

## This Week in Washington October 12<sup>th</sup>, 2012

### Arbitration

#### [Reminder: Write eBay By Nov. 9 To Opt Out Of Restrictive, Anti-Consumer Clause](#)

As we mentioned a few weeks back, the new user agreement for eBay includes one of those lovely little clauses that takes away customers' right to a lawsuit against the company and locks them into mandatory binding arbitration. Fortunately, it also includes the ability to opt out of that clause, but you have to do it in the form of an actual letter, which has to be postmarked by Nov. 9. From the recently updated **User Agreement** (We've bolded certain portions because some readers have had their opt-out letters rejected for not following all the instructions)

### Auto

#### [Camaro Owner Claims He Recorded Mechanics Joy Riding In His Car Then Blaming Him For Damage](#)

A Camaro owner in South Carolina says he had previously had questionable experiences with getting his car repaired at the local Chevy dealership, so when he took the car in to have its grinding gears checked out, he left an audio recorder in the door pocket. What he claims to have recorded has the Internet up in arms. "These people drove this car harder in 20 minutes than by me in 3 years," the owner writes in the text accompanying the YouTube video that has nearly half a million views in just a few days. "[T]he Service Manager and his crew took the car for a twenty minute, tire squealing; drive it like you stole it, all out thrashing. They Launched the car over and over again." Later in the recording, it sounds like there is discussion about pinning the now-fried clutch on the owner. "If it was me, I would write this f\*\*ker up at him buying a clutch for it," someone on the recording says. "Him buying a clutch disk, let them warranty the pressure plate, bill them in on two days later, so I'll get paid to put a clutch in it and then get paid to put a pressure plate in it."

### Consumer Financial Protection Bureau

#### [Updates to the consumer complaint database](#)

We're excited to announce that we're no longer in beta with our [consumer complaint database](#). We launched the beta version on June 19th publishing individual-level consumer complaint data — a first for a federal financial regulator. Since that time, people have been [evaluating](#) and [sharing](#) the data on social media and in new apps. Today, we are taking additional steps to expand this service to the American people. **First**, and as promised, we are releasing consumer credit card complaint data back to December 1, 2011 in the [Consumer Complaint Database](#). **Second**, thanks to all of the great feedback and insight we've gotten, we are removing the

database's beta tag. While we will continue to expand functionality, data fields, and the "look and feel" of the database, after performing for three months as designed and without incident, the database is no longer a beta product. One potential area for database expansion is the inclusion of additional products and services. Over the summer we [asked for public comment](#) on this idea and got a wide range of comments from a range of interested stakeholders. We are in the process of evaluating those comments and anticipate a final Bureau decision in early 2013.

## **Consumer Credit**

### **The Movement to Put Utility Payments on Credit Reports**

It sounds like a good way to help consumers who lack full credit reports, or any credit report at all: Report their utility payments to credit bureaus, to help them develop credit files. Currently, most gas and electric utilities don't report most consumer payments to credit bureaus. They typically report only extremely delinquent accounts that they have written off as uncollectable, rather than those that are merely late or those that are paid on time. But proponents of full utility reporting argue that giving consumers credit for on-time payments can help them develop a credit file and a credit score, which can be key to economic advancement. Supporters include [United States Representative Jim Renacci](#), who has co-sponsored a bill ([H.R. 6363](#)) that he says promotes reporting of on-time utility payments. "Those who have yet to gain credit should be able to use all of the tools available to them to establish their credit worthiness," he said in a statement announcing the measure.

## **Fair Debt Collection**

### **4th Circuit: McLean v. Ray- Bona Fide Error Defense under FDCPA for Debt Collection Attorney allows reliance on Creditor's Statement of Amount Owed**

Ms. McLean was first admitted to ManorCare, a nursing home, in July 2006, signing a contract (through her son, James McLean, who held her Power of Attorney) agreeing to all costs, including attorneys' fees, for collection of unpaid amounts. The contract provided that it would remain in effect if she was discharged but re-admitted within 15 days. In 2007, following her discharge from the nursing home, Mr. Ray sued Ms. McLean on behalf of ManorCare, with the matter being resolved by the parties. Ms. McLean was re-admitted approximately to the nursing home about 20 months later, without signing a new contract and payment disputes arose a second time, with Mr. Ray eventually again filing suit against her. The lawsuit incorrectly asserted, however, that Ms. McLean had continuously resided in the nursing home and as such was liable for attorneys' fees and costs under the original contract. Despite being alerted of this error, both by the McLeans and also by his own secretary, Mr. Ray did not remove the demand for attorneys' fees for several months. Additionally, Mr. Ray sought to have a guardian and conservator appointed for Ms. McLean, alleging that the non-payment of the nursing home bill constituted neglect by her son. Ms. McLean brought a multiple count FDCPA claim against Mr. Ray, with the pertinent assertion on appeal being that Mr. Ray misrepresented the amount of the debt by including attorneys' fees. The District Court granted summary judgment and Ms. McLean appealed.

## [Paper on Forum Shopping in Debt Collection](#)

Judith L. Fox of Notre Dame has written *How Forum Determines Substance in Judicial Debt Collection*, *31 Banking and Financial Services Rev. 11 (August 2012)*. Here's the abstract: In an email to the Small Claims Task Force, a committee appointed by the Indiana Supreme Court to investigate allegations of abuse in the Marion County Small Claims Court, an Indiana attorney claimed that collection attorneys were forum shopping in Indiana small claims court. In its subsequent report, the task force confirmed that some forum shopping is occurring in Marion County Small claims courts. This study takes that allegation a step further and looks beyond the small claims courts of Marion County to examine the forum shopping practices of collection attorneys throughout Indiana. The evidence suggests that collection firms do forum shop between courts in individual judicial districts. This article takes a closer look at forum shopping by exploring the possible motivations for the forum shopping and its implications for consumers.

## **Federal Trade Commission**

### [FTC Settlements Require Equifax to Forfeit Money Made by Allegedly Improperly Selling Information about Millions of Consumers Who Were Late on Their Mortgages](#)

One of the largest U.S. consumer reporting agencies, [Equifax Information Services LLC](#), has [agreed to settle Federal Trade Commission charges](#) that it improperly sold lists of consumers who were late on their mortgage payments. In two separate actions, both Equifax and the companies that allegedly bought and resold the information from it will pay a total of nearly \$1.6 million to resolve charges that they violated the FTC Act and the Fair Credit Reporting Act (FCRA). The two settlements are part of the FTC's ongoing [efforts to protect consumers in financial distress](#) and to protect consumer privacy. Equifax will pay \$393,000 to resolve allegations that its inadequate procedures led to the sale of lists of consumer information to firms that should not have received them. According to the FTC, Equifax sold more than 17,000 prescreened lists of consumers to companies including Direct Lending Source, Inc., which subsequently resold some lists to third parties, who used their data to pitch loan modification and debt relief services to people in financial distress. As part of a separate [settlement](#), [Direct Lending Source will pay a \\$1.2 million civil penalty](#), and will be barred from using or selling prescreened lists without a permissible purpose, or in connection with solicitations for debt relief or mortgage assistance relief products or services.

## **Homeownership**

### [COMMENTS to the CFPB 2012 TILA Mortgage Servicing Proposal](#)

The National Consumer Law Center ("NCLC") submits the following comments on behalf of its low-income clients, as well as the National Association of Consumer Advocates. These comments exclusively deal with the proposed changes to Regulation Z (under the Truth in Lending Act, "TILA") in the CFPB's servicing proposal. Separately, we supply extensive comments on the proposed changes to Regulation X (under the Real Estate Settlement Procedures Act, "RESPA"). We appreciate the close attention to the details of the new statutory requirements that these proposed regulations evidence. Overall, we support all of the proposed changes to Reg Z included in this proposal, as they are simply required by the underlying statute.

We have a number of substantive suggestions on how to improve the proposed regulations, however.

### **Equifax Caught Improperly Selling Lists Of People With Late Mortgage Payments**

When you're in financial trouble, one of your concerns is that your creditors will report you to the three major credit bureaus — Equifax, Experian, and TransUnion. But maybe you should be concerned that the bureaus are selling your sensitive information. Today, the Federal Trade Commission announced a settlement with Equifax over allegations that between 2008 and 2010 the consumer reporting agency had improperly sold lists of consumers with late mortgage payments to a company called Direct Lending and its affiliates. Equifax is alleged to have sold around 17,000 separate lists containing sensitive information — including credit scores and how delinquent the consumer was on their mortgage payment — on millions of U.S. consumers during this time.

### **Is BofA's Foreclosure Review Really Independent? You Be the Judge**

Late last year, the country's bank regulators launched a massive program to evaluate millions of foreclosure cases and compensate homeowners who fell victim to the banks' flawed or illegal practices. Regulators dubbed it the "Independent Foreclosure Review" to emphasize that the banks would not be making key decisions about loans they had made or serviced. But a raft of evidence — [internal](#) [1] Bank of America [memos](#) [2] and emails obtained by ProPublica, interviews with two bank staff members who have worked on the review, and little-noticed documents released late last year by a federal banking regulator — throw the independence of the review into serious doubt. Together, they indicate that Bank of America — the financial giant with the largest number of homeowners eligible for the program — is performing much of the work itself.

### **Mortgage rates are slightly higher**

A week after hitting historic lows, mortgage rates rebounded slightly, according to the latest data released by Freddie Mac. The 30-year fixed-rate average increased to 3.39 percent, up from 3.36 percent a week ago but down from 4.12 percent a year ago. The 15-year fixed-rate average also went up, going to 2.70 percent from 2.69 percent a week ago, but down from 3.37 percent last year. Hybrid adjustable-rate mortgages edged up, too. The five-year ARM moved to 2.73 percent from 2.72 percent a week ago. A year ago, it was 3.06 percent. The one-year arm increased to 2.59 percent from 2.57 percent a week ago but is down from 2.90 percent a year ago.

## **Student Loans**

### **Forty Percent of Student Loan Borrowers Don't Get Advice**

More than 40 percent of high-debt student-loan borrowers didn't receive in-person or online counseling for U.S. government loans, even though it's a mandatory requirement, a survey showed. Almost 92 percent of borrowers said standardizing the format, terminology and content of aid-award letters could ease confusion, the survey also showed, according to a report released

today by Young Invincibles. The Washington-based nonprofit group, which represents the interests of 18-to-34 year-olds, designed and conducted the survey with NERA Economic Consulting. More than one in 10 borrowers defaulted on their federal loans in the first three years they are required to make payments, the Education Department said last month, intensifying concern about student debt levels. Part of the problem is that colleges are failing to inform students about the basics of the loans, including repayment terms and interest rates, said Rory O'Sullivan, co-author of the report and policy director for Young Invincibles.

### **Student Loan Debt "Story": Chicanery? Inadvertent or Intentional?**

During this past year, the irrepressible and contentious media buzz has been that there is now more student loan debt than credit card debt. Of course there are so many details that are NOT reported, it is ridiculous. But the press likes the headline story a lot, and it gets your attention, and so sells the product. Mission accomplished. But the media leave this single "datum" standing there (and I don't even trust that it is true) as if it were conclusive and righteousness-based evidence that something is globally wrong in the state of higher education. It actually isn't such evidence. A huge percentage of the debt [has been accrued](#) by students in for-profit universities. While a meritorious and important topic, for-profit student debt is a horse of a wildly different color, and is its own separate conversation. You can't lump the U of Phoenix with Ohio State and Southwestern College in Santa Fe and say anything too meaningful about them as a collective.