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CFPB Enforcement Actions: Trends and Lessons

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Sometimes, it is a good idea to use a chart to describe a relatively complex subject. One such chart that I keep involves noting the CFPB's administrative actions as they relate to the so-called mortgage industry. The exercise allows me to watch for a trend, perhaps gain a better understanding of the Bureau's concerns, and thereby bring that information to bear on the best ways to provide compliance support to our clients. Especially since the Bureau has been promulgating by Consent Order in some instances, I find a chart useful in allowing me to evaluate strengths and uncover weaknesses in the compliance management system of a financial institution.

Since announcing its first enforcement action in July 2012, the CFPB has claimed credit for generating nearly \$9 billion in refunds, restitution and penalties during its pursuit of 90 publicly-announced enforcement actions, including 37 actions announced in 2015 (through July 20th). Of course, mortgage related actions are subsumed in the foregoing amount.

What I have noticed in the Bureau's enforcement actions in the period from January 2015 through June 2015 has helped to provide significant insights to our clients. Take a look at the chart below and see what patterns you can discern.

For instance, a careful scrutiny of the consent decrees disproves the frequently voiced complaint that the Bureau bases its enforcement actions on broad and loose interpretations of its UDAAP authority and that, as a result, industry participants cannot anticipate the agency's draconian application of the UDAAP provisions. Such a view is belied by the last column of the chart (entitled "Alleged Violations"): in most cases, the Bureau used other statutes and regulations as the basis for - and/or to support any UDAAP grounds for - its positions. The consent decrees usually contain considerable detail about the alleged violations, with more specific legal citations than appear in this chart.

A little known fact is the CFPB's Supervision Office is about four times as large as its Enforcement Office. That is not to say that the enforcement staff is not involved in

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supervisory examinations as well as in determinations of supervisory policy. The message we should all get loud and clear is that each financial institution must be committed to ongoing implementation of the mortgage acts and practices. CFPB examinations are not the place to find out about deficiencies in operations or weaknesses in implementation. The trend is clear: the Bureau will be aggressive in its interpretation of statutory mandates available to it through all of its enumerated authorities.

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CFPB Enforcement Actions: January-June 2015 – Mortgage Related *					
Date	Firm	Payments	Topic (Alleged)	Alleged Number of Consumers Affected	Alleged Violations
1/22/15	Wells Fargo	\$10.8MM in redress; \$24MM penalty	Marketing services kickback scheme	Thousands	RESPA 8(a); D-F 1036; Md. Com. Law 13-101-13-501
1/22/15	JPMorgan Chase	\$300K in redress; \$600K penalty	Marketing services kickback scheme	200	RESPA 8(a); D-F 1036; Md. Com. Law 13-101-13-501
2/10/15	NewDay Financial	\$2MM penalty	Kickback scheme for referrals from veterans' organization	Recipients of over 50MM solicitations	RESPA 8(a); D-F 1031 and 1036
2/12/15	All Financial Services	Complaint filed; no settlement	Deceptive advertising misrepresenting U.S. government affiliation, regarding reverse mortgages	Recipients of 420,917 advertisements	Reg. N; D-F 1031 and 1036
	Flagship Financial	\$225K	Deceptive advertising misrepresenting U.S. government	Recipients of more than 1 million	Reg. N; D-F 1031

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2/12/15	Group	penalty	affiliation	mailers	and 1036
2/12/15	American Preferred Lending	\$85K penalty	Deceptive advertising misrepresenting U.S. government affiliation	Recipients of more than 100,000 mailings	Reg. N; D-F 1031 and 1036
4/21/15	Green Tree Servicing, LLC	\$48MM in restitution ; \$15MM penalty	Failure to honor in-process modifications, demanding payment before providing loss mitigation options, delayed decisions on short sales, harassment and threats, deceptive tactics to charge convenience fees	Thousands	FTC 5; FDCPA; FCRA; RESPA 6 and Regulation X; D-F 1031 and 1036
4/29/15	Genuine Title and 6 individual s	\$662,500 in redress and penalties; banning 5 individuals from mortgage industry; sixth person did not settle	Trading of cash and marketing services for mortgage loan referrals	Thousands (see related Jan. 22, 2015 settlements with JPMorgan Chase and Wells Fargo)	RESPA; D-F 1036; Maryland State statute
	Provident Funding		Charging higher broker fees on mortgage loans to African-American and		Fair Lending

5/28/15	Associates	\$9MM damages	Hispanic borrowers	Unspecified	Act; ECOA;
6/4/15	RPM Mortgage, Inc. and CEO	\$18MM redress; \$2MM civil penalty	Illegally paying bonuses and higher commissions to mortgage loan originators for steering consumers into costlier loans	Thousands	Reg. Z 1026.36(d)(1)(i); D-F 1036
6/5/15	Guarantee Mortgage Corp.	\$228K civil penalty	Paying branch managers based, in part, on interest rates charged on mortgage loans	Unspecified	Reg. Z 1026.36(d)(1)(i); D-F 1036
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