

To the Point!

legal, operations, and strategy briefs for financial institutions

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Unfair, Deceptive or Abusive Acts or Practices

Illinois Attorney General Lisa Madigan and New York Department of Financial Services Superintendent Benjamin Lawsky recently became the first state officials to exercise their authority under Section 1042 of the Dodd-Frank Act to bring civil actions to enforce the Act's prohibition on unfair, deceptive or abusive acts or practices ("UDAAP").

The Illinois suit, brought in state court, accuses a lender of offering a short-term loan product designed to avoid compliance with Illinois predatory lending laws, misrepresenting the cost of the loan and failing to inform consumers that minimum payments will not pay off the loan.

The New York suit, brought in federal court, alleges that a subprime auto lender failed to refund positive credit balances to customers unless specifically requested, hid from customers the existence of the balances and filed false unclaimed property reports relating to the balances.

Financial institutions should monitor these cases because they will involve state and federal courts, rather than solely the CFPB, making determinations of the proper application of the Dodd-Frank prohibition on UDAAP practices related to consumer financial service products.



Remittance Transfer Rule

The CFPB has issued proposed revisions (the "Proposal") to clarify various aspects of the Remittance Transfer Rule (the "Rule"). The Rule applies to international money transfers for personal, family or household purposes, and under the Proposal the depository institution can rely on the type of account from which the transfer will be made to determine the purpose of the transfer. Therefore, transfers are not covered by the Rule if they are made from a commercial or business account or an account owned by a business entity. Under the Proposal, faxes are designated as writings; thus, the disclosures required by the Rule may be made by fax and are not subject to the additional requirements for electronic disclosures. With respect to the error-resolution provisions of the Rule, the Proposal clarifies that a financial institution is prohibited from deducting its fee from the amount refunded or from the new transfer when an error occurs, including an error where the sender failed to provide correct information.

In addition, the CFPB proposes to extend until July 21, 2020 permission to estimate certain third-party fees and exchange rates currently set to expire on July 21, 2015. Finally, the CFPB has requested comments on whether transfers to U.S. military installations or other U.S. government installations abroad, such as U.S. diplomatic missions, should be subject to the Rule.

All financial institutions should determine whether revisions to their policies and procedures are required to adhere to these clarifications of the Rule.



CFPB Advisory Encourages Student Loan Borrowers to Request Co-signer Release

The CFPB recently released an advisory describing complaints from private student loan borrowers placed in default due to the death of a co-signer or a change in behavior of the co-signer (i.e., bankruptcy), even though their loans were current. The advisory recommends that borrowers pursue a co-signer release to avoid such a “surprise default.”

The CFPB also provided sample letters that borrowers can use in making this request of their student loan servicer. The sample letters include a series of questions about the lender’s policy regarding co-signer releases, to be answered if the servicer determines the borrower is ineligible for a co-signer release, including the following:

- What is your current co-signer release policy?
- For what reason(s) am I ineligible for co-signer release?
- If I am not eligible for co-signer release now, when will I become eligible?
- What steps do I need to take to qualify for co-signer release?
- Do you anticipate modifying these requirements in the future? Will any future modifications apply to me when I seek to release my co-signer?

The sample letters also direct the servicer to update the borrower’s file, indicating that the borrower wishes to obtain a co-signer release and requests that the servicer contact the borrower when the release is available.

To avoid customer complaints and regulatory scrutiny, financial institutions with student loan portfolios should work with their servicers to ensure they have (i) a policy for determining when co-signer releases are granted; (ii) prepared responses to the additional questions posed by the CFPB in its sample letter; and (iii) a procedure to contact borrowers who have requested to be notified when eligible for a co-signer release.

FFIEC Joint Statement—Distributed Denial-of-Service (DDoS) Cyber-Attacks



The FFIEC members issued a joint statement focusing on DDoS attacks that can slow website response time, prevent customers from accessing a financial institution’s website, adversely affect back-office operations and in some circumstances be used by criminals as a diversionary tactic to initiate fraudulent wire or ACH transfers using stolen customer or bank employee credentials. The statement outlines the FFIEC’s expectation that financial institutions include DDoS attacks in their ongoing information security and incident response plans.

Financial institutions are directed to take these steps, as appropriate:

- maintain an ongoing program to assess information security risks, including risks to external websites and online accounts;
- monitor Internet traffic to the institution’s website to detect attacks;
- activate incident response plans and notify service providers, including Internet service providers (ISPs), if the institution suspects that a DDoS attack is occurring — such response plans should include notifying customers concerning the safety of their accounts;
- ensure sufficient staffing for the duration of the DDoS attack and consider hiring pre-contracted third-party servicers, as appropriate, that can assist in managing the Internet-based traffic flow and identify how the institution’s ISPs can assist;
- consider sharing information with law enforcement and voluntary organizations such as the Financial Services Information Sharing and Analysis Center; and
- evaluate any gaps in the institution’s response following attacks and in its ongoing risk assessments, and adjust risk management controls accordingly.

The statement also includes a list of publications that can be used by financial institutions to mitigate risks of DDoS attacks. Financial institutions should become familiar with this statement and review and revise, as necessary, their information security and incident response plans to include requirements contained in this new guidance.

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