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Consumer Law In The Aftermath Of The Consumer Financial Protection Act Of 2010

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In the wake of the recent financial crises, the U.S. Government sought a way to “promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail,’ to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.”¹ As a result, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 was born. This Act paved way to the Consumer Financial Protection Bureau (CFPB).²

Welcome, Richard Cordray

In spite of the two year filibuster, the U.S. Senate confirmed Richard Cordray as the CFPB’s first director on July 16, 2013 by an overwhelming majority vote of 71 to 29.³ President Barack Obama announced Mr. Cordray’s appointment in July 2011.⁴ In the months that followed, industry lobbyists fought to put a proverbial muzzle on this watchdog agency; such efforts effectively blocked Cordray’s confirmation for a full two years in an attempt to reorganize the structure of the CFPB. The CFPB was organized under the Dodd-Frank Act with a single director, a statutory budget capped at 12% of the Federal Reserve, and is balanced by the Comptroller of the Currency’s Financial Stability Oversight Council of Office, which has the authority to vote on CFPB actions.⁵ The Republican Party ultimately ended the filibuster and the CFPB was left as enacted.

Richard Cordray has long served his fellow Americans, and served as Ohio Attorney General from 2009-2011.⁶ During his tenure, Mr. Cordray fought for Ohio consumers’ rights. Cordray recovered billions of dollars for Ohio retirees, business owners and investors and actively pursued lawsuits against banks with unlawful foreclosure practices.⁷ Now, Richard Cordray will lead the charge at the CFPB to protect the rights of consumers across the nation.

CFPB Overview

¹ *Public Law 111–203—JULY 21, 2010, Dodd-Frank Wall Street Reform and Consumer Protection Act*, (Jul. 21, 2010), <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

² 12 U.S.C.A. § 5491 (2010).

³ *Richard Cordray Confirmed as Consumer Financial Protection Bureau Director*, Huff Post Politics, (Jul. 28, 2013), http://www.huffingtonpost.com/2013/07/16/richard-cordray-confirmed_n_3607026.html.

⁴ *President Obama Announces Richard Cordray as Director of the Consumer Financial Protection Bureau*, Office of the Press Secretary, (Jul. 17, 2011), <http://www.whitehouse.gov/the-press-office/2011/07/17/president-obama-announces-richard-cordray-director-consumer-financial-pr>.

⁵ *The GOP doesn’t oppose Richard Cordray. It opposes his whole agency.*, The Washington Post, (May 25, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/25/the-gop-doesnt-oppose-richard-cordray-it-opposes-his-whole-agency/>.

⁶ *Past Ohio Attorneys General*, <http://www.ohioattorneygeneral.gov/About-AG/History/Past-Ohio-Attorney-Generals/2003-2011>.

⁷ *About Richard Cordray*, CFPB <http://www.consumerfinance.gov/the-bureau/about-rich-cordray/>.

The federal legislature sought a central agency to oversee consumer protection and to enact and enforce any rules or regulations necessary. To that end, the legislature enacted the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, which created the CFPB and granted it, an executive agency, rulemaking and enforcement powers.⁸

Congress provided the CFPB with exclusive rulemaking authority if another agency is authorized by law to create consumer financial law regulations.⁹ The CFPB enjoys court deference “as if the CFPB were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.”¹⁰ The CFPB has the power to provide rule-exempt classes of persons, service providers, and certain financial products and services.¹¹

The CFPB has made a strong start over the course of the past two years. The CFPB first began operations in July 2011 and has implemented at least 39 rules and regulations since.¹² As of July 29, 2013, the CFPB has received over 175,000 consumer complaints and returned \$430 million in refunds to six million wronged consumers affected by deceptive financial practices.¹³ The CFPB has also helped resolve more than 133,000 consumer complaints about credit cards, mortgages, student loans, bank accounts, and other services.¹⁴

Two major industries subject to the oversight of the CFPB will include the credit reporting agencies and the major debt collectors. The CFPB will oversee and make rules pertaining to the majority of credit reporting agencies, including among them, the “big three” – Experian, Equifax, and Trans Union.¹⁵ While the number of debt collection outfits subject to oversight by the agency is under four percent, those collectors account for approximately 60% of the industry in terms of revenues. Additionally, the CFPB will have jurisdiction to oversee banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, and other financial companies.

Practical Implications for Your Consumer Clients

The CFPB can assist consumers with issues related to erroneous or obsolete credit reporting, unfair debt collections, as well as fraudulent mortgage practices, deceptive trade acts, student loans, and other consumer issues.¹⁶ A consumer need only go to the CFPB website¹⁷ and select the “Submit a Complaint” tab.

⁸ See 12 U.S.C.A. § 5512(a).

⁹ 12 U.S.C.A. § 5512(b)(4).

¹⁰ 12 U.S.C.A. § 5512(b)(4)(B).

¹¹ 12 U.S.C.A. § 5512(b)(3).

¹² *Regulations*, CFPB, (Jul. 11, 2013), <http://www.consumerfinance.gov/regulations/#finalrules>.

¹³ *We're 732 days old: Here's what we've been up to*, CFPB Web Team (Jul. 22, 2013), <http://www.consumerfinance.gov/blog/hbd/>.

¹⁴ *Consumers win as Senate confirms Cordray as CFPB director*

Vote marks a key turning point in preventing financial scams, Consumer Reports.org, (Jul. 2012), <http://www.consumerreports.org/cro/2013/07/cordray-confirmed-cfpb-director/index.htm>.

¹⁵ *Defining Larger Participants of the Consumer Reporting Market* BUREAU OF CONSUMER FINANCIAL PROTECTION, 12 CFR Part 1090 [Docket No. CFPB-2012-0005] http://files.consumerfinance.gov/f/201207_cfpb_final-rule_defining-larger-participants-consumer-reporting.pdf (About 30 credit reporting companies, representing 94 percent of the \$4 billion credit reporting market)

¹⁶ *Complaint* (Jul. 30, 2013), <http://www.consumerfinance.gov/complaint/>.

¹⁷ www.consumerfinance.com

Despite the CFPB's watchdog capabilities on a national scale, consumer clients need strong consumer advocates to act as private attorneys general. Many state and federal consumer protection laws, such as the Fair Credit Reporting Act,¹⁸ the Fair Debt Collections Practices Act,¹⁹ the Truth in Lending Act,²⁰ the Ohio Consumer Sales Practices Act,²¹ provide for private rights of action. Additionally, the majority of state and federal consumer protection laws give rise to the ability to recover reasonable attorney's fees in a successful action.

Accordingly, it is crucial that consumer advocates carefully advise their clients of their rights. While filing a complaint with an agency such as the CFPB is generally advisable, and is helpful to identify the worst offenders, making this suggestion should be tempered with a full disclosure of what a consumer may reasonably expect in doing so. Unbeknownst to many consumers, filing a complaint with the CFPB will not preserve or toll a consumer's applicable statute of limitations. Also, consumer advocates should carefully advise their client regarding their own private right of action and the scope of remedies available to them. While in some cases consumers may receive some form of restitution, the majority of individual complaints can not be effectively addressed by CFPB or agencies like it, notwithstanding the potential merit of the consumer's complaint. The CFPB, like an attorney general, may not pursue individual private actions though they may investigate complaints, file lawsuits and refer unscrupulous actors to criminal proceedings.²²

Still, the CFPB consumer complaint database is a valuable asset to the consumer advocate. Indeed, it is a rich source of information about suppliers, and potentially a source of identification of similarly situated consumers, who may be ideal witnesses in a case.²³ Consumer advocates working in concert with the CFPB can assist to secure a brighter future for U.S. consumers.

Authors:

Amy Wells is the founder of WELLS LAW OFFICE, INC., a boutique consumer protection litigation firm based in Dayton, Ohio. Ms. Wells earned a Juris Doctorate and Masters of Business Administration from the University of Dayton School of Law joint-degree program. She dedicates her legal practice to consumer advocacy, including issues involving identity theft, credit report inaccuracies, debt collection harassment, breach of warranty and consumer fraud.

Ms. Wells currently serves on the Ohio Attorney General's Advisory Committee. She is Chair of the Consumer Law Section and sits on the Board of Trustees of the Ohio Association for Justice. Ms. Wells is an active member of the National Association of Consumer Advocates, and state chair for the organization. She also currently serves as Vice-President of the Miami Valley Trial Lawyers Association. Ms. Wells is also a member of the Dayton Bar Association, and serves on the Ethics Committee.

In 2012 she received the Ohio Association for Justice President's Award. Ms. Wells is the recipient of the highest attorney rating by AVVO.com. Ms. Wells is also among 2.5 percent of Ohio attorneys named a Rising Star by Super Lawyers Magazine. Ms. Wells has authored articles about consumer protection law. She also regularly speaks to other attorneys and consumers on a state and national level regarding consumer advocacy issues. In 2007 WELLS

¹⁸ 15 U.S.C. § 1681, *et seq.*

¹⁹ 15 U.S.C. § 1692, *et seq.*

²⁰ 15 U.S.C. § 1601, *et seq.*

²¹ R.C. § 1345, *et eq.*

²² See 12 U.S.C.A. § 5561, *et seq.*

²³ *Consumer Complaint Database*, CFPB, <http://www.consumerfinance.gov/complaintdatabase/>.

LAW OFFICE launched a website designed to help educate and empower consumers to understand their legal rights. www.MyConsumerHelp.com.

Mandy Jamison is a law clerk at WELLS LAW OFFICE, INC., a boutique consumer protection firm based in Dayton, Ohio. She has worked with WLO since 2007. After completing an internship with the firm, Ms. Jamison was offered permanent employment and is the Senior Paralegal & Law Clerk. Ms. Jamison is a graduate of the Sinclair Paralegal Program, where she earned her Associates in Applied Science. She went on to graduate in the top of her class from Kaplan University with a Bachelor of Science degree, focusing on paralegal studies. Ms. Jamison began her doctoral studies at Capital University Law School in the fall of 2010. During her law school studies, Mandy has earned academic recognition of Dean's List. She anticipates graduation in Spring 2014, at which time she will sit for the Ohio bar examination.