

The Consumer Financial Protection Bureau:  
An Overview for Campus Officials and Their Vendors  
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The Consumer Financial Protection Bureau (CFPB) is a consumer protection agency created by the Dodd-Frank legislation that officially began its supervisory and enforcement activities July 1, 2012. The enabling legislation was passed previously, and while the agency was being put together and awaiting opening actions, it was already involved in the activity it has been best known for thus far, gathering industry data.

Dodd-Frank was supported by testimony and media reports that the FTC had not been successful in reducing the number of consumer complaints they were receiving and not being aggressive enough in their enforcement actions. There was also a backlash effect from the mortgage market failure and credit card problems.

In its final form, the Dodd-Frank legislation comprised 2,319 pages. Compared to other major pieces of financial legislation, the Dodd-Frank Act is rather long and complicated—the Federal Reserve Act was only 31 pages, the Sarbanes-Oxley Act was 61 pages, and the Gramm-Leach-Bliley Act was 145 pages.

The bill was two years getting through Congress and it created 29 new offices and agencies. The law requires 55 studies and reports and has an estimated cost for the first ten years of nearly 27 billion dollars.

The legislation gave the CFPB concurrent jurisdiction with nearly all federal “alphabet soup” agencies that control the consumer credit industry. The CFPB is charged with writing and enforcing rules to target “abusive” practices in those markets.

The law gives the federal government the authority to seize failing financial companies and liquidate to protect taxpayer’s interests and gives new powers to

oversee the derivatives market. A key component of the legislation is the new standards of state law preemption, giving the agency broader power.

The agency organization includes a single director appointed by the President and approved by the Senate for a five year term. Funding is through the Federal Reserve Board and is outside congressional appropriations oversight.

### CFPB's functions

There are eight units that function as follows:

1. To research consumer financial products and develop consumer educational programs;
2. To provide information and guidance to traditionally underserved consumers and communities;
3. Tracking consumer complaints and routing those to proper federal or state agencies;
4. Office of financial education to educate consumers on financial decisions;
5. Office of fair lending and equal credit opportunity to oversee fair lending laws;
6. Consumer advisory board to advise the CFPB and provide information on the consumer industry and emerging practices;
7. Office of service member (military) affairs to provide financial services to service members and their families, including National Guard;
8. Office of financial protection and education for older Americans - those over 62 years old.

The authority granted to the CFPB in the legislation includes rulemaking (perhaps the most important), supervisory and enforcement. A key to this authority is that nearly all consumer protection rulemaking, supervision and enforcement is taken from the bank regulators, although the FTC does retain its authority.

The CFPB has authority over service providers, covered persons (any person that is engaged in offering or providing a consumer financial product or service or any affiliate of such person if acting as a service provider) and related persons. This is one of many omnibus provisions that are included in the CFPB authority, and it is unlikely that any credit transaction in the U.S. is not covered in one of them.

The CFPB website contains examples of those entities and services covered and it is important to visit the site [www.consumerfinance.gov](http://www.consumerfinance.gov), to review those examples, as well as their frequent communications about CFPB activities. It is important to note for the student aid community the clear statement that student loans and those who service them are covered.

The authority extends to define and enforce rules against UDAAP-“unfair, deceptive and abusive acts and practices,” consumer disclosures, credit reporting and consumer complaints. Dodd-Frank says an act is abusive if it “materially interferes with the ability of a consumer to understand a term or condition of a product or takes unreasonable advantage of the ability of a consumer to understand it.”

The legislation included significant oversight duties for private educational loans. A study into issues and functions of the private loan marketplace was ordered and a report of findings was made in July 2012. That report studied many aspects of the private loan market and produced several recommendations for change.

An important date for the education industry is April 13, 2012. That is when the CFPB released a bulletin that set out the requirement that creditors who hire third parties to do work for them, must oversee their compliance with consumer laws. Included in that bulletin were a specific list of duties the creditor must follow in its oversight, including monitoring compliance activities, reviewing policies and procedures, training materials and the total compliance management system.

The CFPB has made clear that they will not only examine a creditor, but their vendors as well when doing a full review. It is important to know as well that a collector who uses third party vendors has the same duty to oversee them as the agency’s creditor has for the collector. In other words, the vendor oversight flows from the top all the way to the bottom.

Thus, part of a compliance initiative for a collector or creditor, must include active due diligence in overseeing their service providers/vendors. It seems prudent to review current contracts between these entities.

The CFPB has been active in recent months with many of their initiatives directed at the collection industry and student aid issues. This attention to student aid was

included in the originating legislation which required a study and report on private educational loans, as mentioned above. The CFPB gathered data from student borrowers, servicers and participating lenders. That report, released one year after the CFPB began operation, also recommended revisiting student loan discharge in bankruptcy.

That focus on student aid was recently revisited by an announcement that the Bureau would be issuing regulations to establish the process to oversee student loan billing servicers.

This followed their previous announcement defining the “larger participant” group of collection agencies and supervision and enforcement authority over them. This announcement and definition created in some a false sense that if an agency was not in that size class, they would not be subject to the same or any level of review.

Since then, the CFPB, as recently as the July 2013 ACA conference in San Diego, when speaking through the Asst. Director, made it clear that size is not the issue when determining who will be examined or when examinations will occur (they do not use the term audit). In that presentation, they repeated what they have made clear previously, complaints are the chief driver for setting an examination.

Other recent CFPB activities include:

November 2012, announces an agreement with City of Chicago to share complaint information;

December 2012, releases a paper on the FCRA and problems with credit bureau reports, citing the situation where collection agencies account for nearly one half of errors/disputes;

December 2012, releases the annual Ombudsman report which discussed the complaints received and the concern by industry of having a CFPB attorney in attendance at an examination;

December 2012, releases debt collection examination procedures;

December 2012, releases educational loan examination guide;

December 2012, announces agreement with several state regulators (primarily in banking space) to share complaint information;

December 2012, CFPB and attorneys general from five states join in an enforcement action against a debt relief company;

December 2012, Congress passes a bill giving CFPB authority to enforce Military Lending Act and creates civil penalties;

January 2013, CFPB sets forth their policy statement defining when one of their rules becomes “final”;

January 2013, CFPB collaborates with U.S. Tribal governments targeting consumer scams;

January 2013, CFPB publishes in federal register two new complaint data collection vehicles “for generic clearance of an information collection to assist in development of financial education initiatives”;

February 2013, an announcement that the CFPB will begin looking into financial products marketed to college students, citing data that suggest students are often poorly informed and make poor decisions;

February 2013, the City of Newark, NJ, enters into a pilot program to use a 4311 hotline to report to the CFPB consumer law complaints;

February 2013, the Navajo Nation Justice Council announces a signed agreement with the CFPB to share information about consumer law issues;

February 2013, Director Cordray, in a speech to the CFPB advisory board, announces his concerns about student loan servicers and their treatment of students “trying to negotiate a more affordable payment”—these comments were likely the driving force for the Mar. 2013 announcement that student loan servicers would be placed under CFPB supervision and examination authority;

February 2013, the CFPB announces an RFI related to creating a “student loan affordability plan”;

March 2013, the second annual report of FDCPA activities is released and focuses on the expanded areas of CFPB coverage, including a discussion of first party creditors who are covered by the UDAAP, which is under CFPB jurisdiction;

March 2013, at a field hearing in Iowa, Dir. Cordray announces that it is expanding its current complaint database by adding the areas of student loans, bank products and mortgages;

April 2013, the CFPB Office of Women and Minority Inclusion announces it is working with the FDIC, Federal Reserve, NCUA, OCC and SEC to explore creating a common standard for assessing compliance with the OMWI requirements. At that same time, the CFPB entered into a Memorandum of Understanding with the EEOC to access employer data on their activities in this area “to analyze composition of regulated agencies”;

May 2013, the CFPB releases a report on student loan affordability based upon comments (28,000) from consumers and information gathered at the field hearing in Miami Fla. May 2013. The report discusses the impact of student debt on the economy and need for more creative repayment options, including refinancing of debt—public and private;

May 2013, CFPB employees join the National Treasury Employees Union;

June 2013, announces agreement with City of Boston to share complaint information;

June 2013, Life of a debt roundtable on data integrity;

June 2013, the CFPB database is expanded to include complaints about credit reporting and money transfers;

A significant part of the CFPB operational model is gathering data, especially about consumer complaints. As noted above, they have reached out to state attorneys general, state and local banking and consumer protection agencies, borrower advocates and legal aid, complaint resolution departments of lenders and servicers, local city governments and institutions of higher education;

July 2013, final supervision rule for nonbank entities (collection agencies) is released;

July 2013, exchange between Senators from Banking Committee and Dir. Cordray about scope of data gathering continues;

July 2013, CFPB testifies before House subcommittee on the scope of their data gathering and use;

July 2013, Senate Banking Subcommittee on Financial Institutions and Consumer Protection holds hearings entitled “Shining the Light on the Consumer Debt Industry”;

July 2013, CFPB field hearing to address credit scoring bulletin, UDAAP bulletin and the portal and consumer letter release bulletin (addressed below);

July 2013, announces Unified Rulemaking Agenda (unusual for a regulator and enforcement agency to make their own rules);

August, 2013, the CFPB seeks OMB approval of new “generic information gathering clearance” which will enable the Bureau to test and improve information gathering techniques;

August 2013, the federal court case challenging the constitutionality of the Dodd-Frank Act is dismissed;

August 2013, the CFPB proposes new information gathering titled “Development of Metrics to Measure Financial Well Being of Working Age and Older American Consumers”. The discussion indicated that this would assist in upgrading the financial literacy of consumers;

August 2013, the CFPB issues an additional report on private student loan complaints; key issues identified were lack of repayment flexibility and payment application on multiple loans;

August 2013, the CFPB, in response to industry questions, issues guidance on using the complaint portal and suggests several techniques and documentation to provide;

August 2013, the CFPB issues an announcement that encourages banks and NON-BANKS to self-report their internal findings of violations; indicating that if they do so, the CFPB would be more lenient in any enforcement action against that entity;

August 2013, several trade groups speak out against the action of the CFPB in seeking funding from OMB to conduct a survey of credit card holders regarding their experiences in arbitration of disputes over credit card term enforcement;

August 2013, the CFPB releases its report of compliance deficiencies in mortgage servicing by both banks and non-banks. The report provides some insight into the areas of examination focus for non-banks (the collection industry has been asking for some indication of what the CFPB is finding in the 10-12 collection agencies they have examined). The report, covering November 2012 through June 2013, focused on the adequacy and formal structure of an independent internal compliance and quality assurance system;

August 2013, Director Cordray, now confirmed by the Senate, ratifies all his prior actions taken during the “recess appointment” period;

August 2013, the CFPB, in a continuing course in this area, announces a program of outreach to teachers and other public servants to assist in providing information about their ability to reduce or cancel their student loan debt.

October 2013, the CFPB launched issued a report with follow-up publicity on the payment processing policies of private student lenders and loan servicers. The report says the lenders and servicers “may be sidetracking responsible borrowers looking to pay off their loans more quickly.” The CFPB is calling for servicers to set up a default order of payments that applies over-payments to the loan with the highest interest rate first.

November 2013, the CFPB announced an Advance Notice of Proposed Rulemaking on debt collection practices, an indication that the Bureau is considering issuing rules for the debt collection industry. Public comment was invited with a deadline later extended to Feb. 28, 2014. A COHEAO Task Force of schools and servicers has been working extremely hard on developing a response.

December 2013, the CFPB called for full disclosure of any arrangements between colleges and financial institutions and later asked parents and students to email the CFPB with their comments.

January 2014, the CFPB joined with the Departments of Veterans Affairs, Defense, Education, and Justice, as well as the Federal Trade Commission, in announcing a new online student complaint system where servicemembers, veterans, and their families can report negative experiences at education institutions and training programs administering the Post-9/11 GI Bill, DoD Military Tuition Assistance, and other military-related education benefit programs. This new feedback system is

supposed to help the government identify unfair, deceptive, and misleading practices.

### Recent Comments from CFPB Officials

In addressing the latest CFPB actions, a Deputy Assistant Director of the CFPB spoke at the ACA conference in California July 15, 2013. A brief overview of those comments follows. That spokesperson identified three themes of CFPB focus in the debt collection arena:

1. Accuracy and integrity of data used to collect debts;
2. Debt verification, consumer complaints and disputes and their impact upon consumer reporting agencies;
3. Understanding industry practices.

They then discussed the organization of the CFPB in the Office of Supervision, which has two sections, Office of Supervision of Policy and Office of Supervision of Examinations. They then discussed the expectations of the CFPB for collection agency conduct to have an internal compliance department that manages compliance with consumer laws. The goals of this internal compliance should be to prevent violations, monitor for and correct violations and track corrections made. This is in addition to managing relationships with third party vendors to ensure they are complying with the CFPB rules and consumer laws.

There are no safe harbors or clear cut list of practices that can prevent being examined or passing such a review. The best prevention is a process of creating written practices, policies and procedures (this is a critical piece). In many of the presentations or bulletins from the CFPB, they use the expression “culture of compliance.” Monitoring and tracking are key focus points, as well as having a risk team and assigned personnel from all departments, conducting appropriate training and making necessary corrections and by all means, keeping a proper paper trail.

The CFPB released on October 2012 and have since amended, their Examination Procedures, a 900-page guide. The goal of these examinations is to identify risks to consumers and review the internal policies and processes used to ensure overall compliance with consumer laws.

Prior to an examination, there will likely be an initial conference with the agency, followed by a request for documentation, including training, process and policy documents, as well as complaint history. After a review of those records, there will be an onsite visit by several examiners who will require unlimited access to your computer, staff and internal documents.

An area of concern for some is that the examiners will be a team of both enforcement and supervision staff. They will jointly “determine when public or nonpublic enforcement action is appropriate”. The analysis by the reviewing team will be to determine if the actions are illegal, have potential to cause harm to consumers and how common the practice is in the industry.

The CFPB will use this information to weigh risks to consumers and develop appropriate policy and regulatory measures to protect consumers, while “ensuring that markets work for families, responsible businesses and the American economy”.

## CFPB's Complaint Portal

On July 10, 2013, the CFPB announced several new actions that address consumer complaints. This continues a process that the Bureau has been active in since the beginning in gathering complaint data from several sources, including an early web-driven complaint process. They have since entered into agreements with the state attorneys general, the FTC and other federal agencies to have their data sent to the CFPB as well as other state and local government entities as set out above.

The July 10, 2013 announcement included two bulletins on illegal conduct, published "action letters" for consumers and information about opening their consumer complaint resolution process, commonly referred to as the "portal".

Each agency is encouraged to register their company with the CFPB portal to receive notice of complaints that consumers will be filing through the portal. The consumer initiates the process by submitting a complaint. This is then reviewed by the CFPB and routed to the portal.

The next step is for the agency to respond, presumably after making their investigation into the complaint. This response is sent to the consumer for review and their counter response. If they elect to do so, they have up to sixty days to provide this information.

This process is set out in detail by the CFPB, including, "what is a complaint?" Some examples shed light on the volume this process might generate. A complaint "expresses dissatisfaction with or communicates suspicion of wrongful conduct by an identifiable entity, related to a consumer's personal experience with a financial product or service". In other words, the complaint can be pretty much anything involved with credit or collection that a consumer does not like. The CFPB makes clear that they do not verify the accuracy of the allegations, but does confirm the business relationship. Therefore it is incumbent upon the agency to make a timely and accurate response.

The CFPB routes the complaint to the company within 48 hours through a secure web portal that the company has established. The information is sent to the company's portal. While there isn't an independent notice of a new complaint, the CFPB provides a status report of all "open" complaints, and by reviewing that

status report you can determine the new complaints. Each company is responsible to monitor their site to determine if they get a complaint.

This monitoring should be performed daily as the response time is 15 days. During her ACA presentation, the Asst. Director stated that it is better to make a response sooner than later and that those who do not respond at all can trigger an investigation into that situation. This suggests to those who have expressed a reluctance or refusal to register, such inaction could be a serious problem.

It is clear that a key issue in managing these complaints is the creation of an internal complaint tracking and management system. Intake, investigation, prompt response and corrective action as needed are some of the elements of a reasonable system. Obviously, this must be part of an internal consumer law compliance system.

The CFPB will investigate individual complaints based upon a set of criterion. Examples include an analysis of the company's response, the consumer's input, the severity of the complaint and timeliness of the company's response.

The resolution response categories are set out in the rules and include: closed with monetary relief, closed with non-monetary relief, closed with explanation and closed. Each category has particular consequences and the discussion is beyond this paper.

This data is public record and can be downloaded to make your own analysis, for example, to track by zip code or company size or collection verticals, age of consumers and any other creative use for which it can be adapted. This feature concerns some as it can very likely be a key for consumer attorneys to target agencies.

Included in the July 10, 2013 compliance alert were five "consumer action letters," including:

1. Needs to know more information on debt collection (additional verification);
2. Wants to dispute the debt (interesting to see how this interplays with FCRA issues);
3. Wants to restrict a debt collector's contact with them (impact on cease and desist?);

4. Has hired a lawyer;
5. Wants the debt collector to stop all communication (sure to drive up litigation as this has the potential to drive up all cease and desist demands).

There are instructions for how the consumer might use these communications, but it is difficult to think that this process will not reduce collection effectiveness and add cost as these letters are utilized by consumers.

Future contacts with consumers will be more limited with more disputes or cease and desist likely. It was interesting that the Asst. Director when discussing these letters, indicated their belief that usage of them would not increase agency costs even with all the extra portal management and anticipated additional documentation exchanged.

The CFPB is a reflection of the current market place within which collection agencies must try to perform their tasks. With the current pro-consumer attitude, the advent of buying and selling debt, law firms that focus on debt collection, major technological advances and a very aggressive consumer bar, the industry is vastly different than the industry that the FDCPA was passed to regulate over 30 years ago.

The industry data, especially from the FTC reports, indicate that the debt collection industry is the leading source of consumer complaints to governmental agencies. This backdrop is a central source of energy behind the CFPB's actions to regulate the collection industry.

It is important to note that in governmental investigations, unlike court proceedings, the CFPB examination team is the fact finder, the jury and the prosecutor. Therefore, these examinations are very dependent upon effective oral and written communication. It is key to deliver your message clearly and have as much supporting documentation as possible.