
CFPB Issues Its Spring 2015 Rulemaking Agenda

By Joann Needleman / May 28, 2015

On Friday, May 22, 2015, the Consumer Financial Protection Bureau (CFPB) quietly issued its [Spring 2015 Rulemaking Agenda](#). The Agenda is mandated by the federal government's Unified Agenda of Regulatory and Deregulatory Actions. Under the Regulatory Flexibility Act, federal agencies must publish regulatory agendas twice a year. The Bureau's Agenda includes rulemaking actions in pre-rule, proposed rule, final rule, long-term, and completed stages.

Here are the areas of particular interest:

Payday, Auto Title and Longer Term Credit Products: An outline of proposals for these markets was issued in late March. Pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA), industry stakeholders were selected in late March to provide information to the Bureau as well as the Small Business Administration Office of Advocacy and Office of Management and Budget (OMB) as to the economic impact on small business of the Bureau's proposals. Clark Hill's [Jane Luxton](#) worked with a number of industry participants at the SBREFA meeting. A Notice of Proposed Rulemaking is expected later this year after the Bureau completes additional outreach and analysis.

Debt Collection: Despite issuing an Advanced Notice of Proposed Rulemaking (ANPR) in November 2013, the CFPB is still involved in "pre-rule activities." This includes a survey about their experiences with debt collectors as well as qualitative testing to determine what information would be useful for consumers to have about debt collection and how that information should be provided to them. Additionally, the Bureau is still analyzing the 23,000 comments to the ANPR. It is expected that an SBREFA panel will occur before year's end. Look for a Notice of Proposed Rulemaking in early 2016.

Overdraft: The Bureau is still conducting analysis of issues relating to overdraft services on checking accounts. This research builds upon a June 2013 white paper and a July 2014 report. The Bureau suggests that additional research and assessment is warranted to determine whether rules would be appropriate.

Arbitration: Two reports were issued regarding the use of arbitration agreements involving consumer financial products or services, a preliminary report in December 2013 and a report to Congress in March 2015. The Bureau is evaluating feedback and considering whether rules governing arbitration clauses may be warranted.

Updates to the Home Mortgage Disclosure Act (HMDA): The proposed Rule was published in August 2014 to implement Dodd-Frank Act amendments to the Home Mortgage Disclosure Act (HMDA). The proposal would help align the law with existing industry standards for collecting data on mortgage loans and applications. The goal is to improve HMDA's effectiveness through changes to institutional and transactional coverage, modifications of reporting requirements, and clarifications of existing regulatory provisions. A final rule is expected in late summer.

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z): A final proposed rule was published in December 2014 that would create comprehensive consumer protections for a range of prepaid financial products, including general-purpose reloadable prepaid cards and certain digital and mobile wallets. Under the proposal, prepaid accounts would receive certain protections that are similar to those that exist now for debit and payroll cards. The protections relate to, among other things:

- Error resolution
- Limitations on liability when a card is lost or stolen
- The provision of information about account activity

Additional measures were proposed for general credit card and prepaid products that access overdraft services or offer credit features for a fee. Under the proposal, these products would be treated generally as credit cards under TILA and Regulation Z. That proposal would include:

- Requirements that creditors assess consumers' ability to repay before extending them credit
- Fee limitations in the first year of account opening
- Certain rules regarding payment periods and processing
- Specific disclosures before a consumer acquires a prepaid account

The final rule is expected in early 2016.

Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service: This has been a significant priority for the Bureau. In a proposed rule issued in September 2014, the Bureau sought to amend the definition of larger market participants to include automobile financing. The finalized proposal is expected in early summer. The proposal will build upon previous rules defining larger participants in the markets for debt collection, credit reporting and student loan servicing.

Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), Integrated Disclosures and Mortgage Servicing Rules: The Bureau continues to struggle in its efforts to develop federal mortgage disclosures required under TILA and RESPA. In February 2015, a third set of amendments were issued which provides more technical corrections, addresses the provision of language relating to new construction loans on the Loan Estimate form, and relaxes certain timing requirements regarding revised disclosures. Guides and materials were published to help industry and consumers

prepare for the changes. The Rule will take effect on August 1, 2015.

In December 2014, a proposal was published to amend certain aspects of the 2013 mortgage servicing rules. The proposed rule would affect disclosures, early intervention, and loss mitigation. The proposal also addresses compliance with the rules when a consumer is a potential or confirmed successor in interest, is in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act (FDCPA). The final Rule is expected in Spring 2016.

Industries in the areas described need to be highly vigilant to ensure adequate compliance expectations even before final rules are issued. We will continue to monitor developments in regulations affecting the consumer finance sector and will share our findings with clients and colleagues.

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