

CFPB Enforcement

- **Deceptive marketing:** On June 19th, the CFPB ordered GE Capital Retail Bank, now Synchrony Bank, to pay \$225 million in remediation to 746,000 consumers whom the CFPB stated, “were harmed by GE Capital’s deceptive credit card add-on practices.” The CFPB also ordered Synchrony to pay a \$3.5 million civil monetary penalty. Since beginning its examination in December 2012, the CFPB found that telemarketers:
 - Led consumers to believe incorrectly that consumers need not pay for add-on products if consumers paid their card balance;
 - Failed to inform ineligible consumers of their eligibility status;
 - Failed to clarify that consumers were purchasing additional products rather than simply administratively updating accounts; and
 - Falsely represented debt cancellation products as subject to a, “limited time offer.”The CFPB also, in coordination with the Department of Justice, ordered GE Capital to pay \$169,000 in remediation to 108,000 individuals to whom GE Capital did not offer certain debt relief services because the individuals indicated either a preference for communication in Spanish or a mailing address in Puerto Rico. CFPB Director Richard Cordray stated that the CFPB will not assess a penalty for violating the Equal Credit Opportunity Act because GE Capital self-reported the violation and initiated remediation.

CFPB Operations

- **Recess appointments:** On June 26th, the U.S. Supreme Court ruled unanimously in *NLRB v. Noel Canning* that President Obama exceeded the presidential recess appointment authority in 2012 by appointing three members to the National Labor Relations Board. The Court wrote that the Senate, at the time of the appointments, had been meeting in brief sessions every three days and that, “Three days is too short a time to bring a recess within the scope of the [Recess Appointments] Clause.” The Court’s opinion did not reference the CFPB or Director Cordray, who the President also appointed by recess appointment at the same time, but the CFPB and House Financial Services Committee Chairman Jeb Hensarling (R-TX) each issued statements following the decision. CFPB General Counsel Meredith Fuchs stated, “We do not expect this decision to impact the CFPB or its important work.” Hensarling responded that President Obama “clearly and unquestionably” exceeded his appointment authority, thereby, “call[ing] into question the legality of the official actions [Cordray] took during this time period, and may represent a legal risk for the CFPB.” The Senate eventually confirmed Cordray as Director in July 2013, and the following month Cordray published a statement in the Federal Register ratifying as “legally authorized and entirely proper” his actions during his recess appointment (previously reported).

CFPB Outreach

- Consumer empowerment: On June 26th, the CFPB published a blog post overviewing its participation in the second annual National Day of Civic Hacking from May 31st through June 1st. During the event, the CFPB asked participant coders, technology enthusiasts, economists, teachers, high school students, and entrepreneurs to, “come up with ways to empower consumers by building tools and visualizations using two of our databases: our consumer complaint database and our HMDA database.” The CFPB stated in its blog post, “This is exactly the type of involvement we’re hoping for and illustrates the opportunities we have to expand this type of public engagement.”
- Technology and innovation: On June 23rd, the CFPB announced that it is accepting applications for the next round of Technology & Innovation Fellows, a two-year program for software developers, graphic and user experience designers, data specialists, and cybersecurity professionals who are interested in applying technology to furthering the CFPB’s mission. The CFPB stated that fellows had been instrumental in creating and building various CFPB tools, including the Ask CFPB tool and eRegulations.

This newsletter is published by AGG’s Consumer Regulatory Practice Team. For more information or to subscribe, please contact Bob Belair at robert.belair@agg.com or Dave Felt at david.felt@agg.com.

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