

## CFPB Enforcement by the Numbers

### ***A substantive and statistical analysis of the Consumer Financial Protection Bureau's 62 publicly available enforcement actions to date reveals preliminary trends and patterns.***

Established in 2011 in the wake of the financial crisis, the Consumer Financial Protection Bureau (CFPB or the Bureau) is charged with enforcing a number of federal consumer financial protection laws, including Title X of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (Dodd-Frank) — which includes a prohibition against unfair, deceptive or abusive acts or practices (UDAAP) in connection with transactions for consumer financial products; the Telemarketing and Consumer Fraud and Abuse Prevention Act; several rules issued by the Federal Trade Commission;<sup>1</sup> and 18 other pre-existing consumer financial protection laws.<sup>2</sup> This White Paper examines the CFPB's first 62 publicly disclosed enforcement actions<sup>3</sup> over the past three-and-a-half years.<sup>4</sup> This examination allows us to identify trends and patterns in the Bureau's enforcement activities and in the ways in which companies subject to its enforcement power are being affected.

### Overview

Because this analysis is limited to publicly available information, this White Paper does not include Bureau inquiries or actions that have not yet been made public by either the Bureau or the target company. Even with those limitations, however, this review of the 62 public actions provides us with sufficient data to identify the types of companies the Bureau is targeting and the laws the it has sought to enforce; and to evaluate the potential settlement terms and costs facing defendants in CFPB enforcement cases.

### Patterns

This White Paper describes in detail the following patterns based on the Bureau's enforcement precedent to date:

- **Industry Sectors:** The Bureau has targeted businesses across a variety of industry sectors. To date, the Bureau has focused on eight industry sectors, with defendants ranging from large banks to modestly sized regional land developers and title insurance companies. The Bureau is continuing to target more and more industries each year.
- **Consumer Financial Protection Laws:** Although the Bureau has responsibility for enforcing dozens of financial laws, in practice, it has largely focused on just a half dozen laws, with most of the activity falling under UDAAP provisions in Dodd-Frank and a handful of other laws. Over time, the Bureau appears to be looking to new and different statutes to enforce federal consumer financial protection laws.

- **Enforcement Forum:** Under the applicable regulations, the Bureau has authority to bring enforcement actions in either administrative proceedings or federal district court. To date, the Bureau's actions have been roughly split between the two fora; however, a number of factors, including size of the defendants, appear to play a factor in the Bureau's forum choice.
- **Remedies:** The Bureau has settled or otherwise reached final judgment in 48 cases, which gives us insight into the nature of the penalties and remedies levied against companies subject to the Bureau's enforcement efforts. Based on our review, defendants are almost always subject to civil penalties, are likely to be subject to other equitable monetary remedies (e.g., restitution, disgorgement), and could be subject to a variety of other remedies available to the Bureau (e.g., monitoring, compliance enhancements, reporting requirements, etc.). Notably, very few respondents were required to admit or deny the underlying allegations of law and fact, although many did admit to the Bureau's personal and subject matter jurisdiction.

### Priority "Clusters"

After reviewing the details of these 62 publicly available enforcement actions, we also identified five "clusters" of enforcement activity that highlight the Bureau's enforcement priorities, and help illustrate the types of remedies available to the CFPB. This White Paper describes clusters involving credit card products, mortgage insurance, mortgage origination services, mortgage assistance relief services, and auto loans. The White Paper concludes with reflections on new enforcement clusters that may be emerging as the Bureau expands its enforcement reach and implements new agency regulations.

## Breaking Down the Trends

### Industry Sectors Targeted

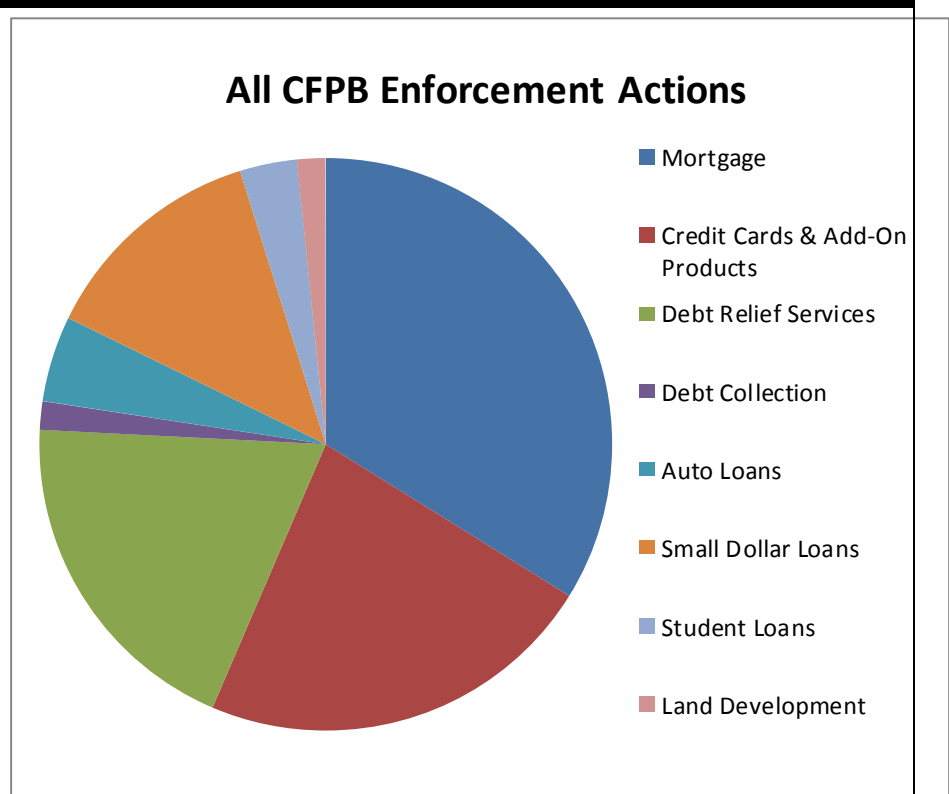
The Bureau has jurisdictional reach across a wide range of industries, under a variety of consumer protection laws. Based on our review of publicly available information, we categorized the companies subject to Bureau actions into the following sectors:

- Mortgage Industry<sup>5</sup>
- Credit Cards & Add-on Products
- Debt Relief Services<sup>6</sup>
- Debt collection
- Small-dollar Loans (including payday loans)
- Land Development<sup>7</sup>
- Auto Loans
- Student Loans

As illustrated in Table 1, the Bureau has focused significant attention on the mortgage industry, which represents 21 cases or 33.9 percent of all public enforcement actions. Companies that provide credit cards and add-on products follow closely behind (14 cases or 22.6 percent), followed by debt relief services (12 cases or 19.4 percent) and small-dollar loans (eight cases or 12.9 percent). Whether the CFPB targeted these industries as part of coordinated industry sweeps, or if the industry focus was more organic remains unclear. Table 1 also identifies the other industries that have been targeted by the Bureau to date.

**Table 1: Enforcement Actions by Industry**

	All CFPB Enforcement Actions
<b>Mortgage Industry</b>	21 (33.9%)
<b>Credit Cards &amp; Add-on Products</b>	14 (22.6%)
<b>Debt Relief</b>	12 (19.4%)
<b>Debt Collection</b>	1 (1.6%)
<b>Auto Lending</b>	3 (4.8%)
<b>Small-dollar Loans</b>	8 (12.9%)
<b>Student Loans</b>	2 (3.2%)
<b>Land Development</b>	1 (1.6%)
<b>Total</b>	62 (100%)



### Sector Trends Over Time

The data also revealed that the Bureau has continued to expand its enforcement targets over time. In 2012, the first year the Bureau brought enforcement actions, all of the CFPB’s cases were in the credit card and debt relief sectors. In 2013, the Bureau added mortgage cases, auto lending, and land development cases to its enforcement agenda, with a plurality (eight cases) focused on the mortgage sector. And in the first 10 months of 2014, the Bureau added cases in two new industries — student lending and debt collection companies — now reaching eight industries. Mortgage cases again constituted a plurality (nine) of the 27 cases filed thus far in 2014.

### Size of Target Companies

The Bureau’s enforcement record also confirms that the CFPB has targeted both large firms and small entities. In the auto loan and credit card product sectors, for example, the Bureau has targeted large, name-brand companies — e.g., JPMorgan Chase Bank and American Express. These entities are notably larger than most of the firms targeted in other industry sectors, such as the mortgage and debt relief services sectors (see Table 2). The Bureau has also targeted small firms in every industry but credit cards, including entities with annual operating revenues of less than US\$250,000.

**Table 2: Defendant Size (Annual Operating Revenue<sup>8</sup>) by Industry**

All values in US\$	Auto	Credit Card	Debt Relief	Mortgage	Small-dollar
Highest	\$19.312 billion	\$71.916 billion	\$50 million	\$1.77 billion	\$1.8 billion
Mean	\$7.55 billion	\$16.316 billion	\$18.76 million	\$307.5 million	\$275.4 million
Median	\$5.445 billion	\$9.138 billion	\$14.4 million	\$45.1 million	\$25.3 million
Lowest	\$950,000	\$24.3 million	\$1.9 million	\$230,000	\$110,000

## Use of Enforcement Statutes

Even though the Bureau has access to a menu of dozens of consumer financial protection laws under which it can bring enforcement actions, it has focused on just seven laws and their implementing regulations:

- 41 of the Bureau’s enforcement actions to date (66.1 percent of publicly available cases) involved allegations of UDAAP under the Consumer Financial Protection Act (CFPA) or other statutes
- 14 cases (22.6 percent) alleged violations of the anti-kickback provision of the Real Estate Settlement Procedures Act (RESPA)
- 10 cases (16.1 percent) involved RESPA’s prohibition on paying or accepting unearned fees
- 11 cases (17.7 percent) enforced provisions of the Telemarketing Sales Rule and Regulation O that prohibit charging a fee prior to settling a customer’s debt (eleven cases or 17.7 percent)
- 4 cases (6.5 percent) alleged violations of civil rights laws such as the Fair Housing Act and Equal Credit Opportunity Act (ECOA)
- 2 cases (3.2 percent) concerned the failure to comply with reporting requirements under Home Mortgage Disclosure Act (HDMA)
- 2 cases (3.2 percent) alleged violations of the Fair Debt Collection Practices Act (FDCPA)

Unsurprisingly, the statutes being enforced tie closely to the industry of the target company. For example, the cases against respondents in the mortgage sector largely include allegations of kickbacks in violation of RESPA (61.9 percent of mortgage cases) or RESPA’s prohibition on accepting or paying unearned fees (38.1 percent). On the other hand, only five mortgage cases have involved UDAAP practices, although we recognized a recent movement toward including UDAAP allegations in cases against mortgage industry defendants. Three of these five cases were brought in the latter portion of 2014.

By contrast, a majority of the credit card and debt relief cases involved UDAAP allegations (100 percent and 83.3 percent, respectively).<sup>9</sup> And nearly all of the debt relief services cases (91.7 percent) involved a particular kind of “unfair” practice: charging fees for debt settlement services before a certain percentage of the customer’s debts have been settled.<sup>10</sup> See Table 3.

	<b>Mortgage Cases</b>	<b>Debt Relief Cases</b>	<b>Credit Cards &amp; Add-on Products</b>
<b>UDAAP</b>	5 (23.8%)	10 (83.3%)	14 (100%)
<b>Civil rights violations</b>	1 (4.8%)	0 (0%)	2 (14.3%)
<b>Paying or receiving kickbacks in violation of RESPA</b>	13 (61.9%)	1 (8.3%)	0 (0%)
<b>Paying or receiving unearned fees in violation of RESPA</b>	8 (38.1%)	2 (16.7%)	0 (0%)
<b>Charging fee in advance of debt settlement<sup>11</sup></b>	0 (0%)	11 (91.7%)	0 (0%)
<b>Failure to comply with the Home Mortgage Disclosure Act (HMDA)</b>	2 (9.5%)	0 (0%)	0 (0%)
<b>Tying loan officer compensation to loan terms</b>	1 (4.8%)	0 (0%)	0 (0%)

**Joint Enforcement**

Of the first 62 cases, nine involved other co-plaintiffs, including the U.S. Department of Justice (DOJ), the Federal Deposit Insurance Corporation, and state attorneys general (AGs).<sup>12</sup>

However, since December 2013, no federal government agency has joined as a plaintiff in a CFPB action, including in cases similar to those where they joined in the past.<sup>13</sup> Based on public statements by CFPB Director Richard Cordray, however, this should not be perceived as a trend: the Bureau is reportedly continuing to work in tandem alongside the Justice Department in ongoing matters.<sup>14</sup>

Director Cordray has also stressed the Bureau’s commitment to working alongside state AGs, as evidenced by previous enforcement actions alongside state prosecutors against mortgage service providers, payday lenders, debt collectors, online loan servicers, and credit card providers.<sup>15</sup>

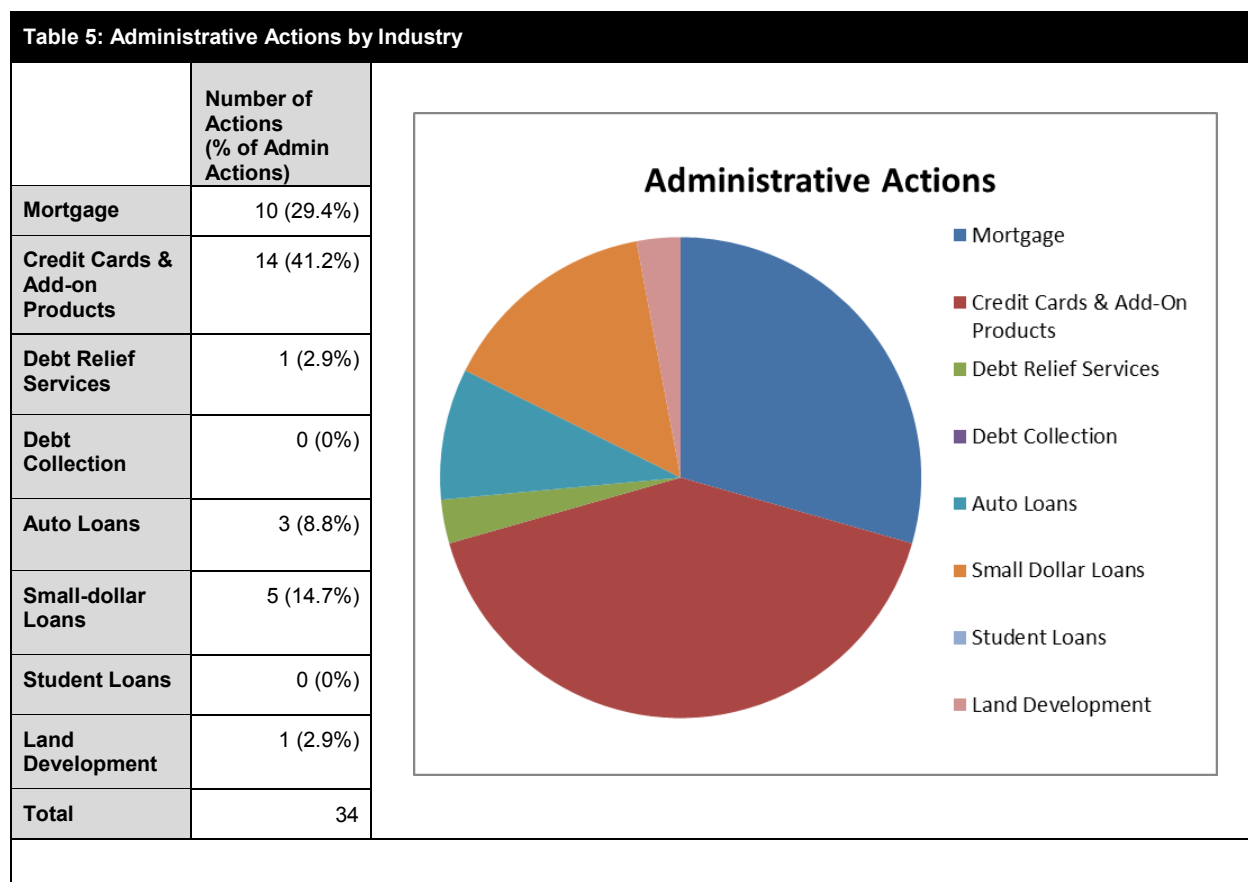
**Choice of Forum**

Under Dodd Frank, the Bureau may institute enforcement proceedings in federal or state court, or pursuant to the Bureau’s administrative adjudicatory process.<sup>16</sup> In practice, the Bureau has roughly split its choice of forum: 28 of the Bureau’s cases have been filed as civil actions in federal district court and 34 were filed as administrative actions. Based on the nature of the information available to us, almost all cases brought administratively have already been resolved through consent orders. Of the 28 cases filed in federal court, 13 are pending in the litigation process.<sup>17</sup> See Table 4.

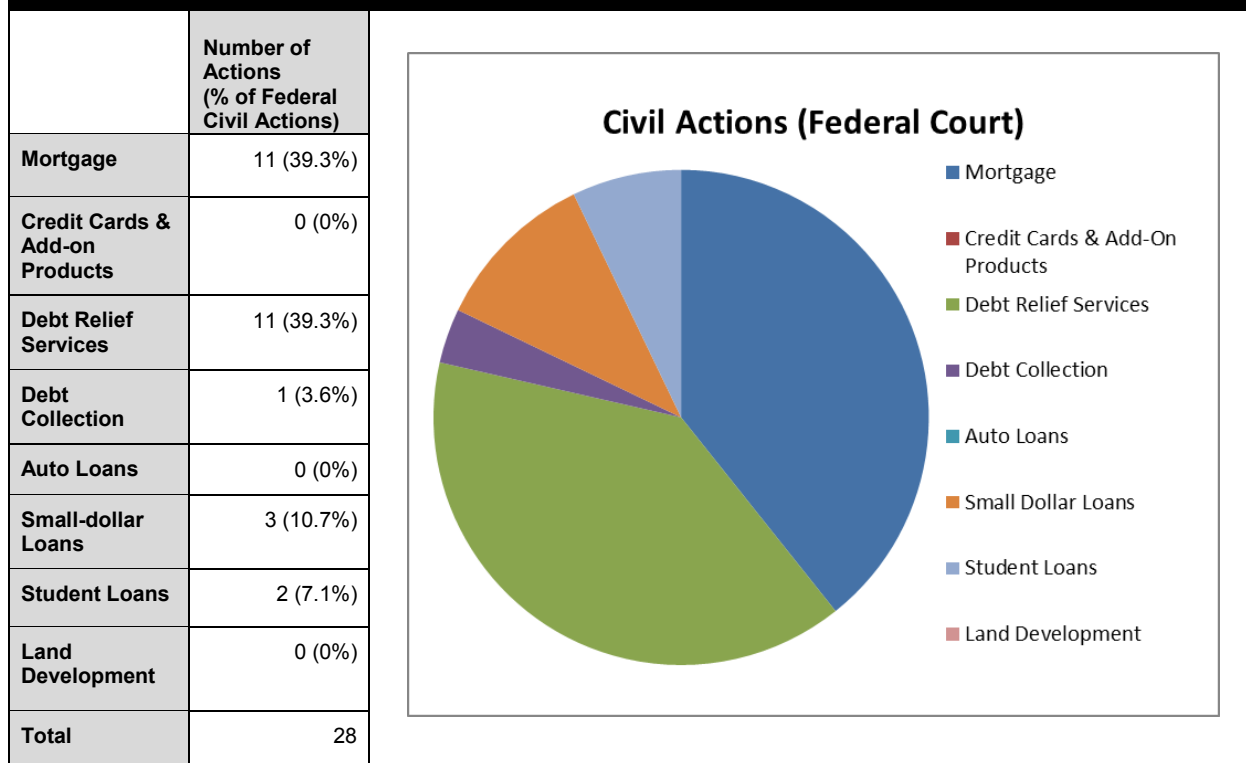
	<b>All CFPB Enforcement Actions</b>	<b>Federal Court</b>	<b>Administrative Proceedings</b>
<b>Non-settlement Resolution</b>	2	2	0
<b>Settlement or Consent Order</b>	46	13	33
<b>Pending</b>	14	13	1

The Bureau's choice of forum may be influenced by the defendant's industry, size or sophistication. In the credit card and auto lending sectors, for example, almost all of the respondents are large depository institutions with assets greater than \$10 billion. And with the exception of *Suntrust Mortgage Inc.*, all of these cases have been handled in administrative proceedings. In addition to being large, sophisticated companies with extensive legal and financial resources, these companies are also subject to the Bureau's examination authority, or the process by which the Bureau examines and enforces regulations for banks and credit unions with greater than \$10 billion in assets; mortgage-related business (such as lenders, servicers and mortgage brokers); and large nonbank financial businesses (such as payday lenders, debt collectors and consumer reporting agencies).<sup>18</sup>

By contrast, the firms whose cases were brought in federal court were more frequently smaller, non-depository institutions that were not likely subject to the Bureau's examination authority. Tables 5 and 6 illustrate the specific industries subject to Bureau proceedings in federal versus administrative settings.



**Table 6: Civil Actions by Industry**



Finally, the Bureau’s forum choices do not reveal any changes or trends over time. Five of the eight cases filed in 2012 were administrative actions (62.5%); 13 of the 27 cases filed in 2013 were administrative actions (48%); and 16 of the 27 cases filed in the first ten months of 2014 were administrative actions (59%).

### Remedies

Perhaps most important to companies evaluating CFPB enforcement risks, the Bureau’s enforcement record helps us better understand the practical effect of such proceedings — how much will the penalties cost defendants, and what are the other possible consequences. To date, 48 of the Bureau’s 62 enforcement actions have resulted in stipulated judgments, settlements or consent orders, 14 cases are still pending, one case concluded with a default judgment, and the final matter concluded with summary judgment in favor of the government.

The 48 cases that have been resolved have resulted in a range of outcomes for companies, including civil penalties, equitable monetary relief, disgorgement and other equitable damages. Very few of the settlements have required the target company to admit the facts alleged by the Bureau. We break down each of these categories of remedies below.

Under 12 U.S.C. § 5565(a)(2), the Bureau can seek a range of relief, including, without limitation:

- Rescission or reformation of contracts
- Refund of moneys or return of real property
- Restitution

- Disgorgement or compensation for unjust enrichment
- Payment of damages or other monetary relief
- Public notification regarding the violation
- Limits on the activities or functions of the person
- Civil monetary penalties

The Bureau does not have the authority to impose exemplary or punitive damages. 12 U.S.C. § 5565(a)(3). Table 7, below, provides an overview of the types of penalty imposed on CFPB defendants by industry.

	<b>Mortgage (% of cases not pending)</b>	<b>Debt Relief (% of cases not pending)</b>	<b>Credit Card (% of cases not pending)</b>	<b>Total (% of cases not pending)</b>
<b>Civil Penalty</b>	15 (83.3%)	6 (85.7%)	13 (92.9%)	40 (83.3%)
<b>Restitution or Other Equitable Monetary Relief</b>	6 (33.3%)	5 (71.4%)	13 (92.9%)	32 (66.7%)
<b>Disgorgement<sup>19</sup></b>	5 (27.8%)	1 (14.3%)	5 (35.7%)	17 (35.4%)

### **Civil Penalties**

Based on enforcement precedent, almost all companies—over 80%—subject to CFPB enforcement proceedings ultimately receive some sort of civil monetary penalty. In the past, these penalties have ranged from \$1 to \$468.3 million. As described in Table 8, the average civil penalty has been just over \$13.4 million, with the median penalty at \$1.05 million.

The CFPB outlines a formula for calculating these penalties, and provides a list of mitigating factors that allow the Bureau to determine the final penalty amount. For any violation of a Federal consumer financial law, civil penalties may not exceed \$5,000 for each day during which such violation or failure to pay continues. If a person *recklessly* violated a Federal consumer financial law, the civil penalty may not exceed \$25,000 per day. And if a person *knowingly* violated a Federal consumer financial law, the civil penalty may not exceed \$1,000, 000 per day. Mitigating factors include:

- The size of financial resources and good faith of the person charged
- The gravity of the violation or failure to pay
- The severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided
- The history of previous violations
- Such other matters as justice may require<sup>20</sup>

Although civil monetary penalties appear largely unavoidable, companies will look to these factors to argue for a reduced penalty.



**Table 8: Civil Penalty Values by Selected Industries**

All values in US\$	Total	Credit Card	Debt Relief	Mortgage
<b>Highest</b>	\$468.3 million	\$25 million	\$1.376 million	\$468.3 million
<b>Mean</b>	\$13.4 million	\$8.235 million	\$441,750	\$28.1 million
<b>Median</b>	\$1.05 million	\$4.5 million	\$49,000	\$462,500
<b>Lowest</b>	\$0	\$0	\$0	\$0

### Equitable Monetary Relief

In addition to civil penalties, companies may also be required to pay equitable monetary awards to customers, often referred to in the consent decrees and settlement documents as “restitution.” As noted in Table 7, two-thirds of the resolved cases have included some sort of equitable monetary relief. Notably, over a dozen cases in which civil monetary penalties were issued did not involve any equitable monetary award.<sup>21</sup>

The size of these awards is often tied to the underlying damage to customers, as described in the final order. See Table 9 for an overview of equitable monetary penalties in past enforcement cases. Like it sounds, equitable monetary relief is designed make injured consumers whole. Typically, respondents made restitution payments to the Bureau, which then distributed the funds to consumers.

Our analysis revealed that certain industries are more likely to be subject to equitable monetary remedies than others. To illustrate, just 33.3 percent of mortgage cases (six) have required defendants to pay some form of equitable monetary relief, compared to 71.4 percent of debt relief cases (five) and 92.9 percent of credit card product cases (13). See Table 7.

The use of equitable monetary relief also appears to be a growing trend in cases involving the mortgage industry. In prior years, companies in the mortgage industry largely faced civil penalties; however three out of the four most recent mortgage cases have included orders for restitution to harmed consumers.<sup>22</sup>

**Table 9: Equitable Monetary Relief Values by Selected Industries<sup>23</sup>**

All values in US\$	Total	Credit Card	Debt Relief	Mortgage
<b>Highest<sup>24</sup></b>	\$2.127 billion	\$215 million	\$11.4 million	\$2.127 billion
<b>Mean</b>	\$75.6 million	\$48.4 million	\$2.5 million	\$153 million
<b>Median</b>	\$499,248	\$26.3 million	\$299,624	\$0
<b>Lowest</b>	\$0	\$0	\$0	\$0

### Disgorgement

Defendants have been required to disgorge ill-gotten gains in 17 out of the 48 resolved cases,<sup>25</sup> though we did not identify notable patterns in these cases. To illustrate, the Bureau has secured disgorgement in all of its auto lending and land development cases, five matters dealing with credit cards and add-on products (35.7 percent), one debt relief action (14.3 percent), five mortgage-related cases (27.8 percent), and two cases involving small-dollar lenders (40 percent). Excluding the auto cases, these other actions

did not share common facts or violations of law that distinguish them from cases that did not include disgorgement.

The data did, however, reveal that the Bureau may be seeking *only* disgorgement less frequently, instead opting to include other remedies alongside disgorgement. In 2012 and 2013, for example, the Bureau often used disgorgement as a stand-alone remedy. Since June 2014, six cases have ordered disgorgement as a supplement to equitable monetary relief.

Synthesizing all of the 48 resolved cases, the Bureau appears to favor a remedy that includes both: (1) restitution payments and (2) a mandatory minimum penalty that is often secured by disgorgement. These orders typically include a clause dictating that any balance between the actual restitution awarded and the penalty floor must be paid to the Bureau or the US Treasury as disgorgement.<sup>26</sup> This way, even in cases where companies fail to identify consumers to make whole through restitution, the companies are still required to pay fines to the Government through disgorgement.

### Other Remedies

In addition to the forms of relief described above, the Bureau has a wide range of other remedies at its disposal — and its enforcement record shows a willingness to tap into these other options. These remedies are noted in Table 10 and illustrated subsequently in the enforcement cluster descriptions.

	<b>Mortgage (% of cases not pending)</b>	<b>Debt Relief (% of cases not pending)</b>	<b>Credit Card (% of cases not pending)</b>	<b>Total (% of cases not pending)</b>
<b>Injunction or Cease &amp; Desist Order (INJ)</b>	17 (94.4%)	7 (100%)	14 (100%)	47 (97.9%)
<b>Compliance Plan</b>	6 (33.3%)	1 (14.3%)	14 (100%)	27 (56.3%)
<b>Civil Money Penalty (P)</b>	15 (83.3%)	6 (85.7%)	13 (92.9%)	40 (83.3%)
<b>Restitution or Equitable \$ Relief (R)</b>	6 (33.3%)	5 (71.4%)	13 (92.9%)	32 (66.7%)
<b>Disgorgement (D)</b>	5 (27.8%)	1 (14.3%)	5 (35.7%)	17 (35.4%)
<b>Monitoring by CFPB (M)</b>	13 (72.2)	5 (71.4%)	13 (92.9%)	37 (77.1%)
<b>Increased BOD Oversight/Internal Monitoring Requirements</b>	5 (27.8%)	1 (14.3%)	14 (100%)	25 (52.1%)
<b>Record Keeping and/or Document Retention</b>	13 (72.2)	5 (71.4%)	12 (85.7%)	38 (79.2%)
<b>Reporting Requirements (CFPB or Other Regulator)</b>	13 (72.2)	5 (71.4%)	14 (100%)	39 (81.3%)

### Admission or Denial of Bureau Allegations

Critically — due to the potential collateral consequences — a large majority of the resolved cases (41 of 48 or 85.4 percent) concluded without requiring the respondent to admit the Bureau’s allegations or its findings of fact and conclusions of law. See Table 11. Specifically, in 39 of the 41 orders, the defendants settled with the Bureau using the following language: “without admitting or denying,” “neither admits nor denies” or “do not admit or deny.” (The object of these statements was typically “findings of fact or conclusions of law” or “allegations set forth in the complaint.”) The final two of the 41 cases used the

following language: “does not admit the allegations of the complaint” and “is not making any evidentiary admission of liability for the specific practices alleged in the Complaint.”

To illustrate what this looks like in practice, one consent order stated that the defendant “has consented, without admitting or denying any findings of fact, any violation of law or any wrongdoing.” Though a very large percentage of respondents avoid admitting or denying findings of fact and conclusions of law altogether, almost all admitted the facts necessary to establish the Bureau’s personal and subject matter jurisdiction.

Not surprisingly, the cases brought in federal court that ended in non-settlement resolutions (all debt relief services cases) resulted in courts making findings of fact and conclusions of law. In addition, three cases settled administratively also required defendants to admit or deny the underlying facts: an interstate land sales case, a RESPA case related to loss-mitigation mortgage refinancing and a small-dollar lending case involving loans to service members. Based on our review, however, defendants are increasingly required to admit only such facts that are necessary to establish the Bureau’s personal and subject matter jurisdiction.

	<b>All CFPB Enforcement Actions</b>	<b>Federal Court</b>	<b>Administrative Proceedings</b>
<b>Total Actions Not Pending</b>	48	15	33
<b>Resolved Without Admitting or Denying</b>	41	11	30
<b>% of Non-pending Actions</b>	85.4%	73.3%	90.9%

The size and sophistication of respondents appears to be related to whether cases were resolved without admission or denial of the underlying allegations. As noted above, most of the credit card industry respondents were large institutions, and each of these companies settled with the Bureau without admitting or denying liability. Similarly, the largest mortgage servicing defendants (\$1.771 and \$1.637 billion in operating revenue) settled without admitting or denying fault. In contrast, two of the smaller debt relief companies (approximately \$2 and \$12 million in operating revenue) were subject to consent orders that explicitly accepted the truth of certain facts and conclusions of law.<sup>27</sup>

## **Enforcement Clusters**

Our review of the Bureau’s enforcement record to date uncovered five core “clusters” of enforcement activity that highlight the Bureau’s priority enforcement targets, and also illustrate the types of real outcomes — including recurring elements in the Bureau’s consent orders — that companies subject to the Bureau’s enforcement authority may face. These clusters include:

- **Credit Card Add-on Products or Services:** Large banks offering credit card add-on products or niche credit cards charged with UDAAP violations (directly or indirectly)
- **Mortgage Insurers:** Providers of mortgage insurance charged with violations of the anti-kickback provisions of RESPA for their relationships with mortgage “reinsurers”
- **Mortgage Originators:** Mortgage originators charged with the failure to comply with the data collection provisions of HMDA

- **Mortgage Assistance Relief Services:** Firms offering debt relief services charged with violations of the MARS Rule (Regulation O) (also a violation of the UDAAP provisions of the CFPB)
- **Auto Lending:** Auto lenders charged with UDAAP violations in connection with loans made to members of the armed services

We summarize below these clusters of cases and outcomes, including the penalties in the related consent orders. We also discuss cases that suggest new clusters may be emerging.

### **Credit Card Products and UDAAP**

As noted above, one of the Bureau's largest target industries has been the credit card industry — including major cases against household-name firms such as JPMorgan Chase and American Express. In 12 of the 14 credit card cases, the product at issue was an “add-on” service to the credit card, such as identity protection, overdraft monitoring, or, in one case, a credit card with a low promotional interest rate that increased substantially after the close of the promotional period. At least some of these cases resulted from Bureau examinations of the financial institutions.

In all of the 14 cases in this cluster, the CFPB charged the respondents with UDAAP violations under CFPB §§ 1031, 1036.<sup>28</sup> In October of this year, the Bureau for the first time added charges under the Truth in Savings Act (TISA).<sup>29</sup> The TISA charge essentially overlapped with the UDAAP charges, as the Bureau alleged that the defendant's representations regarding its “Free Checking” were “deceptive” under UDAAP and “misleading and inaccurate” under the Truth in Savings Act. Because this is the first case where the Bureau has included a TISA claim on top of UDAAP allegations, whether the Bureau will continue to include both allegations in future cases, or if this case is an outlier remains unclear.

The Bureau settled all of the cases in this cluster with substantial penalties; and in resolving the cases, none of the respondents admitted to the alleged facts or conclusions of law. Of the 14 consent orders, 10 included civil money penalties, and 10 contained restitution or equitable money terms. See Table 10. Companies in the credit card cluster not only received substantial monetary penalties, but also significant forward-looking compliance requirements, typically described in detail in the consent orders. The following requirements were included in nearly all of the cases in this cluster:

- Adopting policies and practices to ensure that marketing and collections practices comply with applicable UDAAP laws. In several cases, the consent orders required respondents to develop their own plans for complying with the relevant laws, and to implement those plans after obtaining approval from the CFPB. Although the orders generally gave the respondents discretion in drafting the compliance plans, all the orders contained at least minimal requirements, and some incorporated existing compliance documents and practice standards.
- Developing scripts and oversight procedures to ensure that third-party vendors and service providers comply with the law when marketing and selling the respondents' card services to customers. This requirement — which extends to defendants' third-party service providers — gives insight into the level of diligence, monitoring, and control that the Bureau expects financial institutions and lenders to have over their third parties and business partners.
- Ensuring that sufficient and competent management and staff resources are dedicated to oversee the products that were the subject of the Bureau's allegations.

Some, but not all, of the credit card respondents also received additional requirements in consent orders, including increasing board oversight of UDAAP compliance; and implementing audit plans and preparing independent reports regarding compliance, to be submitted to the Bureau for several years following the effective date of the Order. In addition, many of the consent orders established detailed guidelines or rules regarding the types of statements defendants could and could not make during marketing calls, the disclosures respondent companies must include in sales transactions, and whether defendants could market add-on products in certain circumstances.

### **Mortgage Insurance and Kickbacks**

The second cluster of actions involved five cases litigated by the Bureau in the Southern District of Florida against sellers of private mortgage insurance, which the Bureau alleged were engaged in kickback programs. The defendant companies — Genworth Mortgage Insurance Corporation, Mortgage Guaranty Insurance Company, United Guaranty Insurance Company, Radian Guaranty Insurance Company and Republic Mortgage Insurance Company — had developed relationships with mortgage lenders under which the lender would refer borrowers to the mortgage insurance companies, which would then cede part of the premiums they received back to “reinsurance” companies that the lenders owned. The CFPB considered these payments to be kickbacks and unearned fees that increased borrowers’ costs, because the quid pro quo relationship meant the reinsurance product was not competitively priced. In each case, the Bureau alleged that this conduct violated RESPA.

The Bureau’s consent orders against these five mortgage insurers were nearly identical: enjoining certain activities, imposing monetary penalties, and managing the wind down of the “captive trusts” into which the kickback funds had been paid. All of the orders enjoined the defendants from:

- Participating in any captive mortgage reinsurance arrangement for a period of 10 years
- Ever paying or receiving kickbacks or unearned fees in exchange for mortgage business referral
- Otherwise failing to comply with RESPA

Importantly, all of the consent orders imposed civil money penalties, and none imposed restitution/equitable monetary relief. *Compare with* Table 10. These orders also imposed a series of notification and reporting requirements on the respondents, including the responsibility to comply promptly with any Civil Investigative Demands, subpoenas or data requests from the Bureau. Finally, the orders subjected the mortgage reinsurance defendants to additional monitoring provisions, including the responsibility to comply with the Bureau’s ad hoc requests for written reports, document production and deposition of company representatives. Additional reporting requirements included the responsibility to:

- Notify the Bureau of any changes to the corporate structure that might affect compliance
- Submit written reports to the Bureau regarding the management of and payouts from the captive trust
- Certify compliance with the injunction for 10 years
- Retain all records and documents necessary to demonstrate full compliance with the order for six years

These settlement requirements imposed a significant administrative and resource burden on defendants that extended years into the future, in addition to the financial penalties embedded in the consent orders.

In 2014, we identified a possible new sub-category developing within the mortgage insurance cluster. The CFPB initiated two administrative enforcement actions this year related to title insurance referrals (not sellers of private mortgage insurance as in the previous five cases). In one case, a title insurer allegedly accepted referrals from independent salespeople in exchange for a percentage of the insurer's commission. In the other, a brokerage company and its affiliated title insurance company (owned by the same parent company) allegedly failed to disclose to consumers that they were not required to use the affiliated title insurance business, and in some cases required consumers to use the affiliated title insurance business. In both cases the CFPB considered the referrals to be kickbacks in violation of RESPA.

The consent orders in these two cases were similar to the Southern District of Florida cases described above, imposing civil money penalties but no restitution, and requiring the businesses to cease and desist from all violations of RESPA. The civil money penalties, however, were smaller, and the reporting and compliance monitoring requirements in one of the cases were minimal. Whether these two cases involving title insurance companies are outliers, or if they reflect a move by the Bureau to target new industries for kickback claims under RESPA remains to be seen.

### **Mortgage Originators and HMDA Compliance**

The third cluster of enforcement activity involved two administrative cases the Bureau brought against Washington Federal and Mortgage Master Inc. under the Home Mortgage Disclosure Act (HMDA), which imposes data reporting requirements on mortgage originators, following the CFPB's examination of the defendants' compliance systems. In both cases, the respondents were mortgage originators — subject to HMDA's data collection and reporting requirements — whose data error rates were found to exceed the applicable resubmission threshold. While both defendants maintained HMDA compliance systems, the CFPB found these systems did not maintain procedures "reasonably adapted to avoid such errors."

Both consent orders contained orders to:

- Cease and desist from violations of HMDA
- Confirm the defendants had corrected data errors from the past year
- Develop compliance plans
- Pay civil monetary penalties
- Keep all records necessary to demonstrate compliance with the order for at least five years

In both cases, although the compliance plans had to receive final approval from the Bureau and the orders contained minimal requirements, the respondents were given discretion to develop plans that fit with their businesses.<sup>30</sup> The plan requirements included:

- Policies, procedures and internal controls to ensure compliance
- Development of regular tests of the data's integrity

- Development and implementation of operating policies and training procedures to ensure that personnel understood HMDA standards and reporting requirements

Both respondents also had to submit compliance progress reports to the Bureau for a period of time following the effective date of the order.<sup>31</sup> And both orders imposed civil money penalties, but not restitution/equitable money payments.

The most noticeable differences between the two cases appear to be the size and nature of the respondents and the size of the penalties levied against them. Washington Federal is a depository institution with assets in excess of \$40 million; Mortgage Master Inc. is a relatively small (\$6.5 million operating revenue) for-profit mortgage lending institution. The civil money penalties were also quite different in size (\$425,000 for Mortgage Master and \$34,000 for Washington Federal), likely reflecting the respondents' varying loan volume.

Companies subject to HMDA's data collection and reporting requirements and the Bureau's examination activity should be wary of the potential ramifications of failing to comply with these requirements, as the cases in this cluster demonstrate.

### **Mortgage Assistance Relief Services**

The fourth cluster of enforcement activity centers on five small law firms that offered mortgage assistance relief services. The CFPB charged all five firms with violations of both the UDAAP provisions of the CFPA and Regulation O, and litigated all of the cases in federal district court. The three most recent cases are still pending, while two have ended in final judgments without settlement.<sup>32</sup>

In each of these cases, the Bureau alleged that defendants were engaged in mortgage relief schemes that preyed on financially distressed homeowners nationwide by falsely promising mortgage assistance relief services and/or loan modification in exchange for advanced fees. The CFPB alleged that defendants made misleading and deceptive statements in connection with the sale of a consumer financial product (mortgage assistance relief services such as loan modification and foreclosure relief services), and violated Regulation O, including its prohibition against accepting fees prior to settling customer debts.<sup>33</sup>

Both of the cases in this cluster that have reached judgments to date<sup>34</sup> have included extensive injunctions against future violations of the CFPA and Regulation O. Among other things, these injunctions contained examples of misrepresentations and omissions that violated the law, such as statements suggesting affiliations with government entities or estimating the likelihood that a customer would receive a benefit. Both also addressed the circumstances under which the defendants could use customer information to collect payments in the future, and one imposed compliance reporting requirements. With respect to monetary penalties, one defendant paid over \$2 million in restitution/equitable monetary relief and a civil money penalty of over \$1 million, while the other paid over \$11 million in restitution/equitable money relief.

### **Auto Lending**

The final cluster of enforcement activity involved a pair of administrative cases against U.S. Bank National Association (USBNA) and Dealers' Financial Services LLC, an entity created to run USBNA's Military Installment Loans and Educational Services (MILES) program. The CFPB had conducted a targeted review of the MILES program and had found various violations of CFPA's UDAAP provisions, the Truth in Lending Act (TILA), and TILA's implementing regulation, Regulation Z. These cases concluded

with consent orders that included cease and desist orders, compliance plan provisions, restitution orders and reporting requirements.

Both cease and desist orders contained a prohibition against structuring loans to require repayment through military allotments.<sup>35</sup> The orders also prohibited the two respondents from making certain “deceptive” misrepresentations or omissions related to the marketing of loan add-ons such as “GAP insurance” (which is supposed to cover the difference between insurance payout for damaged vehicles and outstanding loan principal). Both USBNA and Dealers’ Financial Services LLC were subject to redress orders (\$3.2 and \$3.3 million respectively) requiring them to reimburse affected customers.<sup>36</sup> Finally, in addition to reporting and recordkeeping requirements, the MILES defendants were required to create (and submit for Bureau approval) compliance plans meeting certain minimal requirements. As with the HMDA cases, these defendants were given discretion to create their own compliance plans. The minimal requirements in the consent orders focused on policies and procedures for complying with the cease and desist order, auditing, and providing training for employees in positions necessary for compliance with the law.

### **Trends and Predictions for Future Clusters**

The Bureau has and will likely continue to bring enforcement actions outside of these five clusters, against what appears to be an expanding variety of industries and companies. In 2014, for example, the Bureau brought two cases against for-profit colleges, suggesting that student lending may be a growing priority for the Bureau. In November of last year, the Bureau filed its first enforcement action against a payday lender. In 2014, the CFPB brought two more cases against payday lenders, suggesting another potential cluster of enforcement activity.

We also identified growing activity over the past two years with regards to small-dollar consumer lenders. Prior to June 2014, the Bureau had brought just three actions against small dollar lenders. Since June, however, we identified five actions in this cluster. Three of the respondents in these cases were mid-sized lending institutions: Ace Cash Express, Inc. with annual operating revenue of \$309.9 million, USA Discounters, Ltd. with \$30 million, and First Investors Financial Services Group, Inc. at \$40.2 million. The other two respondents were small private operating entities (Colfax Capital Corporation and Richard Moseley et al.). The underlying facts of the cases in this sector vary widely, with a common thread that each case has included at least one UDAAP charge.

As the Bureau continues to engage in rulemaking, this, too, will open up new areas for Bureau enforcement. Earlier this year, for example, the Bureau settled its first enforcement action under new mortgage servicing rules that went into effect in January 2014. The CFPB entered into an order with Flagstar Bank in September 2014 in connection with alleged violations of these new rules.

### **Conclusion**

As Director Cordray said earlier this year, the CFPB “want[s] everyone to know that [it] fully intend[s] to be the ‘cop on the beat’ that was envisioned when the financial reform law was enacted.”<sup>37</sup> Our review of the first three-and-a-half years of the CFPB’s enforcement history confirms that the Bureau is exercising its new regulatory and enforcement powers assertively, and it continues to expand the industries it targets, the laws it invokes and the remedies in its enforcement toolkit. We will continue to monitor the Bureau’s enforcement activity as the new agency continues to mature and grow.



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If you have questions about this *Client Alert*, including additional information about the cases and data analyzed herein, please contact the authors listed below or the Latham lawyer with whom you normally consult:

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## Endnotes

- <sup>1</sup> CFPB Supervision and Examination Manual (version 2 – October 2012) at Overview 3, *available at* [http://files.consumerfinance.gov/f/201210\\_cfpb\\_supervision-and-examination-manual-v2.pdf](http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf). These rules include: Telemarketing Sales Rule (16 CFR Part 310); Use of Prenotification Negative Option Plans (16 CFR Part 425); Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 CFR Part 429); Preservation of Consumers' Claims and Defenses (16 CFR Part 433); Credit Practices (16 CFR Part 444); Mail or Telephone Order Merchandise (16 CFR Part 435); Disclosure Requirements and Prohibitions Concerning Franchising (16 CFR Part 436); Disclosure Requirements and Prohibitions Concerning Business Opportunities (16 CFR Part 437). *Id.*
- <sup>2</sup> "Federal consumer financial law" is defined as "the provisions of [CFPA Title X], the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act." CFPA §1002(14). The "Enumerated Consumer Laws" are: (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.); (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act; (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.); (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w); (G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.); (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.); (I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f)); (J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 as it applies to section 501(b); (K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); (L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note); (M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); (N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.); (O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); (P) the Truth in Savings Act (12 U.S.C. 4301 et seq.); (Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8); and (R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701). CFPA §1002(12).
- <sup>3</sup> To conduct this analysis, we reviewed all complaints the Bureau filed in federal court and the judgments/settlement orders entered in those cases, where applicable. For administrative actions, we reviewed all publicly available consent orders into which the Bureau entered.
- <sup>4</sup> This White Paper contains all publicly disclosed enforcement actions as of October 29, 2014. The Bureau has entered into at least one consent order in an administrative action since that date. To the extent this White Paper is updated, future editions will include data and analysis of these cases.
- <sup>5</sup> The "mortgage lending" category includes cases related to mortgage origination and the sale of title insurance and mortgage "reinsurance." In addition to the CFPA, statutes and regulations enforced in these cases include the "Compensation Rule" of Regulation Z, the HMDA, the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA) and RESPA. Cases involving loss-mitigation mortgage refinancing, the Mortgage Assistance Relief Services Rule (MARS Rule) and Regulation O have been classified as "Debt Relief." One case, *CFPB, et al. vs. Ocwen Financial Corp.*, touched on CFPA violations involving practices related to mortgage servicing, foreclosure, refinancing and other loss mitigation services. No. 2013-cv-02025 (D.D.C. Feb. 26, 2014). For purposes of this White Paper, we have classified *Ocwen* as "Mortgage" because, though the weight of the allegations related to loss mitigation services, the bulk of the company's business related to mortgage products. The parameters of this category may be modified as the CFPB brings more enforcement actions.
- <sup>6</sup> In addition to the CFPA, the CFPB-enforced statutes and regulations in the "debt relief" cases include the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Sales Rule (TSR), RESPA and Regulation O. Though some of these cases involve mortgages, we have classified these cases as "Debt Relief" because the regulated behavior was more in the area of debt (mortgage) modification than routine mortgage origination and servicing. One case, *CFPB, et al. vs. Ocwen Financial Corp.*, touched on CFPA violations involving practices related to mortgage servicing, foreclosure, refinancing and other loss mitigation services. No. 2013-cv-02025 (D.D.C. Feb. 26, 2014). We classified *Ocwen* as "Mortgage" because the bulk of the business related to mortgage products.
- <sup>7</sup> The one case falling into this category, *In the Matter of 3D Resorts-Bluegrass LLC*, enforced the Interstate Land Sales Full Disclosure Act (ISLA) against a respondent meeting the definition of "developer" in ISLA. (2013-CFPB-0002), filed Dec. 3, 2013. The respondent had developed resort property and allegedly made material omissions and misrepresentations in the property reports distributed to purchasers and prospective purchasers.
- <sup>8</sup> Financial data were not available for all defendants/respondents. As a result, these statistics (particularly mean and median) are approximations based on publically available operating revenue for almost four dozen of the named defendants/respondents.
- <sup>9</sup> In general, the allegations have been under the UDAAP provision of the CFPA. However, violations of some laws that pre-date the CFPA, such as the Truth in Lending Act (TILA) and the Mortgage Assistance Relief Services Rule (also known as Regulation O), are considered violations of the CFPA's UDAAP provision.
- <sup>10</sup> The debt relief sector accounts for 100 percent of cases with this particular violation.
- <sup>11</sup> Five of these were Regulation O and six were the Telemarketing Sales Rule.

- <sup>12</sup> One case involved mortgage assistance relief, *CFPB and The State of Florida v. Michael Harper et al.*, 14-cv-80931 (filed July 14, 2014), in which Florida brought charges under the Florida Unfair and Deceptive Trade Practices Act, which mirrored the federal UDAAP charges. Two cases involved companies offering debt relief services. In *CFPB, et al. vs. Payday Loan Debt Solution, Inc.*, 12-cv-24410 (S.D. Fla., Dec. 21, 2012) five states (HI, NM, ND, NC, and WI) joined as plaintiffs for various relators. In *CFPB et al. vs. Ocwen Financial Corp.*, 2013-cv-02025 (D.D.C. Feb. 26, 2014) all 50 states joined as plaintiffs. All 50 states also joined in *CFPB, et al. v. Suntrust Mortgage Inc.*, 14-cv-01028 (filed June 17, 2014). CFPB brought charges against Suntrust under UDAAP for deception and misrepresentations to consumers with respect to loan origination and modification, loss mitigation, and foreclosure processing. CFPB also charged Suntrust under the False Claims Act and Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) for making false claims to the Federal Housing Administration for payment. Suntrust is the only case in which CFPB brought charges for bankruptcy misconduct, the complaint details Suntrust's inadequate bankruptcy procedures. Suntrust Mortgage is the largest case brought by the CFPB to date, ending in a total settlement of over one billion dollars.
- <sup>13</sup> In 2013, the DOJ joined as plaintiffs in *In the Matter of Ally Financial Inc. et al.*, after CFPB's investigation led to allegations regarding violations of law and deficiencies in applicable compliance systems related to Ally's compliance with the Equal Credit Opportunity Act (ECOA), a civil rights statute. This year, the DOJ did not join a case with similar ECOA charges. See *In the Matter of Synchrony Bank, f/k/a/ GE Capital Retail Bank*. 2014-CFPB-0007 (filed June 19, 2014).
- <sup>14</sup> Prepared Remarks of CFPB Director Richard Cordray at the Auto Finance Field Hearing (Sept. 28, 2014), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-auto-finance-field-hearing/>.
- <sup>15</sup> See generally Prepared Remarks of CFPB Director Richard Cordray at the National Association of Attorneys General (Feb. 216, 2014), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-national-association-of-attorneys-general/>.
- <sup>16</sup> See 12 U.S.C. § 5565(a)(1) ("The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.")
- <sup>17</sup> One case currently pending in the Southern District of Florida is *CFPB v. Michael Harper et al.*, 2014-cv-80931 (S.D. Fla., July 14, 2014), which was jointly filed by CFPB and The State of Florida. The defendants settled Florida's state claims by filing an Assurance of Voluntary Compliance, without admitting or denying guilt. With respect to the state claims, defendants agreed to pay restitution in the amount of \$12,623 to identified consumers and \$20,000 to unidentified consumers. Defendants further agreed to pay a civil money penalty to Florida Attorney General in the amount of \$5,000 to cover the state's attorney costs. Finally, defendants agreed to maintain availability of records for state inspection for a period of two years.
- <sup>18</sup> For a good description of the Bureau's powers vis-à-vis large depository institutions (more than \$10 billion in assets) see DAVID H. CARPENTER, CONG. RESEARCH SERV., R42572, THE CONSUMER FINANCIAL PROTECTION BUREAU (CFPB); A LEGAL ANALYSIS 13-15 (2014) (available at <http://fas.org/sqp/crs/misc/R42572.pdf>). For these institutions, in addition to having the power to enforce federal consumer financial protection laws, the CFPB has consumer compliance supervisory, enforcement, and rulemaking authority. *Id.*; Dodd-Frank Act §§1061-1067, 12 U.S.C. §§5581-5587. The Bureau also has examination authority over these institutions ("visitorial" powers) that allow it to, among other things, examine the bank and its compliance systems and inspect its records and books. CARPENTER at 13; Dodd-Frank Act §1025, 12 U.S.C. § 5515; 12 C.F.R. §7.4000 (Visitorial Powers).
- <sup>19</sup> This category overlaps to a large extent with "Restitution or Other Equitable Monetary Relief." In a majority of cases featuring a disgorgement clause, the clause was paired with a restitution or redress plan and used as a mechanism to ensure that the defendant made a minimal payment to the government if restitution/redress payments to consumers under the plan did not reach a certain level. See, e.g., *In the Matter of U.S. Bank National Association* (2013 CFPB 0003)(filed June 26, 2013) at 13-14 ("Upon completion of the Redress Plan, if the amount of redress provided to Affected Consumers is less than the greater of (a) \$3,200,000 or (b) the amount of total proposed redress specified in the Redress Plan,...U.S. Bank is ordered to pay to the Bureau...the difference...as disgorgement."). Such cases were coded as both "Restitution or Other Equitable Monetary Relief" and "Disgorgement." One of these cases included this construct but did not explicitly call it "disgorgement." See *In the Matter of GE Capital Retail Bank* (2013 CFPB 0009)(filed Dec. 10, 2013) at 21. An additional case included a remedy described as "equitable monetary relief in the form of disgorgement." *In the Matter of Paul Taylor* (2013 CFPB 0001) (filed May 17, 2013) at 7. This case was coded for "Disgorgement" alone. Still another case included the remedy of disgorgement without any other equitable monetary relief and was therefore coded for "Disgorgement" alone. *In the Matter of Fidelity Mortgage Corporation* (2014 CFPB 0001) (filed Jan. 16, 2014).
- <sup>20</sup> Dodd-Frank Act §1055(c), 12 U.S.C. § 5565(c).
- <sup>21</sup> *CFPB, et al. vs. Ocwen Financial Corp.*, 2013-cv-02025 (D.D.C. Feb. 26, 2014). Also, by contrast, the case with the largest equitable money award (restitution) did not include any civil money penalty.
- <sup>22</sup> All three of these cases included charges for various misrepresentations to consumers under UDAAP, in addition to charges under RESPA and other statutes such as TILA, Mortgages Acts and Practices (MAP) Rule, False Claims Act, and FIRREA. *In the Matter of Lighthouse Title, Inc.*, 2014-CFPB-0015 (filed September 30, 2014) is the only mortgage case that did not require restitution, but this is likely explained by the fact that this case only involved charges for kickbacks under RESPA and not for misrepresentations to consumers under UDAAP.

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- <sup>23</sup> These calculations are somewhat skewed because, in two cases, the equitable monetary relief could not be calculated easily. In one, this was because the relief was suspended pending bankruptcy and, in the other, it was ordered at \$5 per affected customer. These cases were removed from the calculations.
- <sup>24</sup> Because of the overlap between the categories of “Restitution or Other Equitable Monetary Relief” and “Disgorgement,” and because in at least one case the Bureau actually referred to disgorgement as a form of equitable monetary relief, see Endnote 20 above, these figures include the value of all monetary remedies not classified as civil money penalties. If we remove the value of the disgorgement remedy in *In the Matter of Fidelity Mortgage Corporation* (the only case with disgorgement that did not refer to it as equitable relief or pair it with a restitution/redress clause), the mean equitable money relief for all defendants is \$82,108,790 and the median is \$100,000. The mean for the mortgage sector goes up to \$3,695,591 but the median remains \$0. One of the cases with a consent order containing an equitable money clause is also subject to ongoing litigation. See *CFPB vs. National City Bank*, No. 2:2013-cv-01817 (W.D. Pa. Jan. 9, 2014). However, the value of that penalty is included in these calculations.
- <sup>25</sup> Of those 17, two cases were filed in federal court, and the remaining 15, or 88.2 percent, were administrative actions.
- <sup>26</sup> The one potential pattern worthy of note is that, in its action against American Express Bank, FSB in 2012, the CFPB did not order disgorgement, but did order disgorgement in its second action brought against the bank in 2013. In the 2012 action against the bank, the CFPB charged the bank with committing unfair or deceptive practices and with violations of TILA’s Regulation Z. See 2012-CFPB-0003. In 2013, the Bureau again charged American Express with committing unfair or deceptive practices (but no Regulation Z violations). See 2013-CFPB-0012.
- Similarly, the CFPB did not order disgorgement in the first action it brought against American Express Centurion Bank in 2012, but did award disgorgement in the second action it brought against the bank in 2013. In the 2012 action, the Bureau charged the bank with committing unfair or deceptive practices, civil rights violations and violations of Regulation Z. See 2012-CFPB-0002. In the 2013 action, the Bureau only charged the bank with committing unfair or deceptive practices. See 2013-CFPB-0011.
- <sup>27</sup> One case involved a default judgment issued because the defendant failed to answer or otherwise defend the action. *CFPB vs. Najia Jalen et al.*, No. 8:12-cv-02088 (C.D. Cal., Dec. 3, 2012) (a.k.a. National Legal Help Center). The allegations in the Complaint were taken as true in the default judgment order. In the second case, *In the Matter of 1st Alliance Lending LLC*, the stipulation at the beginning of the order expressly notes that the respondent admits the findings of fact and conclusions of law set forth in the consent order. 2014-CFPB-0003 (filed Feb. 24, 2014). Whether or not the CFPB refused to allow this respondent to avoid admission/denial of the allegations remains unclear.
- <sup>28</sup> Examples of alleged UDAAP are as follows: Two American Express subsidiaries allegedly engaged in deceptive debt collection practices by sending settlement letters that stated that the consumers’ remaining debt would be “waived” or “forgiven” after settlement, without prominently disclosing that the consumer had to pay the full debt balance before the Bank would process any future credit or charge card application. [2012-CFPB-0002 & 2012-CFPB-0003]. The same American Express subsidiaries also allegedly deceptively marketed a product called “Account Protector” by failing to ensure that telemarketing service providers did not make misrepresentations about the product such as “failing to disclose near the outset of the call that Account Protector was optional and not required for the Card Member to activate or use the Card Member’s account” and “Representing that the benefit payment amount would cover the Card Member’s minimum payment due when, in fact, the benefit payment would be 2.5% of a Card Member’s outstanding balance on the date of the qualifying event, up to \$500 which frequently did not equal the minimum payment due.” [2013-CFPB-0011 & 2013-CFPB-2012].
- Several of the cases in this group also included alleged violations of the Truth in Lending Act (TILA) and the Fair Credit Reporting Act (FCRA). [2012-CFPB-0002 & 2012-CFPB-0003; 2013-CFPB-0011 & 2013-CFPB-2012; 2013-CFPB-0009].
- <sup>29</sup> In the Matter of Manufacturers and Traders Trust Company (Manufacturers), 2014-CFPB-0016 (filed October 9, 2014).
- <sup>30</sup> Mortgage Master had to hire qualified, independent consultants to help develop its plan.
- <sup>31</sup> Mortgage Master had to submit a report 120 days after the effective date of the order and then, upon the Bureau’s request, for the next four years. Washington Federal had to submit a report within 90 days of the order and then quarterly for a year. Thereafter, the order only required Washington Federal to submit reports upon request of the Bureau.
- <sup>32</sup> One case against National Legal Help Center was a default judgment and the other, against Chance Gordon, was a final judgment entered after the court granted the CFPB’s Motion for Summary Judgment against the defendant.
- <sup>33</sup> The allegation regarding misrepresentations of affiliation stems from defendants’ practice of including language on its mailers suggesting affiliations with federal agencies such as the Department of Housing and Urban Development, as well as affiliations with the consumers’ lenders.
- <sup>34</sup> These cases resulted in a default judgment against National Legal Help Center and summary judgment against Chance Gordon.
- <sup>35</sup> The orders left open the option for the lenders to provide incentives for allotment repayment, but the lenders were not permitted to make the option mandatory.
- <sup>36</sup> Both defendants also had to tender to the Bureau any balance between their actual restitution payments and the redress estimate cited in the order.
- <sup>37</sup> Prepared Remarks of CFPB Director Richard Cordray at University of Michigan Law School (Oct. 24, 2014), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-university-of-michigan-law-school/>.