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### **CFPB Proposed Regulatory Activity Agenda Released, Focuses on Limitations on Bank and Credit Card Fees, Small Business Lending Data Collection, Fair Credit Reporting Act Requirements, and Other Areas**

By: [Michael Flynn](#)

The Office of Information and Regulatory Affairs in the Office of Management and Budget has released the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions (Agenda) reports on the actions administrative agencies plan to issue in the near and long term. Included is the CFPB's regulatory agenda for 2023. The CFPB agenda may be found [HERE](#).

Below are the activity summaries provided by the CFPB, organized under Final Rule Stage Activities, Notice of Proposed Rulemaking (NPRM) Proposed activities, and Pre-Rule Activities. Several things to note:

- There is a strong focus on restrictions on bank and credit card fees, with 3 possible activities including credit card late fees, NSF fees, and possible amendments to Regulation Z with respect to the special rules for determining whether overdraft fees are considered finance charges.
- The proposal for "Nonbank Registration – Nonbank Covered Persons Subject to Certain Enforcement Orders" states that the CFPB is developing an NPRM. In fact, the CFPB recently published that proposed rule. See Buchalter's January 5, 2023 Client Alert [CFPB Proposes That Non-Bank Consumer Finance Companies Must \(1\) Register all Federal, State and Local Regulator Enforcement Orders and Court Judgments; and \(2\) Have an Annual Attestation from an Executive that Each Order and Judgment Has Not Been Violated](#).
- The CFPB is considering amending Regulation V in regard to the Fair Credit Reporting Act. It does not say what type of amendments are contemplated.
- In regard to PACE financing, the CFPB is working to prepare a proposed rule to implement statutory requirements that mandate that regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing.
- The CFPB continues to study how to implement the Dodd-Frank requirement that regulations address the obligation of a covered entity (for example, a bank) to make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the covered entity.
- The CFPB continues to work with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency to address the Dodd-Frank amendments to FIRREA requiring implementing regulations for quality control standards for automated valuation models (AVMs).

## CFPB Proposed Regulatory Activity Agenda Items and Proposed Dates

### **Final Rule Stage**

#### **Small Business Lending Data Collection Under the Equal Credit Opportunity Act**

Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. In September 2020, the Bureau released an outline of proposals under consideration and alternatives considered in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA panel was convened in October 2020 and received feedback from representatives of small entities on the impacts the rules the Bureau is considering to implement section 1071 would have on small entities likely to be directly affected by the rulemaking. The panel's report was completed and released in December 2020. On October 8, 2021, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register. The Bureau's next action for the section 1071 rulemaking is the issuance of a final rule.

**Proposed date: 01-23**

### **Notice of Proposed Rulemaking**

#### **Credit Card Penalty Fees**

Section 149 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 is implemented in part in Regulation Z, section 1026.52(b)(1). Currently, under Regulation Z, section 1026.52(b)(1), a card issuer must not impose a fee for violating the terms or other requirements of a credit card account, including a late payment, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation consistent with section 1026.52(b)(1)(i) or complies with the safe harbor amounts consistent with section 1026.52(b)(1)(ii). The Bureau is considering whether to propose amendments to the rules implementing the CARD Act relating to penalty fees levied by card issuers, including the safe harbors for penalty fees. On June 22, 2022, the Bureau issued an advance notice of proposed rulemaking (ANPRM) seeking information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments, and card issuers' revenue and expenses. The Bureau is considering the comments received on the ANPRM in its development of the NPRM.

**Proposed date: 01-23**

#### **Nonbank Registration – Terms and Conditions**

The Bureau is developing a proposed rule that would require supervised nonbank entities to register with the Bureau and provide information about their use of certain terms and conditions in standard-form contracts. In particular, the Bureau is developing a proposal to collect information standard terms used in contracts that are not subject to negotiating or that are not prominently advertised in marketing.

**Proposed date: 12-22**

#### **Nonbank Registration – Nonbank Covered Persons Subject to Certain Enforcement Orders**

The Bureau is developing a proposed rule under its authorities at 12 U.S.C. 5512(b) and (c) and 5514(b) that would require certain nonbank covered persons that are under certain final public enforcement orders to register with the Bureau via a public registry that the Bureau would create for such purposes; to

submit copies of public orders to the same; and, where such persons are supervised by the Bureau, to prepare and submit annual reports and other statements regarding such orders for use in connection with the Bureau's supervisory functions. The public registry created by the Bureau would identify institutions subject to registration and include public enforcement orders and information regarding those orders.

**Proposed date: 12-22**

### **Property Assessed Clean Energy Financing**

Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amended the Truth in Lending Act (TILA) to require the Bureau to prescribe regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined in EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing and specifically authorizes the collection of data and information necessary to support a PACE rulemaking. In March 2019, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPRM) on PACE financing to facilitate the Bureau's rulemaking process. The Bureau is working to develop a proposed rule to implement EGRRCPA section 307.

**Proposed date: 04-23**

### **Amendments to FIRREA Concerning Automated Valuation Models**

The Bureau is participating in an interagency rulemaking process with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning automated valuation models. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). In February 2022, the Bureau initiated the process under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) for this rulemaking and released an outline of proposals and alternatives under consideration for the SBREFA panel, made up of representatives of small businesses that might be affected by the rulemaking. The Bureau released a final SBREFA report on May 13, 2022. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

**Proposed date: 03-23**

**Pre-Rule Activity****Fees for Insufficient Funds**

Consumers using deposit accounts sometimes engage in transactions that exceed their accounts' balances. Sometimes the depository institution will pay that transaction, resulting in an overdraft, but in many situations the depository institution will decline to pay the transaction and charge the consumer a "non-sufficient fund" (NSF) fee. Until recently, NSF fees were a significant source of fee revenue from deposit accounts for depository institutions; lately some financial institutions have voluntarily stopped charging such fees. The Bureau is considering new rules regarding NSF fees.

**Proposed date: 11-23**

**Required Rulemaking on Personal Financial Data Rights**

Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that, subject to rules prescribed by the Bureau, a covered entity (for example, a bank) must make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the covered entity. Section 1033 also states that the Bureau must prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. In November 2020, the Bureau published an Advance Notice of Proposed Rulemaking (ANPRM) concerning implementation of section 1033, accepting comments until February 2021. In October 2022, the Bureau released materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The Bureau's next step in the rulemaking is to convene the SBREFA panel and issue a report summarizing feedback received from the panel.

**Proposed date: 02-23**

**Fair Credit Reporting Act Rulemaking**

Congress enacted the Fair Credit Reporting Act (FCRA) to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy. The law and its implementing regulations (Regulation V) impose legal duties on consumer reporting agencies, data furnishers, and users of consumer reports, and furnishers of information to consumer reporting agencies. The Bureau is considering whether to amend Regulation V.

**Proposed date: 11-23**

**Overdraft Fees**

Financial institutions offer various types of overdraft services, some of which are subject to Regulation Z and some of which are not. Whether Regulation Z applies depends on whether fees imposed in connection with those services (overdraft fees) are considered finance charges. When the Federal Reserve Board first adopted Regulation Z in 1969, it created special rules for determining whether overdraft fees are considered finance charges. While the nature of overdraft services, including how accounts can be overdrawn and how financial institutions determine whether to advance funds to pay the overdrawn amount, has significantly changed since 1969, the special rules remain largely unchanged. The Bureau is considering whether to propose amendments to Regulation Z with respect to these special rules.

**Proposed date: 11-23**

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