

CONSUMER FINANCIAL SERVICES ALERT

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CFPB HAPPENINGS

CFPB Files *Amicus* Brief in TILA Rescission Case

The CFPB filed an *amicus* brief in the Tenth Circuit setting forth its interpretation of the rescission period under the Truth in Lending Act. TILA provides consumers a statutory right to rescind certain types of mortgages within three days after consummation of a loan where a lender provides the required disclosures. If a lender fails to provide the consumer with the required disclosures, the right to rescind expires three years after consummation of the loan or upon sale of the home, whichever occurs first. A consumer can exercise the right to rescind by notifying the creditor of his/her intention to rescind the loan.

In this case, defendant never provided plaintiff with the required disclosures. Although plaintiff notified defendant of her right to rescind within 3 years, the district court held that the right of rescission also requires the consumer to file an action against the lender for any disputes regarding the rescission, which plaintiff, here, did not do. In its *amicus* brief, the CFPB argued that the recession period under TILA only defines the time to *notify* the lender and not the time to *sue* the lender.

Click [here](#) for the CFPB's *amicus* brief.

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CFPB Creates *Ask CFPB* Database

The CFPB launched *Ask CFPB*, an interactive online tool to help consumers find answers to their financial questions. The online tool contains three categories of questions and answers: (1) definitions; (2) explanations; and (3) situations.

Click [here](#) for the press release and [here](#) for the online web tool.

CFPB Requests Comments on Payday Lending Hearing

The CFPB issued a Notice and Request for Public Comment on its Payday Lending Hearing that took place in January in Birmingham, Alabama.

Click [here](#) for the notice and [here](#) for a transcript of the hearing.

CFPB Reports that Student Loan Debt Hits Trillion Dollars

The CFPB reported that outstanding student loan debt hit the trillion dollar mark. The CFPB made this conclusion after a months-long study into the student loan market. The CFPB plans to release its full study on the private student loan market in the summer.

Click [here](#) for the press release.

CFPB Raises Ceiling of Allowable Charges Under FCRA

The CFPB raised the ceiling of allowable charges under Section 612(f) of the Fair Credit Reporting Act, which permits consumer reporting agencies to charge consumers a reasonable amount for making disclosures such as all the information in the consumer's file and the source of the information. Effective April 3, 2012, the ceiling is \$11.50 (raised from \$11.00) for the amount a consumer reporting agency may charge a consumer for making a required disclosure to the consumer. The CFPB is required to increase the ceiling of allowable charges under FCRA each year based on the proportionality of changes in the Consumer Price Index.

Click [here](#) for the related notice.

The CFPB Issues Guidance on Mortgage Loan Origination Compensation Rules Under Regulation Z

In response to several inquiries regarding the FRB's mortgage loan originator compensation rules, the CFPB issued a guidance bulletin stating that compensation rules under Regulation Z permit employers to contribute to profit-sharing, 401(k), and employee stock-ownership plans out of a profit pool derived from loan originations. The compensation rules promulgated by the FRB in September 2010 provide that no loan origination may receive, directly or indirectly, compensation that is based on any terms or conditions of a mortgage transaction.

The CFPB also noted that it anticipates in the near future issuing a proposed rule on the loan origination provisions under Section 1403 of the Dodd Frank Act, which addresses loan originator compensation. Click [here](#) for the bulletin.

REGULATORY DEVELOPMENTS

Fed Releases Mobile Banking Survey Results

The FRB published its report, *Consumers and Mobile Financial Services*, on consumers' use of mobile technology to access financial services. The report focuses on mobile banking, defined as using a mobile phone to access bank, credit card and other financial accounts via text messaging, mobile applications or the phone's web browser, and defined mobile payments, in part, as making purchases, bill payments, charitable donations, etc., using a mobile phone. The report found that although the use of mobile phones has significantly increased, most users do not use mobile banking or mobile payments because they: (1) do not see a benefit in the services; (2) have security concerns; and (3) have found an easier platform and/or already have their banking needs met. However, the use of mobile banking and mobile payments was higher among the "under/unbanked" – defined to include consumers who are young, minorities or have low income levels, although within this group mobile payments were less likely to be used than mobile banking. The report also identified other potential uses for mobile financial services, including shopping and personal financial management and budgeting.

Click [here](#) for report.

FTC Issues FACTA Report on Identity Theft

The FTC issued a staff report on its survey of the Fair and Accurate Credit Transactions Act of 2003's identity theft remedies. The survey was focused on consumers' identity theft reporting experiences with consumer reporting agencies. The report found that while most consumers were not aware of their FACTA remedies, the majority were satisfied with their CRA experience, with a higher degree of satisfaction found where the CRA was contacted online rather than by telephone. The survey was focused on consumers who contacted the FTC to report identity theft, but the FTC plans to expand the survey pool with a mail-in survey to consumers.

Click [here](#) for report.

FTC Issues its Report on Protecting Consumer Privacy

The FTC issued its final report outlining best practices for businesses and policymakers for protection of consumers' privacy. The FTC recommended Congress consider baseline privacy legislation and data security legislation. The FTC also listed areas where it will be active over the course of the next year, specifically, (1) the implementation of "Do Not Track," improved privacy protections for companies providing mobile services, (2) the invisibility and lack of control over data brokers' collection of information and use of consumer information, (3) the raised privacy concerns of large platforms (e.g., Internet Service Providers) that track consumers' online

activities, and (4) the promotion of self-regulatory codes, specifically sector-specific codes of conduct.

Click [here](#) for the FTC's final report and [here](#) for the press release.

LITIGATION NEWS

The 11th Circuit Ruled Overdraft Case Should be Decided by an Arbitrator

The Eleventh Circuit vacated the district court's ruling that plaintiff's claims were outside the scope of the arbitration agreement. Plaintiff filed a putative class action seeking monetary and injunctive relief for alleged violations of state common law and the Maryland Consumer Protection Act. The case was transferred to the U.S. District Court for the Southern District of Florida for consolidation of pretrial issues. The lower court found that the case was not subject to the arbitration agreement because plaintiff's injunctive relief claims were outside the agreement's scope. Defendant appealed on the grounds that pursuant to the arbitration agreement, whether the claims were covered by the arbitration agreement should be decided by an arbitrator. The Eleventh Circuit agreed and remanded the case back to the lower court with the instruction to also review its unconscionability decision in light of *Concepcion*.

Click [here](#) for the opinion.

Federal Judge Holds MERS Not Required to Own Note to Transfer Mortgage

The U.S. District Court for the Eastern District of Michigan held that Mortgage Electronic Registration Systems, Inc. was not required to own the note in order to assign the mortgage. The plaintiff filed suit against MERS alleging violations of the Fair Debt Collection Practices Act and state common law after MERS sought to foreclose on plaintiff after she defaulted on her loan. After moving to foreclose, MERS assigned plaintiff's mortgage. Plaintiff argued that MERS sought to transfer rights that it did not possess. More specifically, plaintiff argued that MERS sold the note to an investment trust in 2005 and, therefore, did not have the legal rights to assign the mortgage. The Court disagreed, holding that MERS was the record holder of the mortgage and as such had the authority to foreclose. Plaintiff further alleged that separation of the note and mortgage rendered the mortgage a "nullity" or extinguished the note. However, the Court also rejected this argument, finding that MERS was not required to own the note to assign the mortgage.

Click [here](#) for the opinion.

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