

# HFMA Winter Institute

**CONSUMER FINANCIAL PROTECTION  
BUREAU: WHO IS IT AND WHY DOES IT  
MATTER TO THE HEALTH CARE INDUSTRY?**



# Today's Presentation

- ➔ CFPB background and principal functions
- ➔ CFPB concerns regarding the health care industry

# CFPB Background

- ➔ Established in 2010 by the Consumer Financial Protection Act
- ➔ Authority to implement and enforce certain federal consumer financial statutes and related regulations

Alternative Mortgage Transaction Parity Act

Consumer Leasing Act

Electronic Fund Transfer Act

Equal Credit Opportunity Act

Fair Credit Billing Act

Fair Credit Reporting Act

Home Owners Protection Act of 1998

Fair Debt Collection Practices Act

Consumer sections of the FDIC Act

Consumer sections of Gramm-Leach-Bliley Act

Home Mortgage Disclosure Act

Home Ownership and Equity Protection Act

Real Estate Settlement Procedures Act

SAFE Mortgage Licensing Act

Truth in Lending Act

Truth in Savings Act

Section 626 of the Omnibus Appropriations Act of 2009

Interstate Land Sales Full Disclosure Act

# CFPB Background

- ➔ Regulates "covered persons" and "service providers" who provide consumers financial products "for use ... primarily for personal, family or household purposes."

# CFPB Background and Principal Functions: CFPB Director Cordray

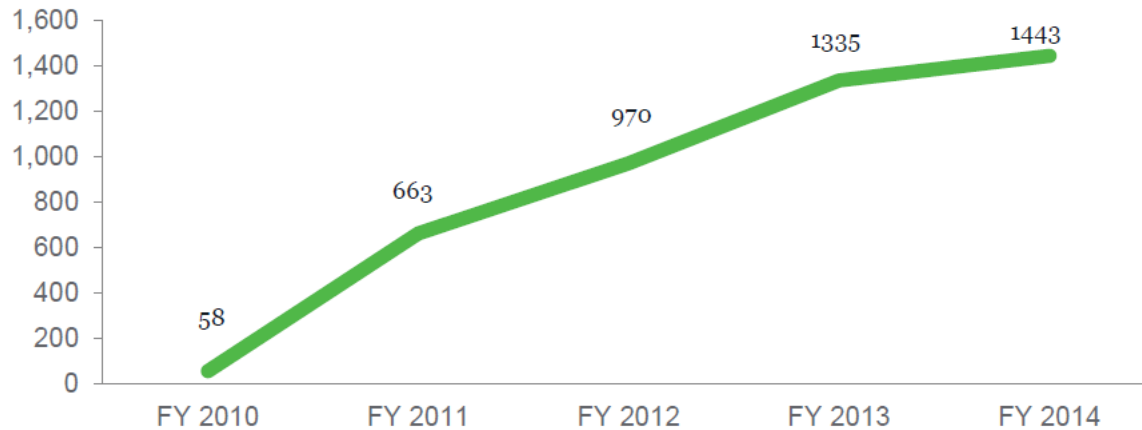
- ❑ First director; previously led Enforcement Division
- ❑ Confirmed July 16, 2013 for 5-year term
- ❑ Experience:
  - Ohio Attorney General (2009-2011)
  - Ohio Treasurer (2006-2008) and Franklin County Treasurer (2002-2006)
  - Private practice (1995-2007).
  - Adjunct Professor at the Ohio State University College of Law (1989-2002)
  - Ohio's first Solicitor General (1993-1994)
  - State Representative for the 33rd Ohio House District (1991-1993)

# CFPB Background and Principal Functions: Employees - growing

## Growth of the CFPB

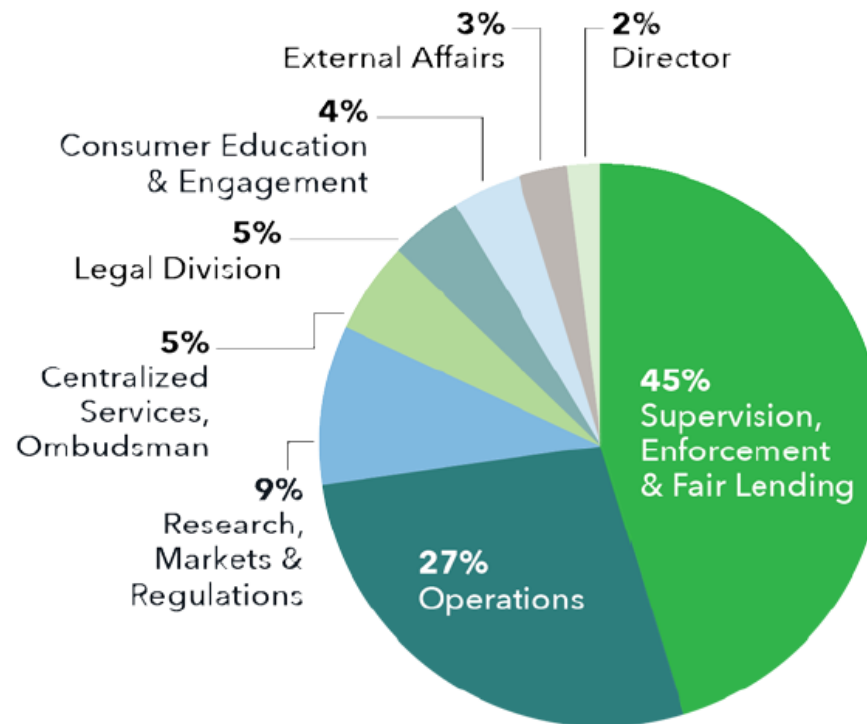
Since its inception, the CFPB has grown in the number of employees and the corresponding funding needed to carry out its duties and responsibilities. At the end of fiscal year 2014, the CFPB was still below the employment levels and funding it estimates it will need to achieve the mission and responsibilities mandated by Congress in the Dodd-Frank Act. The CFPB's growth to date has been relatively steady and consistent. The charts below provide a historical depiction of the growth for employees and funding levels.

**FIGURE 1:** CFPB EMPLOYEES BY FISCAL YEAR



# CFPB Background and Principal Functions: Employee roles reflect CFPB priorities

**FIGURE 2:** OFFICE PERCENTAGE OF TOTAL POSITIONS (AS OF SEPTEMBER 30, 2014)





# CFPB Background and Principal Functions: Budget -- growing

TABLE 2: Budget by program

	FY 2013	FY 2014	FY 2015
Office of the Director	\$5,234,704	\$4,515,983	\$4,711,724
Operations	\$54,171,404	\$68,684,285	\$69,744,184
Operations - Consumer Response	\$39,586,117	\$68,782,620	\$73,072,513
Consumer Education and Engagement	\$22,263,284	\$31,589,071	\$38,588,426
Research, Markets, and Regulation	\$32,895,564	\$47,815,380	\$42,556,406
Supervision, Enforcement, and Fair Lending	\$105,568,127	\$165,342,969	\$174,770,999
Legal	\$10,308,644	\$15,508,793	\$16,891,971
External Affairs	\$4,833,964	\$6,909,993	\$7,807,621
Other Programs*	\$1,241,727	\$3,310,693	\$3,611,304
Centralized Services**	\$262,629,424	\$157,384,960	\$151,663,053
<b>Total</b>	<b>\$538,732,958</b>	<b>\$569,844,747</b>	<b>\$583,418,201</b>

\* Other Programs include the Director's Financial Analyst Program, Ombudsman, and Administrative Law Judges.

\*\* Centralized Services include the cost of certain administrative and operational services provided centrally to other programs (e.g., building space, utilities, and IT-related equipment and services).

# CFPB Background and Principal Functions: Civil Penalties -- growing

**FY 2013: \$49,520,001** against 11 institutions

Defendant name	Civil Penalty collected	Collection date
American Express Centurion Bank	\$3,900,000	October 1, 2012
American Express, FSB	\$1,200,000	October 1, 2012
American Express Travel	\$9,000,000	October 1, 2012
Payday Loan Debt Solution, Inc.	\$5,000	December 28, 2012
Abraham M. Pessar (Gordon, <i>et. al</i> )	\$1	February 26, 2013
United Guaranty Corporation	\$4,500,000	April 11, 2013
Genworth Mortgage Ins. Corp.	\$4,500,000	April 15, 2013
Mortgage Guaranty Ins. Corp (MGIC)	\$2,650,000	April 16, 2013
Radian Guaranty Inc.	\$3,750,000	April 29, 2013
American Debt Settlement Solutions, Inc.	\$15,000	June 12, 2013
JPMorgan Chase	\$20,000,000	September 19, 2013
<b>Total</b>	<b>\$49,520,001</b>	

# CFPB Background and Principal Functions: Civil Penalties -- growing

**FY 2014: \$77,502,001** against 22 institutions

Defendant name	Civil Penalty Collected	Collection date
Washington Federal	\$34,000	October 11, 2013
Mortgage Master, Inc.	\$425,000	October 15, 2013
Castle & Cooke Mortgage, LLC	\$4,000,000	November 13, 2013
Cash America International, Inc.	\$5,000,000	November 25, 2013
Meracord, LLC.	\$1,376,000 <sup>2</sup>	November 26, 2013 July 16, 2014
Republic Mortgage Insurance Company	\$100,000	December 5, 2013
American Express Bank, FSB	\$2,000,000	December 23, 2013
American Express Centurion Bank	\$3,600,000	December 23, 2013
American Express Travel Related Services	\$4,000,000	December 23, 2013
Ally	\$18,000,000	December 30, 2013
Fidelity Mortgage Corporation	\$54,000	January 21, 2014
1st Alliance Lending, LLC	\$83,000	March 5, 2014
Bank of America	\$20,000,000	April 17, 2014
RealtySouth	\$500,000	June 4, 2014
Synchrony (GE Capital Retail Bank)	\$3,500,000	June 20, 2014
Stonebridge Title Services, Inc.	\$30,000	June 24, 2014
Ace Cash Express, Inc.	\$5,000,000	July 18, 2014
Colfax (Culver Capital, LLC)	\$1	August 5, 2014

USA Discounters, Ltd.	\$50,000	August 19, 2014
Amerisave Mortgage Corporation	\$8,000,000	August 22, 2014
First Investors Financial Services Group, Inc.	\$2,750,000	August 29, 2014
Global Client Solutions	\$1,000,000	September 5, 2014
<b>Total</b>	<b>\$77,502,001</b>	

# CFPB Principal Functions

## 1. Guidance

- ❑ 39 Guidance Bulletins

<http://www.consumerfinance.gov/guidance>

## 2. Rulemaking

## 3. Supervision and Examination

## 4. Enforcement

# CFPB Background and Principal Functions: Rulemaking

- ➔ General rulemaking authority over enumerated statutes
- ➔ Must weigh costs and benefits of rule to consumers and industry
- ➔ Must monitor the market for risks to consumers
- ➔ Yearly report

# CFPB Background and Principal Functions: Rulemaking (Cont'd.)

- ➔ 2012: 20 Final Rules
- ➔ 2013: 21 Final Rules
- ➔ 2014: 12 Final Rules
- ➔ 23 pending Proposed Rules

# CFPB Background and Principal Functions: Implemented Rules

Implemented rules have focused on residential real estate and loan practices

- ⇒ Mortgage servicing
- ⇒ Loan origination
- ⇒ Appraisals
- ⇒ Home equity and loan counseling

# CFPB Background and Principal Functions: Supervision

- ➔ Non-depository institutions
  - ➔ Periodic reporting and examination
- ➔ Large banks
  - ➔ 10b+ in assets
  - ➔ Regular reporting and examination
- ➔ “Larger Participants” – as CFPB defines them by rule



# CFPB Background and Principal Functions: Supervision Highlights

- ➔ CRAs
  - ➔ Improper procedures to investigate accuracy of reporting consumer debts and disputes
- ➔ Debt collection
  - ➔ Imposition of unlawful fees
  - ➔ Accurate disclosures to debt buyers
- ➔ Deposits
  - ➔ Error resolution requirements: oral vs. written notice
  - ➔ Duty to investigate
- ➔ Student loans
  - ➔ Improper fees and pro rata allocation

# CFPB Background and Principal Functions: Supervision Takeaways

- ➔ Accurate disclosure to consumers
- ➔ Duty to remedy errors
- ➔ Duty to investigate
- ➔ Additional fees will be closely scrutinized

# CFPB Background and Principal Functions: Enforcement Powers

- ➔ Limited jurisdiction: enumerated statutes or "covered persons" and "service providers"
- ➔ Administrative Proceedings or Civil Litigation
- ➔ Civil Investigative Demands (CID)

# CFPB Background and Principal Functions: Enforcement Powers

## Administrative Proceeding before the CFPB v. Civil Litigation

- ➔ Filings "as settled" vary dramatically
- ➔ Considerations for defendant (procedural rules, publicity, decision-maker, discovery, company goals)

# CFPB Background and Principal Functions: Public Enforcement Actions: Data

**FY 2014:** Bureau resolved 40 public enforcement actions

- ➔ Nearly \$4 billion in penalties, redress, and relief
- ➔ More than 5.9 million affected consumers
- ➔ First contested administrative proceeding finished trial. In re PHH Corp.
  - ➔ Alleged mortgage kickback scheme
  - ➔ 3 key takeaways (damages, timing, discovery)

# CFPB Background and Principal Functions: Enforcement: “UDAAP” Authority

UDAAP: authority to investigate and enforce violations of Unfair, Deceptive or Abusive Acts or Practices

- ➔ Restitution
- ➔ Civil Penalties: Wide range depending on intent
  - ➔ *Maximum* penalties: \$5,000 per each day of violation (negligence); \$25,000 per each day of violation (reckless); \$1 million per each day of violation (knowing)
- ➔ Compliance and other mandates

# CFPB Background and Principal Functions: Enforcement Highlights

- ➔ M&T Bank
  - ➔ Deceptive advertising relating to “no fee checking”
  - ➔ Bank ordered to return \$2.9 mm in monthly fees and fined \$200k.
- ➔ GE Capital Retail
  - ➔ Alleged deceptive marketing and discriminatory practices
  - ➔ \$225 mm in refunds
- ➔ Ace Cash Express
  - ➔ Illegal debt collection practices
  - ➔ \$5 mm in refunds, \$5 mm in penalties
- ➔ Flagstar Bank
  - ➔ Delays in mortgage modifications and foreclosure relief
  - ➔ Injunction, \$27.5 mm compensation, \$10 mm in penalties

# CFPB Background and Principal Functions: Enforcement Takeaways

- ➔ Prominently disclose fees
- ➔ Must market from the consumer's perspective
- ➔ Compliance programs are comprehensive and onerous
- ➔ You are responsible for your third party servicers
- ➔ “Responsible Conduct” bulletin
- ➔ Add-on's



# CFPB Background and Principal Functions: CIDs

12 U.S.C. § 5562(c)

- May apply to "any person"
- Can require:
  - Production of documents or tangible things
  - Written reports or answers
  - Oral testimony

# CFPB Background and Principal Functions: CIDs (Cont'd.)

- ➔ **Meet and Confer:** mandatory meet and confer *within 10 calendar days* after receiving the CID
    - ➔ Expected attendees
    - ➔ Failures may cause refusal to consider a Petition
    - ➔ Potential waiver of legal and fact objections
  - ➔ **Petition to modify the CID:**
    - ➔ Submitted by the shorter of:
      - ➔ 20 days after service of the CID
      - ➔ the CID compliance date
      - ➔ Date agreed to by CFPB investigator
    - ➔ The time to respond to the CID is tolled while the petition is pending, except portions of the CID that are not being petitioned
    - ➔ Potential waiver of legal and fact objections
- \*\*\* But consider the “public record” effect of the petition

# CFPB Background and Principal Functions: CIDs (Cont'd.)

- ➔ Document productions and submission of “**tangible things**” must be accompanied by a **sworn certification** of the completeness of the submission
- ➔ **Oral testimony**: under oath and transcribed, where the respondent resides or does business. Audience limited to deponent, lawyer, court reporter, and CFPB officers
- ➔ Information obtained pursuant to a CID is **confidential**, subject to CFPB’s rules
- ➔ Civil contempt available for enforcement of CID

# Novelty: why does it matter what the CFPB has done with...

- ➔ Schools
- ➔ Auto Dealers and Indirect Financiers
- ➔ Limits of jurisdiction?

# CFPB Concerns with Healthcare Industry

➔ White Paper issued December 2014

➔ Link:

<http://www.consumerfinance.gov/newsroom/cfpb-spotlights-concerns-with-medical-debt-collection-and-reporting/>

➔ Focused on

➔ Consumer confusion regarding medical debts

➔ Debt collection

➔ Debt reporting

# CFPB Concerns with Healthcare Industry: Consumer Confusion

- ➔ Medical debts differ from other consumer debts:
  - ➔ Unpredictable
  - ➔ Cost not always identified before “purchase”
  - ➔ Can be very expensive
  - ➔ Timing: debt results from a time of weakness
  - ➔ Payment may not be due proximate to time of “purchase”

# CFPB Concerns with Healthcare Industry: Consumer Confusion

- ➔ Multiple payors (insurance) and confusion regarding who owes what
- ➔ Who owns the debt? Physicians rarely collect their own overdue bills
- ➔ In-network, out-of-network, both
- ➔ Insurance complexities
- ➔ Multiple billers bill separately

# CFPB Concerns with Healthcare Industry: Statistics

- ➔ 52% of all debt collections tradelines on credit reports relate to healthcare debt
- ➔ 19.5% of credit reports contain 1+ healthcare debt tradelines
- ➔ Most healthcare debt tradelines are relatively small: median = \$207, average = \$579
  - ➔ Compare finance companies (median = \$515, average = \$1785), autos (median = \$3995, average = \$5587)
- ➔ FICO report: *any* collection tradeline of \$100+ on a credit report drops a score from 680 to 640, 780 to 680



# CFPB Concerns with Healthcare Industry: Statistics

- ➔ Healthcare collections furnishing is highly fragmented
  - top furnisher accounts for only 3% of tradelines; top 10 furnishers account for only 18%
  - ➔ Contrast: top telecommunications debt furnisher accounts for 37% and top 10 account for 83%

# CFPB Concerns with Healthcare Industry: Debt Collection

- ➔ Bureau study: May-June 2014
  - ➔ 15,000 consumer complaints regarding debt collections
  - ➔ compared persons disputing collection of non-healthcare debt v. collection of healthcare debts
  - ➔ Findings:
    - ➔ 2x more likely to assert the debt was paid than non-healthcare debt disputes
    - ➔ More likely to claim they were not given information to verify the debt
    - ➔ Nearly 2x more likely to assert the collector was collecting the wrong amount
    - ➔ Less likely to complain about collection *tactics*

# CFPB Concerns with Healthcare Industry: Debt Collection

- ➔ Findings (cont'd):
  - ➔ Small healthcare debts may lead to “passive collections”, or “parking debts”
  - ➔ 2005 HFMA Survey: 83% of medical providers report unpaid accounts to a CRA (67% report any amount, 16% only report debts over a limit, 13% do not report at all)
  - ➔ Debt collectors are inconsistent regarding when they delete or re-label collections tradelines

# CFPB Concerns with Healthcare Industry: Debt Reporting

- ➔ Disconnect between reporting of unpaid healthcare debt and creditworthiness of patient
  - ➔ Patient confusion regarding amount of bill, when it is processed through insurance, when it is paid, and when it is due can lead to inadvertent defaults
- ➔ Comparison:
  - ➔ Consumers with 10+ non-healthcare collections tradelines on report – 13% had “clean”\* records
  - ➔ Consumers with 10+ exclusively healthcare collections tradelines – **52%** had “clean” records

\* CFPB defines a consumer’s credit report as “clean” if it reflects no delinquencies greater than 30 days

# CFPB Concerns with Healthcare Industry: Debt Reporting

“The fact that consumers in this [only healthcare debt] group have not repaid these debts, and yet otherwise indicate an ability and willingness to meet their obligations, suggests there is something different about these consumers’ understanding of their debts and their reasons for not paying them.”

# CFPB Concerns with Healthcare Industry: Debt Reporting

- ➔ CFPB approves of proposed measures:
  - ➔ IRS proposed rule:
    - ➔ before a non-profit hospital can begin collecting on bills, consumer must be informed of the bills and the hospital's charitable care policies, and be given time to determine eligibility under those policies
    - ➔ Minimum of 120 days after *billing* date before referring debt to collection company

# CFPB Concerns with Healthcare Industry: Debt Reporting

- ❑ CFPB approves of proposed measures (cont'd):
  - HFMA and Association of Credit and Collection Professionals similar proposal (proposed best practices, Jan. 15, 2014)

# CFPB Concerns with Healthcare Industry: Debt Reporting

- ➔ CFPB approves of proposed measures (cont'd):
  - ➔ Credit score developers: reworking programs to assign different weights to (a) paid versus unpaid collection tradelines, and (b) healthcare debt collection v. non-healthcare debt collections



# CFPB Concerns with Healthcare Industry: Debt Reporting

- ➔ CFPB announced new requirements on Nationwide Consumer Reporting Agencies (NCRAs): must provide regular, standardized accuracy reports regarding key areas CFPB identifies. Report will allow CFPB to identify:
  - ➔ Debt collectors who receive a high percentage of consumer disputes
  - ➔ Industries in which debts are most frequently disputed
  - ➔ Breakdown of debt collectors by industry

# CFPB Concerns with Healthcare Industry: Debt Reporting

- ➔ CFPB issued Consumer Advisory: “7 ways to keep medical debt in check”:
- 1) Review medical bills carefully
  - 2) Get documentation
  - 3) Check insurance and confirm information with physician
  - 4) Act quickly to resolve/dispute bills
  - 5) Negotiate your bills
  - 6) Get financial assistance or support
  - 7) Don't pay bills on credit card if you cannot pay it

Link:

[http://www.consumerfinance.gov/blog/consumer-advisory-7-ways-to-keep-medical-debt-in-check /](http://www.consumerfinance.gov/blog/consumer-advisory-7-ways-to-keep-medical-debt-in-check/)

# Final Thoughts

- ➔ Duty to investigate, duty to remedy
- ➔ Disclosure of fees and accuracy of billing
- ➔ FCRA concerns: what do you furnish and how
- ➔ Debt collection to the extent you are covered by statute
- ➔ Relationships with vendors – do you know what they are doing?
- ➔ CIDs – know your rights and obligations

# THANK YOU

## QUESTIONS?

Albert Lin

Tel: (614) 462-2233

Email:

[Albert.Lin@icemiller.com](mailto:Albert.Lin@icemiller.com)

Steven Forry

Tel: (614) 462-2254

Email:

[Steven.Forry@icemiller.com](mailto:Steven.Forry@icemiller.com)