Fargo. Moreover, the CFPB continued to favor an administrative forum in some cases against large, sophisticated clients. For example, its enforcement actions against CitiBank, Fifth Third Bank (the ninth largest depository auto loan lender in the United States), Chase Bank and American Honda were all brought in an administrative action. *CFPB v. Citibank, N.A.*. 2015-CFPB-0015 (filed June 21, 2015); *In the Matter of Fifth Third Bank* 2015-CFPB-0024 (filed Sept. 28, 2015).

[25] *See* 2014 Report, at 6.

[26] *CFPB v. Citibank, N.A.* 2015-CFPB-0015 (filed June 21, 2015); *In the Matter of Fifth Third Bank* 2015-CFPB-0024 (filed Sept. 28, 2015); *CFPB* v. *Chase Bank, USA N.A*, 2015-CFPB-0013 (filed July 8, 2015); *In the Matter of Am. Honda Finance Corp.*, 2015-CFPB-0014 (July 14, 2015).

[27] One administrative action, *CFPB v. PHH Corp.*, is currently on appeal before the D.C. Circuit. Because this case was included in the data set for the 2014 Report and is still pending, it is not included in the Update Period dataset.

[28] As discussed in Note 2, this table collapses the separate civil and administrative actions brought against JPMorgan and Wells Fargo.

[29] 2014 Report, at 9.

[30] *In the Matter of International Land Consultants*, 2015-CFPB-0010 (filed May 1, 2015); *CFPB v. Morgan Drexen, Inc.*, No. 13-cv-1267 (C.D. Cal. Oct. 19, 2015). In the case of *Morgan Drexen*, the relevant clause states that the defendant "admits all facts alleged in the Complaint and stated herein, but does not waive any privilege."

[31] Although not within the telecommunications industry, the Bureau's complaint against PayPal (*CFPB v. PayPal, Inc.*, No. 15-cv-01426 (D. Md. May 21, 2015)) alleged similar behavior. The Bureau alleged, among other things, that PayPal enrolled customers in PayPal credit without their knowledge, causing consumers to pay for purchases with PayPal Credit. Consumers often discovered they were enrolled only after finding a credit-report inquiry, or receiving billing statements, or debt-collection calls for amounts past due (including late fees and interest).

[32] PayPal, on the other hand, was required to pay both civil penalties and restitution (though no disgorgement).

[33] *CFPB v. Sprint Corp.*, No. 14-cv-9931 (S.D.N.Y. June 30, 2015); *CFPB v. Cellco Partnership d/b/a Verizon Wireless* (D. N.J. June 9, 2015).

[34] 15 U.S.C. § 1692e.

[35] *In the Matter of Westlake Services, LLC*, 2015-CFPB-0026 (filed Sept. 28, 2015); *In the Matter of Portfolio Recovery Assocs., LLC*, 2015-CFPB-0023 (filed Sept. 8, 2015).

[36] Newsroom, *CFPB Cautions Military Lenders Against Illegal Military Allotment Practices*, Consumer Financial Protection Bureau, (July 20, 2015), http://www.consumerfinance.gov/newsroom/cfpb-cautions-military-lenders-against-illegal-military-allotment-practices/.

[37] Newsroom, *CFPB Takes Action Against Mortgage Companies for Misrepresenting U.S. Government Affiliation*, (Feb. 12, 2015), http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-mortgage-companies-for-misrepresenting-u-s-government-affiliation/.

[38] *In the Matter of American Honda*, 2015-CFPB-0014 (filed July 14, 2015).

[39] One of these statements was included in a settlement reached in a parallel case brought by the Department of Justice. *See United States v. Fifth Third Bank*, 15-cv-626 (S.D. Ohio Sept. 28, 2015).