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## CFPB ISSUES COMPANY PORTAL MANUAL FOR ONLINE COMPLAINT SYSTEM

The CFPB is in the process of developing online and paper consumer complaint intake methods to facilitate the centralized collection and monitoring of and response to complaints concerning consumer financial products and services. The CFPB Company Portal Manual describes how the complaint system is envisioned to work. In time, the CFPB plans to expand the system to additional financial products. Thus, the system warrants review by consumer financial services providers outside the credit card area.

Currently, the CFPB is taking online credit card complaints through its home web page. Among other things, the online form requests (i) a description of what happened, (ii) if the consumer believes discrimination was involved, (iii) if money was lost and the amount, (iv) if the company has been contact and (v) the desired resolution.

According to the Manual, the CFPB should alert a card issuer within 24-48 hours of receiving a consumer complaint by sending an email with an assigned case number. The issuer may then log in to locate the complaint and review the information provided by the consumer. The issuer is expected to review and respond to the complaint within 10 days and update the CFPB's website by (i) completing a form and providing a short message explaining "the resolution provided", (ii) choosing from a drop down menu one of four potential statuses (gauged in relation to the "desired resolution" requested by the consumer) to indicate the appropriate resolution status, (iii) upload any relevant documents and (iv) click "send." The CFPB will then notify the consumer and update the consumer portal so the consumer can check the status of the consumer's complaints.

The four potential resolution statuses for a complaint are "Full Resolution Provided" (*i.e.*, the "desired resolution" requested by the consumer is provided), "Partial Resolution Provided" (*i.e.*, the resolution includes part of or something in lieu of the "desired resolution" requested by the consumer), "No Resolution Provided" (*i.e.*, the "desired resolution" requested by the consumer is declined) and "Incorrect Company" (which routes the complaint back to the CFPB).

The CFPB has acknowledged problems with the system, such as issuers not receiving timely email alerts of complaints. The CFPB explains some of the problems as the result of issuers using incompatible browsers. Consequently, the Manual lists compatible browsers. The Manual's FAQs provide information on other potential problems with the system such as data input errors.

The CFPB has invited comment on its system. While still in its infancy, it is unclear how open the CFPB may be to making significant changes to the system to address potential concerns. Again, while of immediate concern to card issuers, other consumer financial services providers, including their servicers and other industry participants, should take time to review the online form and Manual and consider the potential impact of such a format and system on non-card programs. □

✧ *Mike Tomkies and Elizabeth Anstaett*

## CFPB ISSUES SUPERVISION AND EXAMINATION MANUAL

The CFPB has release the initial version of its general Supervision and Examination Manual, designated "1.0," along with specific examination procedures for mortgage servicing. Additional guides providing specific examination procedures organized by product line and line of business reportedly are planned.

While the CFPB relied heavily on procedures previously used by bank regulators, the CFPB reportedly anticipates a more consumer-centric focus in terms of consumer risk, clear and conspicuous disclosure and transparent pricing. The consumer-centric focus includes examiner instructions to contact consumers affected by apparent violations, a new practice.

"Our goal is to help promote fair, transparent, and competitive consumer financial markets where consumers can have access to credit and other products and services, where providers can compete for their business on a level playing field where everyone has to play by the rules," according to Peggy Twohig and Steve Antonakes, in an explanation posted on the CFPB web site on October 13, 2011.

While the general manual and mortgage servicing supplement will initially be used to examine the large depository institutions that

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are immediately subject to CFPB supervision, in time, the CFPB anticipates using the same manual and procedures for nonbank providers of consumer financial products and services such as mortgage lenders, payday lenders, and private education lenders. The CFPB will begin supervising nonbanks only after a permanent director is in place. Nonbanks should review the CFPB's manual and guidelines for potential impact, including the increased costs of enhanced compliance procedures that may need to be implemented. The CFPB welcomes input from industry and plans to reach out directly to consumers (and their advocates) as well. □

✧ *Mike Tomkies and Elizabeth Anstaett*

## FINCEN FINALIZES PREPAID ACCESS RULES

After several delays, the Financial Crimes Enforcement Network (FinCEN) has issued final rules which focus on prepaid access programs (formerly known as "stored value") that pose the greatest potential risks of money laundering and terrorist financing. See our Alert of July 19, 2010. Such rules were developed in close cooperation with law enforcement and regulatory authorities.

The final rules were mandated under the Credit Card Accountability, Responsibility and Disclosure Act of 2009, and cover prepaid devices such as plastic cards, mobile phones, electronic serial numbers, key fobs and/or other mechanisms that provide a portal to funds that have been paid for in advance and are retrievable and transferable.

FinCEN has applied a limited regulatory framework since 1999 to certain prepaid access products as part of the money services businesses regulations applicable to sellers, issuers, and redeemers of stored value. Under the final rules, non-bank providers of prepaid access are subject to comprehensive Bank Secrecy Act (BSA) regulations similar to depository institutions. In recognition of the fact that programs commonly involve multiple parties, the final rules impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others who might be in a position to provide information to regulators and law enforcement, such as prepaid access sellers, with the option to designate a single party (presumably the party with the best access to data) as the reporting party for a program on a consolidated basis.

Among the major features of the final rules are:

- Renaming "stored value" as "prepaid access" and defining the term to allow for future changes in technology and prepaid devices;
- Deleting the terms "issuer" and "redeemer" of stored value and adding the terms "provider" and "seller"; and
- Placing registration requirements on providers of prepaid access and suspicious activity reporting, customer information recordkeeping, and new transactional recordkeeping requirements on both providers and sellers of prepaid access.

The rules became effective September 27, 2011 and should allow participants to streamline their compliance. The Office of the Comptroller of the Currency has issued recent guidance that references the proposed rule. See OCC Bulletin 2011-27, "Prepaid Access Programs: Risk Management Guidance and Sound Practices" (June 28, 2011). □

✧ *Mike Tomkies and Elizabeth Anstaett*

## HOUSE BILL MAY ALLOW AUTO-DIALED CELL PHONE CALLS

A bill has been introduced in the House of Representatives that would amend the Telephone Consumer Protection Act (TCPA) to allow calls to mobile telephone numbers by auto-dialers by exempting informational calls to wireless phones from auto-dialer restrictions if there is "prior express consent." See H.R. 3035.

The term "prior express consent" is defined to mean the oral or written approval of a person:

- (1) For the initiation of a telephone call to such person by or on behalf of an entity with which such person has an established business relationship;
- (2) That is provided when such person purchases a good or service or at any other point during such relationship.

A person who merely provides a telephone number as a means of contact evidences consent under this definition.

The bill is before the House Committee on Energy and Commerce.

The President's jobs bill, which did not pass the Senate, also included a provision that would allow the government to call cell phones in an attempt to collect debts owed to the government.

Currently, debt collectors and other businesses can call cell phones if they manually dial a cell phone number, but are precluded from using more efficient automated dialing systems without a debtor's prior express consent. The current standards for prior express consent arguably require nonrestrictive explicit consent, preferably in writing. □

✧ *Mike Tomkies and Chuck Gall*

## NEW RECORDKEEPING RULES FOR COLLECTION AGENCIES REGISTERED IN FLORIDA

The Florida Department of Financial Services has enacted new recordkeeping rules for registered collection agencies that become effective October 25, 2011. The new rules require collection agencies to maintain records of, among other things:

- Debtor account information including (i) debtors' names and addresses, (ii) dates accounts are referred or acquired and account numbers, (iii) amounts of claims as submitted by creditors, (iv) creditors' names and addresses, (v) payments including dates, amounts and balances owing and (vi) outbound contacts or attempted contacts with debtors that include certain specific information;
- All written agreements between the collector and a debtor;
- The bill of sale or other document evidencing when and from whom a debt was acquired; and
- All written or electronic correspondence sent to a debtor.

The records must be kept for three years from the date that the debtor pays the debt or the collector ceases collection efforts. The new rules also contain new complaint and penalty provisions. □

✧ *Mike Tomkies and Chuck Gall*