

# To the Point!

legal, operations, and strategy briefs for financial institutions

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## Student Loan Servicing — Unfair or Deceptive Acts or Practices

The Consumer Financial Protection Bureau (CFPB) recently issued a report highlighting potential violations it discovered during recent examinations of banks and nonbank providers of consumer financial products and services. The CFPB set out six unfair or deceptive acts or practices that its examiners uncovered while examining student loan servicers for compliance with federal consumer financial protection laws:

1. **Allocating partial payments in a way that maximizes late fees.** Where borrowers made a single payment for multiple student loans that was less than the total amount due, the CFPB examiners found that some student loan servicers allocated the payment proportionately to each loan, resulting in late fees being assessed on all of the loans and causing all the loans to become delinquent.
2. **Making misrepresentations about required minimum payments on billing statements.** CFPB examiners found that some student loan servicers inflated the minimum payment amount on billing statements to improperly include amounts that were in deferment and not due.
3. **Charging improper late fees.** CFPB examiners found that some student loan servicers unfairly charged late fees when payments were received during the grace period.
4. **Failing to provide accurate tax information.** CFPB examiners found that some student loan servicers failed to provide consumers with accurate information or required additional certifications before reporting allowable interest deductions for tax filing purposes.
5. **Misrepresenting dischargeable student loans in bankruptcy.** CFPB examiners found that some student loan servicers told consumers that student loans are never dischargeable in bankruptcy even though discharge is possible if the borrower can prove “undue hardship” in court.
6. **Making improper telephone communications.** CFPB examiners found that some student loan servicers improperly made debt collection calls to delinquent borrowers early in the morning or late at night.

In December, the CFPB filed two actions against debt relief companies targeting consumers with student loans. The lawsuits allege violations of the Telemarketing Sales Rule and unfair practices by these companies related to charging illegal advance fees, false promises of lower payments and quick relief from default or garnishment, false representation of affiliation with the U.S. Department of Education, and deception about the costs and terms of services provided.

We advise lenders with student loan portfolios to become familiar with the practices identified in the CFPB report and these lawsuits and then review their own policies and procedures, and those of their service providers, to ensure that these policies, procedures and practices are consistent with the CFPB’s guidance regarding UDAAP.



## OCC Revises Its Truth in Lending Handbook

The Office of the Comptroller of the Currency (OCC) has issued a new Truth in Lending (TILA) Handbook for examiners. This Handbook replaces the OCC’s December 2010 version and includes the Dodd-Frank Act transfer of TILA rulewriting authority to the CFPB and extensive amendments to mortgage lending requirements effective in January 2014. The 225-page Handbook provides guidance for national banks and federal savings associations on the OCC’s examination procedures and its views on TILA compliance.



## FFIEC Releases Revised BSA/AML Examination Manual

The Federal Financial Institutions Examination Council (FFIEC) has revised its Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual, which was last updated in 2010. The revised Examination Manual includes regulatory changes that have occurred since 2010 and provides guidance on supervisory expectations related to a bank's obligation to comply with the BSA and safeguard the bank from money laundering and terrorist-financing activities. The significant changes are identified in the Examination Manual's table of contents with the designation "2014" and are summarized in the interagency statement issued with the new manual. Among the changes highlighted in the new Examination Manual, the FFIEC has

renamed the section on Electronic Cash as "Prepaid Access" and expanded its discussion of risk factors and risk mitigation for prepaid products.

## NACHA Same-Day ACH Processing Proposal



NACHA has issued its Same-Day Processing Proposal amending the NACHA Operating Rules (the "Proposal"). ACH payments are currently settled on the next business day. The Proposal would enable same-day processing of most ACH payments. Under the Proposal, only international ACH transactions and individual large-dollar transactions over \$25,000 would be ineligible for same-day processing. All receiving depository financial institutions (RDFIs) would be mandated to receive same-day payments, thus providing certainty to originating depository financial institutions (ODFIs) and originators.

The Proposal includes a three-step phased-in approach. The first phase, which would become effective in September 2016, would include only ACH credits and would require 10:00 a.m. and 3:00 p.m. transmission times and a 5:00 p.m. settlement time.<sup>1</sup> The second phase would become effective in September 2017 and would include both ACH credits and debits with the same two transmission times and the same end-of-day settlement time. The third and final phase, which would become effective in March 2018, would include both ACH credits and debits, the same two transmission times and both a 12:00 p.m. and a 5:00 p.m. settlement time.

The Proposal recognizes that implementation of the new requirements will mandate system upgrades by banks and includes a flat interbank fee of 8.2 cents per transaction to address the costs associated with these upgrades.

We encourage banks to become familiar with the Proposal and to provide comments. NACHA is accepting comments through February 6, 2015.

<sup>1</sup> All times are Eastern Time.

## Chapman and Cutler LLP

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