CENTER FOR JUSTICE & DEMOCRACY
CJ&D
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IMPACT

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...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE & DEMOCRACY **NEWS**

Dear Friends,

The 2014 elections are over and it's time to assess where we are.

It might seem at first glance that the anti-civil justice forces have taken over Congress and most state legislatures. But have they?

Many lawmakers on both sides of the aisle believe strongly in the Constitution, as they should. The right to trial by jury is as important as any other provision, found in the Bill of Rights and virtually every state Constitution. Whether the concern is fairness and justice, or simply protecting the Constitution from government interference, there are good reasons to believe that "tort reform" is wrong for our country and will fail.

The Center for Justice & Democracy is already organizing groups, both in DC and around the nation, to educate, organize and fight back against cruel attacks on victims' legal rights.

So let's all take a deep breathe. It's going to be a rough and tumble year, no question about it. But if we all stick together and support this important work, we will win this fight! Thank you for your support.

Sincerely,
Joanne Doroshow
Executive Director

IN THIS ISSUE: CONSUMER FINANCIAL PROTECTION BUREAU

WHAT THE CFPB IS ALL ABOUT

It's been a very busy three plus years for the Consumer Financial Protection Bureau (CFPB), the new independent federal regulatory agency created by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB is charged with regulating the activities of large banks and credit unions as well as non-bank financial service providers, such as mortgage companies, payday lenders, auto financing companies, private student lenders, debt collectors, debt relief companies and credit reporting agencies. Its stated mission is "ensuring that consumers get the information they need to make the financial decisions they believe are best for themselves and their families – that prices are clear up front, that risks are visible, and that nothing is buried in fine print." The Bureau has the authority to issue new regulations, monitor financial service and product providers, enforce consumer financial protection laws and safeguard consumers from unfair, deceptive, abusive or discriminatory practices. In a short period, the CFPB, under the leadership of former Ohio Attorney General Richard Cordray, has used these powers to benefit millions of U.S. consumers.

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RECENT CFPB ENFORCEMENT ACTIONS

***In the Matter of DriveTime Automotive Group, Inc. et al.* (November 2014)**
The country's largest "buy here, pay here" lender had harmed customers – many of whom were low-income with poor credit ratings – "by making harassing debt collection calls and providing inaccurate credit information to credit reporting agencies," according to the Bureau. As a result, DriveTime was fined $8 million and required to end its unfair calling practices, disclose collection options to consumers, stop furnishing inaccurate repossession information, correct credit reporting information, provide credit reports to harmed consumers and implement an audit program.

***In the Matter of Manufacturers and Traders Trust Company* (October 2014)**
M&T was ordered to refund $2.9 million to approximately 59,000 account holders who paid fees for accounts advertised as "no strings attached" free checking accounts. The company was also forced to update credit reports, end all deceptive advertising and pay a $200,000 fine.

***In the Matter of Flagstar Bank, F.S.B.* (September 2014)**
Flagstar was ordered to pay $27.5 million to 6,500 victims as well as a $10 million fine for illegally blocking mortgage bor-

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WHAT THE CFPB IS ALL ABOUT continued...

Regulation

Since 2012, the Bureau has issued over 60 new rules to protect consumers using financial products and services, with dozens of proposed regulations currently under review. Finalized rules to date have shielded homebuyers from risky lending practices, brought new oversight to certain student loan services, improved consumer access to home appraisal reports, safeguarded consumers sending money abroad, made it easier for spouses or partners who don't work outside the home to qualify for credit cards, promoted more effective privacy disclosures from financial institutions to customers and established countless other consumer protections.

Supervision

Various offices within the CFPB work together to conduct supervisory activities at bank and nonbank financial institutions to "foster compliance with Federal consumer financial laws, promote a fair consumer financial marketplace, and prevent unlawful discrimination." In FY 2013 alone, the Bureau launched 160 supervision actions at various financial institutions. Activities included "continuing existing supervision programs across product areas including mortgage origination, mortgage servicing, credits cards, deposits, student lending, and short-term, small dollar loans. They also included the first ever review of consumer reporting agencies and nonbank debt collectors." In addition, the CFPB continues to assess whether supervised entities are complying with federal Fair Lending laws, puts them on notice if there are violations and monitors their responses to avoid further violations or consumer harm.

As of July 2014, CFPB supervisory actions and self-reported violations at banks and nonbanks amounted to over $75 million in remediation to approximately 775,000 consumers.

Enforcement

The agency has numerous enforcement powers, including the authority to undertake investigations, issue subpoenas, conduct discovery, bring enforcement actions (in administrative proceedings and civil court), conduct hearings and grant relief, which may include "without limitation," rescission of contracts, monetary refunds, return of real property, restitution, disgorgement or compensation for unjust enrichment, payment of damages or other monetary relief, civil money penalties and limits on activities or functions. Although punitive damages are not permitted, the CFPB can recover its costs if the Bureau prevails in an action to enforce any federal consumer financial law.

The agency has successfully resolved many cases in favor of the American consumer. As of July 21, 2014 (the Bureau's three-year anniversary), CFPB enforcement actions had resulted in $4.6 billion in relief for roughly 15 million consumers. Such actions also led to $150 million in civil penalties for illegal corporate practices. According to a recent agency report, in FY 2013 alone, "the Office of Enforcement obtained monetary relief for more than 2.4 million consumers, including redress in excess of $414 million and civil money penalties totaling more than $50 million. These actions included an order requiring one of the nation's largest banks to refund an estimated $309 million to more than 2.1 million customers for illegal credit card practices."

Education

"An informed consumer is the first line of defense against abusive practices" – this is one of the Bureau's guiding precepts. Consequently, the CFPB generates and disseminates press releases, brochures, reports, bulletins, blog posts and other financial education tools in plain language to improve the public's understanding of financial products and services as well as the consumer protections they are entitled to by law. The Bureau also launches educational campaigns and has online resources to help consumers find the information they need, whether it's answers to questions or contact numbers for agencies that can better address their concerns. In addition, the CFPB publishes guidance documents, bulletins and other materials to educate financial companies about federal consumer protections and how to comply with them, information that puts businesses on notice that their practices must be fair, transparent and nondiscriminatory.

Research

According to the CFPB website, every week the Bureau receives thousands of new complaints about financial products and services. These complaints help the agency better understand finan-

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WHAT THE CFPB IS ALL ABOUT continuted...

cial services providers, U.S. consumers and financial markets so it can take meaningful steps "to supervise companies, enforce federal consumer financial laws, and write better rules and regulations." In addition, each complaint is forwarded to the appropriate company for a response, with information about the complaint and response published in the agency's Consumer Complaint Database with all personal details redacted. Complaint data are also shared with Congress and federal and state agencies. Moreover, the CFPB issues reports based on its own empirical research. Report topics have ranged from credit card complaints, mortgage debt, checking account overdraft, prepaid account agreements, credit scoring, medical debt, private student loans and payday lending to pre-dispute arbitration contract provisions, debt collection complaints from older consumers, challenges facing low income and economically vulnerable consumers and complaints received from servicemembers, veterans and their families.

Since its inception, the CFPB has been under constant attack by big banks, debt collectors, payday lenders, countless other financial firms and their political and industry allies. Clearly the Bureau is doing its job too well. As CFPB Director Cordray told a U.S. Senate committee on June 10, 2014, "Since we opened our doors, we have been focused on making consumer financial markets work better for the American people, the honest businesses that serve them, and the economy as a whole. … Through fair rules, consistent oversight, appropriate enforcement of the law, and broad-based consumer engagement, the Bureau is helping to restore American families' trust in consumer financial markets,

to protect American consumers from improper conduct, and to ensure access to fair, competitive, and transparent markets," Cordray testified. "In the years to come, we look forward to continuing to fulfill Congress's vision of an agency dedicated to cultivating a consumer financial marketplace based on transparency, responsible practices, sound innovation, and excellent customer service."

THE CFPB AND FORCED ARBITRATION

As part of the Dodd-Frank Act, Congress directed the CFPB to study the use of forced arbitration clauses in consumer contracts for financial products and services. The statute also gives the Bureau the power to restrict the use of forced arbitration for the protection of consumers if warranted by the agency's findings.

According to a preliminary report released in December 2013, CFBP found, "Larger institutions are most likely to use arbitration clauses," "[a]rbitration clauses are more complex than the rest of the contract" and "[a]round 9 out of 10 arbitration clauses expressly bar consumers from filing class arbitration." In addition, even though "tens of millions of consumers are subject to arbitration clauses in the markets the CFPB studied," on average, consumers filed a total of "300 disputes [relating to credit cards, checking accounts, payday loans and prepaid cards] each year between 2010 and 2012 with the nation's leading arbitration association. In comparison, in that same three-year time period, over 3,000 cases were filed by consumers in federal court about credit card issues alone," with more than 400 of those federal court cases being filed as class actions, "whereas CFPB's research found only two class filings in arbitration and neither was about credit cards." The Bureau also found that consumers "do not choose arbitration over class action settlements," with over 13 million class members making claims or receiving payments under credit card, deposit account or payday loan settlements, "while 3,605 individuals opted out of participating in the settlements, which gave them the right to bring their own cases. At most, only a handful of these individuals chose instead to file an arbitration case." Empirical data also showed that consumers don't file arbitrations for small-dollar disputes (with the average non-debt-related consumer claim involving over $38,000) and that, when small claims actions are permitted by an arbitration clause, few consumers file in small claims court compared to banks (870 consumer credit card cases brought by consumers vs. more than 41,000 cases brought by banks).

In 2014, the CFPB has continued to gather information about forced arbitration by looking more critically at consumers' understanding of arbitration clauses. For example, in August, the Bureau reportedly sent letters to payday lenders demanding copies of certain standard loan agreements. And in September, despite strong opposition from the American Bankers Association, the Consumer Bankers Association, the Financial Services Roundtable and other industry groups, the agency received approval from the Office of Management and Budget to conduct a national phone survey of credit card holders.

The Bureau is slated to issue its final arbitration study within the next several months.

rowers' attempts to save their homes. The company was also required to: 1) properly review, acknowledge and evaluate loss mitigation applications, 2) stop improperly denying loss mitigation applications or improperly prolonging the trial period for a loan modification, 3) stop acquiring default servicing rights from third parties and 4) engage in efforts to help affected borrowers preserve their home.

In the Matter of U.S. Bank National Association **(September 2014)**
The company was ordered to pay $48 million in refunds to approximately 420,000 consumers who were illegally charged for certain identity protection and credit monitoring services they never received. The consent order also mandated that U.S. Bank end its unfair billing practices, conveniently repay consumers, improve oversight of third-party vendors and pay two fines – a $5 million civil penalty to the CFPB and a $4 million penalty to the Office of the Comptroller of the Currency.

In the Matter of First Investors Financial Services Group, Inc.
(August 2014)
The company was ordered to fix errors on credit reports, help consumers obtain free copies of their credit reports, establish consumer safeguards and pay a $2.75 million fine after knowingly distorting consumer credit records for years, a practice which potentially harmed tens of thousands of customers.

In the Matter of USA Discounters, Ltd.
(August 2014)
The retail company ran a fee scam that tricked thousands of servicemembers into paying fees for legal protections available for free and for certain services that USA Discounters failed to provide. The company was forced to pay more than $350,000 in refunds and a $50,000 civil penalty.

In the Matter of Amerisave Mortgage Corporation et al. **(August 2014)**
Amerisave and its affiliate were ordered to pay $14.8 million in refunds to tens of thousands of consumers, as well as a $4.5 million penalty, over a bait-and-switch mortgage scheme. Amerisave also had to stop advertising unavailable mortgage rates and stop charging illegal fees. In addition, the owner of both companies was required to pay a $1.5 million fine for deceiving consumers.

In the Matter of ACE Cash Express, Inc. **(July 2014)**
ACE, one of the nation's largest payday lenders, was ordered to pay $10 million in refunds and a $5 million penalty for using illegal debt collection practices to push consumers into taking out extra loans they couldn't afford. The company was also required to end its illegal debt collection threats and harassment and stop bullying consumers into more loans.

In the Matter of Synchrony Bank, f/k/a GE Capital Retail Bank
(June 2014)
The company was required to pay $225 million to nearly 750,000 consumers harmed by deceptive and discriminatory credit card practices, making the order the federal government's largest credit card discrimination settlement in history. The CFPB's order also required GE Capital to stop deceptive marketing practices, end illegal discrimination, conveniently provide consumer relief, notify credit reporting agencies of new information and forgive debt of accounts that did not receive debt relief offers.

In the Matter of Bank of America, N.A. et al. **(April 2014)**
Bank of America was ordered to pay $727 million in relief to millions of consumers harmed by the company's credit card add-on practices. More specifically, the company was required to pay $268 million in refunds to about 1.4 million consumers impacted by its deceptive marketing of add-on products and roughly $459 million to about 1.5 million consumers whose 1.9 million customer accounts were illegally charged for credit monitoring and credit reporting services that were never received. In addition to repaying affected customers, Bank of America was ordered to stop engaging in illegal practices, end unfair billing practices, conveniently repay consumers and pay a $20 million penalty.

CFPB v. Ocwen Financial Corp.
(February 2014)
As reported by the Bureau, "The CFPB, along with authorities in 49 states and the District of Columbia, obtained an order from a federal court against the nation's largest nonbank mortgage loan servicer, Ocwen Financial Corporation, and its subsidiary, Ocwen Loan Servicing, addressing Ocwen's misconduct at every stage of the mortgage servicing process. The consent order requires Ocwen to provide $2 billion in principal reduction to underwater borrowers and to refund $125 million to nearly 185,000 borrowers who have already been foreclosed upon. The order also extends the standards for servicing loans found in the National Mortgage Settlement, as well as several new standards, to all of Ocwen's loans."

CFPB et al. v. National City Bank
(January 2014)
As stated in the CFPB's May 2014 semi-annual report, "At the request of the CFPB and the DOJ, a federal district court in Pennsylvania ordered National City Bank – now owned by PNC – to pay $35 million in restitution to African-American and Hispanic borrowers who were charged higher prices on mortgage loans than similarly-situated non-Hispanic borrowers." More specifically, "National City gave its loan officers and brokers the discretion to set borrowers' rates and fees. National City then compensated the officers and brokers from extra costs paid by consumers. Over 76,000 African-American and Hispanic borrowers paid higher costs because of this discriminatory pricing and compensation scheme."