

PUBLICATION

What You Need to Know About the CFPB's Priorities for 2016 and 2017

Authors: Kristine L. Roberts

March 14, 2016

The CFPB recently announced its [policy priorities](#) for the next two years. There are not too many surprises, since the CFPB has been targeting most of these areas in recent months and years. Here's what the Bureau is planning, and what you can do to prepare for what is coming:

Arbitration. The CFPB has been studying pre-dispute arbitration provisions in consumer contracts since 2012. In March 2015, the Bureau [reported](#) on its [study](#) of arbitration agreements, including a comparison of consumer finance disputes that were resolved through arbitration, individual lawsuits and class actions. Among other findings, the study noted that roughly 32 million consumers each year were eligible for relief as part of class action settlements in federal court, and the Bureau expressed concern about arbitration clauses blocking class actions.

In October the Bureau [announced two proposals](#) it is now considering: a rule prohibiting pre-dispute arbitration clauses that waive the right to bring class actions, and a rule requiring that companies report claims and awards in arbitration to the Bureau. According to Director Richard Cordray during a [speech](#) in February to the American Constitution Society, "Companies could still have an arbitration clause, but they would have to say explicitly that it does not apply to cases brought on behalf of a class unless and until the class certification is denied by the court or the class claims are dismissed in court."

We expect that CFPB will announce the new rules in the first part of 2016, and they would likely apply to arbitration agreements beginning in early 2017. While the new rules may give rise to legal challenges, since the U.S. Supreme Court upheld class action waivers in agreements to arbitrate as recently in 2013 in *American Express v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013), it could take years before any challenge reaches the Court. Entities regulated by the CFPB will need to plan for the time and expense of revising contract language and complying with reporting requirements about arbitration claims, as well as for increased legal and compliance costs due to greater class action exposure.

Consumer Reporting. The CFPB cites concerns over consumers who lack credit reports and complaints received by the Bureau about inaccuracies in credit reports. The Bureau has targeted both the [credit reporting companies](#) that track a consumer's credit history and the financial institutions that furnish information to the credit bureaus. Both groups can expect continued investigations by the CFPB into alleged inaccuracies and deficient dispute resolution mechanisms. Back in 2012, the CFPB [warned](#) credit reporting agencies that they may be violating the law by failing to provide a streamlined process for consumers to request free reports. Now the Bureau says it is considering rulemaking about furnishing and reporting company accuracy and dispute resolution, and we expect that rulemaking to happen during the next two years.

Debt Collection. The CFPB has made the debt collection industry an enforcement priority since 2012. The Bureau issued a rule establishing its [supervisory authority over large nonbank debt collectors in October 2012](#) and began accepting [debt collection complaints in July 2013](#). Because about one-third of all consumers with credit reports have at least one collection item on their credit reports, and because the highest number of complaints received by the CFPB are about collections, the Bureau continues to set its sights on first- and third-party debt collectors, collection agencies and debt buyers. The Bureau also continues to bring

enforcement actions seeking monetary penalties and requiring companies to overhaul their debt collection processes, such as the [actions](#) the Bureau took against Citibank in February.

In December, the CFPB published a [bulletin](#) highlighting in-person debt collection activities that violate the Fair Debt Collection Practices Act (FDCPA) or constitute unfair, deceptive or abusive acts or practices (UDAAPs). The bulletin listed such examples as visits to a consumer's workplace that led to negative employment consequences or visits to a consumer's home that are harassing or harm the consumer's reputation.

During the next two years, the Bureau will be working on finalizing regulations for both first-party and third-party debt collectors. Proposed regulations may include prohibiting particular acts or practices, requiring disclosures about debtor rights and the debt collection process, and mandating that debt collectors obtain and retain the information necessary to substantiate the debts at issue. In the meantime, debt collectors should expect continued rigorous supervision and enforcement actions.

Demand-Side Consumer Behavior. Recent studies of consumer attitudes about financial security and about retirement saving indicate that large numbers of Americans report struggling to make ends meet and are not financially prepared for retirement. In response, the CFPB plans to spend time during the next two years to research and develop consumer financial decision-making tools and educational programs to help consumers build financial skills and make better decisions.

Household Balance Sheets. The Bureau believes that existing research on household financial decisions does not adequately address a household's balance sheet over time or how a household's use of financial products changes. According to the Bureau, better and more comprehensive studying of household balance sheets will help identify trends and lead to more effective regulations. Over the next two years, the CFPB will devote additional resources to studying and understanding the dynamics of household balance sheets.

Mortgages. The \$10 trillion mortgage market has been a CFPB priority since the agency was first created. Back in January 2014, the agency's [Qualified Mortgage Rule](#), which governs how lenders assess a borrower's ability to repay a mortgage before making the loan, went into effect. That rule and the creation of a National Mortgage Database, which the agency [intended](#) as a "comprehensive repository of detailed mortgage loan information," have been controversial, with critics charging that the QM Rule gives lenders insufficient flexibility and complaining about the possible risks from the CFPB's amassing of so much consumer data.

Last fall the CFPB finalized the Home Mortgage Disclosure Act [regulations](#), which are designed to improve information reported about the residential mortgage market and to shed more light on consumers' access to mortgage credit. Mortgage lenders will be required to report on all applications and mortgage loans. Additional requirements include reporting on property value, term of the loan, the duration of any teaser or introductory interest rates, as well as more information about underwriting and pricing to help the CFPB identify possible fair lending problems. Lenders must collect the new information starting on January 1, 2018, and start reporting by March 1, 2019.

The CFPB is also concerned about discrimination in the mortgage market. According to the CFPB, both denial rates and mortgage prices are higher, and credit access is lower for people of color. Lenders should expect that supervisory and enforcement actions will target alleged discriminatory access to mortgage credit.

Finally, the CFPB will be working on implementation of its [servicing rules](#), which have been in effect since January 2014 and are designed to protect delinquent borrowers suffering from economic setbacks and to ensure that servicers handle future delinquencies fairly.

Open-Use Credit. The open-use credit market encompasses a wide range of financial products such as credit cards, overdraft products, payday loans, auto title loans and installment loans. The Bureau complains that lenders can structure these products to ensure their own success even if the borrower cannot afford to repay the loans when due. Even more concerning to the CFPB is its finding that these products are typically used by consumers from low- and moderate-income households who are disproportionately female and persons of color. The agency's supervisory and enforcement actions in the coming years will focus on alleged deceptive marketing and debt collection processes.

The CFPB has also been critical of bank overdraft products, as the agency noted in a [2014 report](#) that the vast majority of overdraft fees are paid by a fraction of customers and that the transactions that lead to overdrafts can be small, averaging \$50. Over the next year or so, the CFPB will be initiating a rulemaking process intended to make the overdraft market "fairer and more transparent."

In November 2014, the CFPB [proposed rules](#) to govern prepaid products. A final rule on prepaid products is expected in the next few months and is likely to cover payroll cards, certain government benefit cards, student financial aid disbursement cards, tax refund cards and certain peer-to-peer payment products. The new rules are expected to require enhanced disclosures provided to consumers, better access to account information and requirements that prepaid companies investigate and resolve errors and limit consumers' losses when funds are stolen or cards are lost.

Small Business Lending. Small business loans, including term loans, credit lines and business credit cards, have a market size of more than \$1 trillion. This market serves more than 28 million businesses, including those owned by women and minorities, and the Bureau is concerned about discrimination. Under the Dodd-Frank Act, the CFPB is required to issue a rule on small business lending data collection. During the next two years, the Bureau will start that process by beginning market research for rulemaking on business lending data collection, and it is also considering building additional infrastructure to handle small business lending complaints. Lenders should also be prepared that the Bureau will continue to examine them for compliance with fair lending laws.

Student Lending. The Bureau has expressed concern about the amount of outstanding student debt – almost \$1.2 trillion – and the number of borrowers in default or struggling to make payments - roughly 11 million people. In the fall 2015, the CFPB published a [report](#) that identified deficiencies in student loan servicing and recommended reforms to improve consistency, accuracy, accountability and transparency. Those findings and recommendations, coupled with significant public and political pressure, have raised the profile of this problem. The CFPB has and will likely continue to [partner](#) with the U.S. Department of Education to improve student loan servicing practices and reduce defaults. We expect continued supervisory and enforcement activity as the Bureau targets servicers that it believes are not complying with their obligations to borrowers.