BURR FORMAN

DODD-FRANK
NEWS

April 2016

The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted as a measure to promote financial stability and protection for consumers through increased regulation of nearly every aspect of the consumer finance industry. In the years since its enactment, the Dodd-Frank Act has led to significant industry reforms and the promulgation of numerous new laws and regulations. In an effort to stay apprised of these significant industry changes, Burr & Forman's Dodd-Frank Newsletter will serve as a periodic update of recent case law, news, and developments related to the Dodd-Frank Act.

---- RECENT CASES ----

CFPB Involvement in Litigation

Alexander v. Ameripro Funding, Inc., No. 15-20710 (5th Cir. Feb. 23, 2016).

The Consumer Financial Protection Bureau ("CFPB") recently filed an amicus brief in the case *Alexander v. Ameripro Funding, Inc.*, No. 15-201710, which is on appeal before the Fifth Circuit. In its brief, the CFPB argues that the district court erroneously dismissed the plaintiffs' complaint where the plaintiffs sufficiently alleged that the defendants violated the Equal Credit Opportunity Act ("ECOA"). Specifically, the CFPB argued that the plaintiffs stated a claim under the ECOA when they alleged that defendants Ameripro Funding, Inc. and Wells Fargo failed to consider public assistance income when they originated plaintiffs' loans.

The ECOA provides that "it shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction because all or part of the applicant's income derives from any public assistance program." *See Alexander v. Ameripro Funding, Inc.*, No. H-14-2947, 2015 WL 4545625, at *3 (July 28, 2015) (quoting 15 U.S.C. § 1691(a)). To establish a *prima facie* case of discrimination, the plaintiffs had to allege that (1) they are members of a protected class; (2) they applied for and were qualified for the loan at issue; (3) they were rejected despite their qualifications; and (4) other similarly-situated persons outside the protected class were given loans, or treated more favorably than plaintiffs. *See id*. The district court determined that nothing in the applicable case law requires a lender to treat public assistance income the same as other sources of income and noted that, in fact, the ECOA expressly authorizes a lender to consider the fact that income derives from a public assistance program in determining creditworthiness. The district court found that plaintiffs failed to allege that they qualified for yet were denied a mortgage loan and that other similarly-situated applicants received the same or a comparable mortgage loan. The court further determined that plaintiffs' complaint contained conclusory allegations of direct evidence of discrimination and, as a result, were required to establish a *prima facie* case of discrimination.

In its brief, the CFPB argues that Regulation B of the ECOA prohibits a lender from considering the fact that an applicant's income derives from a public assistance program or excluding income that derives from a public assistance program when considering a loan application. As such, a plaintiff states a claim for relief when a lender fails to consider public assistance income as part of a mortgage application. Further, the CFPB argued that allegations that it is the lender's policy to refuse to consider public assistance income constitutes direct evidence of discrimination and precludes dismissal of a plaintiff's complaint. Because plaintiffs' complaint alleged that Ameripro's investors would not purchase a loan that allowed for Section 8 housing income to be utilized in calculating the debt-to-income ratio and that Wells Fargo had a policy of not accepting applications that included public assistance income, the CFPB said that the district court erred in dismissing plaintiffs' complaint.

The CFPB also contended that the district court erred in requiring applicants to allege hostility or animus to state a discrimination claim under the ECOA. The CFPB conceded that the case upon which the district court based its conclusion, *Brown v. East Mississippi Electrical Power Association,* 989 F.2d 858 (5th Cir. 1993), held that a plaintiff states a disparate treatment claim of discrimination under Title VII when he or she presents direct evidence of animus. However, the CFPB argued that a plaintiff need only allege direct evidence of discrimination to state a claim under ECOA.

Sheriff v. Gillie, No. 15-388 (S. Ct. Mar. 2, 2016).

The CFPB recently filed an amicus brief in the case *Sheriff v. Gillie*, which is pending on appeal before the U.S. Supreme Court. The questions presented are (1) whether "special counsel" appointed by the Attorney General ("AG") of Ohio are officers of the state and, therefore, exempted from the definition of "debt collector" under the FDCPA, and (2) whether the special counsel's use of state AG letterhead on communications to debtors violated the FDCPA.

Plaintiffs filed suit against attorneys who were appointed as special counsel by the Ohio AG's office. Plaintiffs alleged that collection letters sent to them on AG letterhead violated the FDCPA because they were misleading and failed to include the true name of their business or company. The U.S. District Court for the Southern District of Ohio granted the defendants' motion for summary judgment. The U.S. Court of Appeals for the Sixth Circuit reversed.

The CFPB first argued that special counsel appointed by the AG are "debt collectors" as defined by the FDCPA and are not "officers" exempt from the FDCPA's prohibitions pursuant to 15 U.S.C. § 1692a(6)(C). According to the CFPB, special counsel do not occupy state office and, instead, are independent contractors. The CFPB conceded that the FDCPA does not define "officer," but said common law supports a finding that the special counsel's duties arose from contract rather than law, making them independent contractors. Therefore, the special counsel should be considered debt collectors under the FDCPA.

The CFPB also argued that a reasonable jury could conclude that the use of the AG's letterhead violated the FDCPA. By using the AG's letterhead, the CFPB said that such communications falsely represented to be a document authorized, issued, or approved by an official or agency of the State, and it used a name other than the true name of the debt collector's business, company, or organization. Applying the unsophisticated consumer standard, the CFPB said that the use of the letterhead was misleading, despite the fact that the letter included the special counsel's name, law firm, and a disclosure that he or she was acting as special counsel for the AG. The CFPB conceded that communications from debt collectors could include the creditor's name, but argued that using the creditor's name to suggest that it was the sender of the letter "blurr[ed] the line between the sender and the represented party." The CFPB believed that this was particularly problematic when the creditor was the government. The CFPB further asserted that the terms "special counsel" and "outside counsel" do not adequately convey that the sender was an independent contractor rather than a government officer or employee. Accordingly, the CFPB urged the U.S. Supreme Court to affirm the Sixth Circuit's holding.

Preemption

Edwards v. Macy's, Inc., --- F. Supp. 3d ---, 2016 WL 922221 (S.D.N.Y. Mar. 9, 2016).

The U.S. District Court for the Southern District of New York recently held that state law claims arising from plaintiff's enrollment in a debt cancellation program were preempted by the National Bank Act ("NBA") and accompanying regulations promulgated by the Office of the Comptroller of the Currency ("OCC"). Further, the court held that the claims against both the national bank and the corporation acting on behalf of the national bank were preempted, even though the corporation was not a national bank or a subsidiary.

Addressing defendants' argument that plaintiff's state law claims were preempted, the court noted that "business activities of national banks are controlled by the National Bank Act and regulations promulgated thereunder by the [OCC]." 2016 WL 922221, at *3 (quoting *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1,

6 (2007)). Pursuant to the holding in *Barnett Bank, N.A. v. Nelson*, 517 U.S. 25, 31 (1996), preemption under the NBA can be express or implied. Where Congress explicitly preempts the state law, the law is expressly implied. On the other hand, state law is implicitly preempted where the application of state law would "prevent or significantly interfere with a national bank's exercise of its powers." *See id.* (quoting *Nelson*, 517 U.S. at 31). Under the implied preemption analysis, state law may be preempted if there is (1) field preemption – where Congress has legislated so comprehensively that federal law occupies the field of regulation and leaves no room for state law, or (2) conflict preemption – where state law conflicts with federal law.

Applying these principles to plaintiff's claims, the court acknowledged that 12 C.F.R. § 37 governs debt cancellation or suspension products. Specifically, 12 C.F.R. § 37 provides that "[n]ational banks' debt cancellation contracts and debt suspension agreements are governed by this part and applicable Federal law and regulations, and not by State law." *See id*. at *4 (quoting 12 C.F.R. § 37). Thus, the court easily found that the OCC's regulations expressly preempted the state law's application to debt cancellation and debt suspension products.

In response to defendants' argument that 12 C.F.R. § 37 expressly preempted the state law claims, plaintiff argued that, pursuant to the Dodd-Frank Act, state laws that "directly and specifically" regulate financial transactions are not preempted expressly or preempted under the field preemption analysis. The court, however, hesitated to find that the Dodd-Frank Act applied to plaintiff's claims because its preemption amendments went into effect on July 21, 2011, after plaintiff enrolled in the debt cancellation program. Additionally, the court said that the Dodd-Frank Act has not effect on the preemption rule set forth in 12 C.F.R. § 37. Accordingly, the court held that the Dodd-Frank Act did not save plaintiff's claims from preemption.

Although the court held that 12 C.F.R. § 37 expressly preempted plaintiff's claims, it went on to find that implied preemption barred plaintiff's claims. The court determined that regulation in the field of debt cancellation products offered by national banks is "sufficiently comprehensive as to crowd out state law." *See id*. at *5. Accordingly, the court held that plaintiff's claims were barred under both express and implied preemption.

Further, the court found that claims against both defendants, Department Stores National Bank and Macy's Inc., were preempted. The Second Circuit has held that OCC preemption applies to an entity that is not a national bank only if the entity is an agent or subsidiary of a national bank, or is acting on its behalf carrying out the bank's business. Because plaintiff alleged that Macy's provided marketing services related to credit card accounts and related products, and was compensated for doing so, Macy's conducted banking activities on Department Stores National Bank's behalf. Therefore, the court held that the state law claims against both defendants were preempted and dismissed plaintiff's complaint in its entirety.

Gordon v. Kohl's Department Stores, Inc., No. 15-730, 2016 WL 1211375 (E.D. Penn. Mar. 28, 2016).

The Eastern District of Pennsylvania recently held that plaintiffs' breach of the implied covenant of good faith and fair dealing and unjust enrichment claims were preempted in part by the National Bank Act ("NBA"). The court held, however, that claims against Kohl's Department Stores, Inc. ("Kohl's"), a non-bank, were not preempted, as the Dodd-Frank Act overturned the subsidiary-preemption holding in *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007). The court further held that to the extent the claims were not based on debt cancellation contracts, such claims were not preempted by the NBA.

Plaintiffs filed suit against Kohl's and Capital One Bank, N.A. ("Capital One") alleging breach of the implied covenant of good faith and fair dealing and unjust enrichment claims arising from two enhancements products related to their Kohl's credit card accounts. Plaintiffs claimed that they were enrolled in the program without their permission and the enhancement products provided little or no value to them (the "No Value theory"), and that any authorization of the programs was not assigned to Capital One (the "No Authorization theory"). Defendants moved to dismiss Plaintiff's second amended complaint.

The court first addressed Plaintiffs' breach of the implied covenant of good faith and fair dealing claim. To sustain a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must show "(1) the existence of a contract between the parties; and (2) a breach of the implied covenant." 2016 WL 1211375, at *8. Plaintiffs claimed that by enrolling them in a program that provided little to no value without their permission, Capital One breached its duty to exercise its contract rights fairly and in good faith. The court held that these allegations survived a motion to dismiss and denied Defendants' motion with respect to the breach of the implied covenant of good faith and fair dealing claim to the extent it was based on Plaintiffs' No Value theory.

The court next addressed Plaintiffs' breach of the implied covenant of good faith and fair dealing claim to the extent it was based on their No Authorization theory. Plaintiffs urged the court to find that Capital One was not authorized to bill Plaintiffs for products, because the provision addressing the products at issue was not expressly assigned to Capital One. The court, relying on well-settled law, found that the assignee steps into the shoes of the assignor with regard to whatever rights the assignor had. Further, the court said that an express authorization of assignment was not necessary, because the assignment did not materially change the parties' rights and it was not otherwise prohibited by statute, public policy, or the contract itself. However, the court acknowledged that the contract required the bank to provide notice of any adverse changes in the terms and allow customers to cancel their service. The court noted that Delaware law governed the original creditor's amendment, while Capital One's amendment applied Virginia law. Because the application of Virginia law would require a customer to prove reliance and, as a result, would be adverse to the consumer, the court held Capital One was required to give notice to the customers. Accordingly, the court held that Plaintiffs' breach of the covenant of good faith and fair dealing claim survived dismissal. However, the court went on to conclude that these claims were time-barred by Virginia's three-year statute of limitations, to the extent they were based on conduct arising before February 13, 2012.

The court also held that Plaintiffs' unjust enrichment claims survived to the extent they were based on unauthorized fees. However, the unjust enrichment claims were time-barred by Virginia's three-year statute of limitations on unjust enrichment claims, to the extent they were based on conduct occurring before February 13, 2012.

Addressing Defendants' preemption argument, the court noted that the NBA does not preempt laws that do not "forbid, or [] impair significantly, the exercise of a power that Congress explicitly granted" to national banks." *See Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 33 (1996). The court further noted that the Dodd-Frank Act reserved states' power to apply laws of general applicability to national banks. *See* 12 U.S.C. § 25(b). Defendants argued that the NBA preempted plaintiffs' claims against Kohl's, the non-bank servicer, because it was acting as an agent of a national bank. While the court acknowledged that the First and Second Circuits extended the preemption provision articulated in *Watters* to non-bank subsidiaries acting as agents of national banks, it said that Defendants ignored the Dodd-Frank Act, which effectively overturned the subsidiary-preemption holding in *Watters*. Because some of Plaintiffs' claims arose after the effective date of the Dodd-Frank Act's preemption provision, the state law claims against Kohl's were not preempted. However, the court held that Plaintiffs' claims based on debt cancellation contracts against Capital One, a national bank, were preempted by 12 C.F.R. § 37, which governs debt cancellation contracts. The court further held that, to the extent Plaintiffs' claims were based on allegations that agreements for fees were not authorized, such claims against Capital One were not preempted, because they did not arise from debt cancellation contracts.

RESPA

In re Residential Capital, LLC, No. 12-12020 (MG), 2016 WL 1254429 (S.D.N.Y. Mar. 28, 2016).

Plaintiff William Futrell filed suit alleging that GMAC Mortgage, LLC ("GMAC") violated the Real Estate Settlement Procedures Act ("RESPA") by failing to respond or responding inaccurately to a Qualified Written Request ("QWR").

RESPA allows a borrower to submit a QWR to the loan servicer to obtain information relating to the servicing of the loan. *See* 12 U.S.C. § 2605(e)(1)(A). The loan servicer is then required to provide a written response.

Plaintiff's attorney sent a QWR to GMAC on October 30, 2009 to the designated address. GMAC sent a letter on November 13, 2009 in response to a letter sent on October 23, 2009, but it contended that the response letter addressed questions in the October 30, 2009. The information contained in the November 13, 2009 letter, however, was inaccurate.

Addressing Plaintiff's RESPA claim, the court noted that at the time the QWR was sent, a loan servicer had 20 days to send a written acknowledgement of receipt in response to a QWR, pursuant to § 6(e). Pursuant to the Dodd-Frank Act's amendment to RESPA, § 6(e) allowed a loan servicer 60 days to take responsive action. The court found that the November 13, 2009 letter was timely but inaccurate because it allegedly contained an incorrect monthly payment for escrow for taxes and insurance. The court looked to § 10 of RESPA, which prohibits a borrower from requiring a borrower to pay a sum into escrow that exceeds the amount sufficient to pay taxes and insurance. Section 10(b) of RESPA further provides that a lender must notify a borrower at least annually of any shortage in escrow funds. However, the court sided with the majority of courts which holds that a private right of action under § 10 of RESPA does not exist.

The court next addressed whether Plaintiff was entitled to recover damages for a violation of § 6 of RESPA. The court found that Plaintiff was damaged by the higher interest rate in the payment plan that was offered after a typographical error was corrected. The court awarded actual damages for the difference in payment between the two plans and attorney's fees. The court, however, declined to award statutory damages because Plaintiff failed to show a pattern and practice of noncompliance with § 6(f). The court also admonished the loan servicer for "sloppiness," saying that it can cause serious harm to people and commented that a loan servicer should at least check to confirm whether it made a mistake. The court did, however, acknowledge necessary limitations on damages stemming from such mistakes.

Equal Credit Opportunity Act

Trapp v. SunTrust Bank, No. 1:15-cv-937, 2016 WL 1175194 (M.D.N.C. Mar. 23, 2016).

Plaintiff Michelle Trapp filed suit against SunTrust Bank alleging a violation of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691(a), for allegedly providing a vague explanation for its denial of credit. Plaintiff alleged that SunTrust told her that her credit was denied because her husband's social security number was associated with a person who was deceased and, as a result, there was a fraud alert on the application. In a letter to Plaintiff, SunTrust advised Plaintiff that it required additional information to process her application. SunTrust moved for judgment on the pleadings.

The court first discussed the various actions a creditor is required to take under the ECOA depending on the circumstances. Plaintiff alleged that the credit application was complete and, therefore, SunTrust was required to provide the specific reason for the denial pursuant to 15 U.S.C. §§ 1691(d)(2)-(3). SunTrust, on the other hand, argued that the loan application was incomplete and it lacked sufficient information for a credit decision. Pursuant to 12 C.F.R. §§ 1002.9(a)(2), 1002.9(c)(1)(i), SunTrust's response was sufficient because it stated that the application was incomplete. SunTrust also noted that 12 C.F.R. § 202 was superseded by 12 C.F.R.§ 1002.9. SunTrust argued that the Dodd-Frank Act transferred ECOA rulemaking authority to the CFPB, and the CFPB "substantially duplicated the existing regulations" by codifying 12 C.F.R. § 1002. However, the court found that the CFPB made only minor changes to the regulations, and § 202 was not repudiated or rescinded. The court further noted that courts continue to rely on § 202 and related interpretations.

Addressing the parties' arguments, the court noted that it could consider only the allegations in the complaint and the denial letter. Thus, the court declined to adopt SunTrust's argument that the loan application was incomplete and found the question of whether the application was complete must be answered after developing the factual record. Because the court needed additional facts, it denied SunTrust's motion for judgment on the pleadings.

The court did, however, grant SunTrust's motion to the extent Plaintiff's claims were based on SunTrust's use of a form letter, as the creditor's response did not need to be extensive and could contain a short checklist statement.

Challenge to the Credit Risk Retention Rule

Loan Syndications & Trading Association v. S.E.C., --- F.3d ---, 2016 WL 1075882 (D.C. Cir. 2016).

The U.S. Court of Appeals for the District of Columbia recently held that it lacked jurisdiction to review a challenge to a joint regulation implementing § 78o-11 of the Securities Exchange Act of 1934, which was added by the Dodd-Frank Act.

Plaintiff Loan Syndications and Trading Association ("LSTA") filed suit in the Court of Appeals challenging aspects of the Credit Risk Retention Rule as arbitrary and capricious. Pursuant to the Dodd-Frank Act, the SEC, the Board of Governors of the Federal Reserve System, FDIC, and the OCC jointly issued the Credit Risk Retention Rule on December 24, 2014. The Rule requires securitizers to retain an interest in a portion of the credit risk for any asset that the securitizer transfers to a third party through the issuance of an asset-backed security. *See* 15 U.S.C. § 78o-11(b)(1).

While the court found that certain challenges to orders and rules fell within its jurisdiction, the plain language of the statute provided that challenges to the rule should begin in district court, pursuant to § 78y(b)(1). The court also rejected the parties' argument that it had jurisdiction because the agencies that jointly promulgated the rule invoked other statutes, including the Securities Act of 1933, the Exchange Act, and the Bank Holding Company Act of 1956 ("BHCA"). The court found that because the rule was jointly promulgated and the other statutes did not justify the final rule, it did not have jurisdiction over LSTA's challenge. The court also declined to exercise pendant appellate jurisdiction. Accordingly, the court transferred the case to the district court.

Judicial Review of FSOC Designation of Nonbank Financial Company

Metlife, Inc. v. Financial Stability Oversight Council, No. 15-0045 (RMC), 2016 WL 1391569 (D.D.C. Mar. 30, 2016).

The U.S. District Court for the District of Columbia recently overturned the Financial Stability Oversight Council's ("FSOC") designation of a nonbank financial company for enhanced supervision under the Dodd-Frank Act as arbitrary and capricious.

Pursuant to § 113 of the Dodd-Frank Act, the FSOC can designate nonbank financial companies for supervision by the Board of Governors of the Federal Reserve under enhanced prudential standards. *See* 12 U.S.C. § 5323(a). Companies that are eligible for designation are U.S. nonbank financial companies, which are organized under the laws of the United States and are "predominately engaged in financial activities." *See* 12 U.S.C. § 5311(a)(4)(B). In turn, the Dodd-Frank Act sets forth two tests to determine whether the nonbank financial company is predominately engaged in financial activities. First, eighty-five percent or more of the company's "'consolidated annual gross revenues' must be 'derived' from activities that are 'financial in nature.'" *See* 2016 WL 1391569, at *3 (quoting 12 U.S.C. § 5311(a)(6)(A)). Second, eighty-five percent or more of the company's consolidated assets must be related to activities that are financial in nature. *See* 12 U.S.C. § 5311(a)(6)(B). Companies that satisfy either of these tests are eligible for designation by the FSOC.

Once the FSOC determines that a company is eligible for designation, the company may be subject to enhanced supervision, if it meets one of two determination standards. Enhanced supervision may apply if the company's material financial distress could pose a threat to the financial stability of the United States or if the "nature, scope, size, scale, concentration, interconnectedness, or mix of the company's assets could pose the same threat." *See* 2016 WL 1391569, at *3 (quoting 12 U.S.C. § 5323(a)(1)). While the Federal Reserve has not yet promulgated the

enhanced supervision and prudential standards, the FSOC has promulgated through formal rulemaking a Final Rule, setting forth guidance for nonbank financial company determinations. The Final Rule outlined six categories of consideration: (1) interconnectedness, (2) substitutability, (3) size, (4) leverage, (5) liquidity risk and maturity mismatch, and (6) existing regulatory scrutiny. The FSOC grouped the categories, stating that the first three "seek to assess the potential for spillovers from the firm's distress to the broader financial system or real economy," while the second set of categories "seek to assess how vulnerable a company is to financial distress." *See* 76 Fed. Reg. 4,555, 4,560 (Jan. 26, 2011). The FSOC designated MetLife under § 113 of the Dodd-Frank Act, and MetLife sought judicial review of the decision pursuant to § 113(h).

Reviewing the FSOC's Final Determination designating MetLife under § 113 of the Dodd-Frank Act, the court held that the FSOC made "critical departures" from standards adopted in its guidance and that if failed to consider the cost of designation to MetLife, which was arbitrary and capricious.

At the outset, the court determined that MetLife was eligible for designation pursuant to § 102(a) the Dodd-Frank Act. However, the court determined that when making its determination, the FSOC reversed itself without acknowledgement or explanation. Specifically, MetLife argued that the FSOC failed to assess MetLife's vulnerability to material financial distress before addressing the potential effect of such distress, which is contrary to the FSOC's Guidance. Interpreting the FSOC's Guidance, the court said that the FSOC intended the second group of analytical categories (leverage, liquidity risk, and maturity mismatch) to assess a company before it became distressed and the first group to analyze the impact of such distress on national financial stability. When making the Final Determination with respect to MetLife, the FSOC said that all six categories were meant only "to assess the potential effects of a company's material financial distress." *See* 2016 WL 1391569, at *10. Because the FSOC neither acknowledged its changed position nor explained its departure from its Guidance, the court held that the Final Determination was arbitrary and capricious and, therefore, rescinded it.

The court also agreed with MetLife's contention that the FSOC failed to abide by the standard in determining whether MetLife could pose a threat to the financial stability of the United States. Specifically, the FSOC was required to project estimated losses and establish a basis for finding that MetLife's material financial distresses would materially impair U.S. financial stability. Instead, the FSOC conclusorily stated that MetLife's financial distress would impact U.S. financial stability and failed to predict what the losses would be or how the market would be destabilized as a result. As such, the FSOC departed from its Guidance and, therefore, the Final Determination was arbitrary and capricious.

Finally, the court determined that the FSOC ignored the financial impact of its Final Determination on MetLife. The court said that the FSOC "'foist[ed] billions of dollars' of regulatory costs on MetLife under the auspices of safeguarding it," which would cause significant financial burden to MetLife. *See* 2016 WL 1391569, at *15. The court also rejected the FSOC's argument that the Dodd-Frank Act does not require a cost-benefit analysis and held that it was a central part of the administrative process. Further, the Dodd-Frank Act requires the FSOC to consider "appropriate" risk-related factors, which, pursuant to the court's interpretation, requires the FSOC to consider costs. By failing to consider costs to MetLife, the court held that the FSOC's Final Determination was arbitrary and capricious. For this additional reason, the court rescinded the designation.

The FSOC filed an appeal on April 20, 2016.

---- IN THE NEWS ----

CFPB Issues Final Rule on Application Process for Designation of Rural Area

The CFPB issued a final rule on March 3, 2016 establishing an application process by which a person may identify an area that the CFPB has not yet established as a "rural area," pursuant to provisions of the Dodd-Frank Act.

The application may be submitted via email to CFPB_Rural_Application@cfpb.gov. It should identify the area requested for designation, provide a justification for designating the area as a "rural area," and include certain required information about the applicant.

To read the final rule, visit: https://www.federalregister.gov/articles/2016/03/03/2016-04643/application-process-for-designation-of-rural-area-under-federal-consumer-financial-law-procedural

CFPB Issues Final Rule on Operations in Rural Areas

The CFPB issued a final rule, effective March 31, 2016, amending two provisions of the Truth in Lending Act's Regulation Z to address the HELP Rural Communities Act enacted in December of 2015.

Under Regulation Z, certain small creditors are eligible for a special exception allowing origination of balloon-payment qualified mortgages, as well as an exemption from the escrow-account requirement for higher-priced mortgages. The final rule expands the universe of small creditors eligible for these provisions. The final rule also amends Regulation Z to refer to the newly-instituted application process for seeking "rural" designation of an area.

To read the final rule, visit: https://www.federalregister.gov/articles/2016/03/25/2016-06834/operations-in-rural-areas-under-the-truth-in-lending-act-regulation-z-interim-final-rule

CFPB Issues Final Rule on Integrated Mortgage Disclosure Rule

On February 10, 2016, the CFPB issued a final rule correcting a typographical error in the Final Rule related to tolerances for property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees.

To read the final rule, visit: https://www.federalregister.gov/articles/2013/12/31/2013-28210/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the

CFPB Issues Official Guidance Regarding Credit Card Agreements

On March 30, 2016, the CFPB issued official guidance regarding the submission of credit card agreements. Both TILA and Regulation Z require credit card issuers to submit credit card agreements currently offered to their customers to the CFPB. The CFPB then posts these agreements on its website. In April 2015, that obligation was suspended for one year. With that suspension having expired, the next submission is due on May 2, 2016.

To read the full notice, visit: http://files.consumerfinance.gov/f/201604_cfpb_submission-of-credit-card-agreements-under-the-truth-in-lending-act-regulation-z.pdf

CFPB Issues Bulletin on FCRA Obligation of Reasonable Written Policies and Procedures

On February 3, 2016, the CFPB issued a bulletin emphasizing a furnisher's obligation under FCRA to establish and implement reasonable written policies and procedures regarding the accuracy of the information it furnishes regarding consumers to credit reporting agencies ("CRAs").

This obligation has been required under Regulation V since July of 2010. A furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities, and must encompass reporting to all types of CRAs. The CFPB noted that some financial institutions were not compliant with this obligation as it pertains to furnishing to specialty CRAs.

To read the bulletin, visit: http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf

CFPB Issues Report on Online Payday Loan Payments

The CFPB issued a report on April 20, 2016 discussing the practices of online payday lenders regarding the handling of failed ACH payments.

To read the report, visit: http://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf

CFPB Releases 2015 Consumer Response Annual Report

On April 1, 2016, the CFPB released its annual report on consumer complaints. The report discusses a broad array of complaints, including debt collection, credit reporting, mortgage, bank account, credit card, consumer loan, student loan, payday loan, prepaid card, and money transfer complaints.

To read the report, visit: http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf

CFPB Releases FDCPA Annual Report

On March 22, 2016, the CFPB released its fifth annual FDCPA report. The report describes activities undertaken by the CFPB and FTC during 2015 regarding administration of the FDCPA.

To read the report, visit: http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf

CFPB Issues Tenth Issue of Supervisory Highlights

On March 8, 2016, the CFPB issued its tenth issue of Supervisory Highlights, in which it shares findings from recent examinations in several areas, including student loans, remittances, debt collection, mortgages, and consumer reporting.

To read this issue, visit: http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf

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No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.

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results matter

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