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STRATEGIC PERSPECTIVES—Top 5 CFPB enforcement actions in 2016, by the numbers

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This year marked the fifth anniversary of the Consumer Financial Protection Bureau. Since its inception, the CFPB has filed enforcement actions against numerous companies for unfair, deceptive, and abusive practices. The bureau estimates its actions have resulted in $11.7 billion in relief for more than 27 million harmed consumers. The bureau's enforcement activity did not slow in its quinquennial year. In 2016, the CFPB continued to secure large dollar judgments and settlements in its mission to protect consumers from unfair and deceptive acts or practices.

The CFPB brought actions against credit card companies, for-profit colleges, auto lenders, and debt collectors, among others, while the activities at issue encompassed the entire lending process, from questionable assurances and disclosures to illegal debt collection practices. Although they are just a fraction of the bureau's enforcement actions in 2016, the following actions secured the five largest monetary recoveries in 2016.

5. **The CFPB recovers almost $22 million for auto loan borrowers.** In February, the CFPB and Department of Justice resolved an action with Toyota Motor Credit Corporation for allegedly charging thousands of minority consumers higher rates for auto loans regardless of the borrower's creditworthiness. Under the agreement, affected borrowers would receive up to $21.9 million. Toyota also agreed to change its pricing and compensation system to substantially reduce dealer discretion and accompanying financial incentives to mark up interest rates (see *Banking and Finance Law Daily*, Feb. 3, 2016).

   According to the CFPB, auto loans are the third-largest source of outstanding household debt in the United States, after mortgages and student loans. As an indirect auto lender, Toyota sets interest rates, or "buy rates," for consumers based on credit scores and other risk criteria. Those rates are conveyed to auto dealers. Indirect auto lenders like Toyota Motor Credit allow auto dealers to charge a higher interest rate when they finalize the deal with the consumer, an action typically called "dealer markup."

   The bureau's stipulation, filed in an administrative action, alleged that Toyota violated the Equal Credit Opportunity Act and its implementing regulations for permitting dealers to charge higher interest rates to consumer auto loan borrowers on the basis of race and national origin

4. **For-profit college's allegedly faulty disclosures cost more than $30 million.** California-based Bridgepoint Education, Inc., agreed in September to settle CFPB charges that it deceived students about the amount of their student loan payments. The agreement required Bridgepoint to refund

the roughly $5 million in principal and interest that students had already paid, discharge another $18.5 million in unpaid debt—the entire amount that students currently owed the company—and pay an $8 million civil penalty. Bridgepoint operates under the names Ashford University and University of the Rockies (see *Banking and Finance Law Daily*, Sept. 12, 2016).

The CFPB charged that Bridgepoint's financial aid advisors gave incorrect payment information to students who needed private education loans. According to the consent order, advisors misrepresented to loan applicants that students normally made loan payments of only $25 per month. As a result, students did not know the accurate cost of their loans and were required to make larger payments than they expected.

3. **Bank pays over $35 million for alleged credit card 'add-on' practices.** In August, the First National Bank of Omaha entered into separate consent orders with the CFPB and the Office of the Comptroller of the Currency in connection with the CFPB's claim that the bank engaged in unlawful practices concerning its credit card "add-on" products and the OCC's claim that the bank engaged in unfair billing practices concerning its identity-theft protection products (see *Banking and Finance Law Daily*, Aug. 25, 2016).

   The CFPB alleged that FNBO violated provisions of the Consumer Financial Protection Act governing unfair and deceptive acts or practices by using deceptive marketing tactics to lure consumers into accepting credit card debt-cancellation "add-on" products and by charging consumers for credit monitoring services they never received.

   Under the consent order with the CFPB, the bank agreed to provide $27.75 million as redress to approximately 257,000 consumers and a $4.5 million civil penalty to the CFPB's Civil Penalty Fund. Under the consent order with the OCC, the bank agreed to pay a $3 million civil penalty to the U.S. Treasury for restitution to affected consumers.

   Commenting on the action, Timothy Q. Karcher, of Proskauer Rose LLP, warned, "Banks and other covered persons who provide add-on products, either directly or through third parties, are well advised to review the consent order and their own practices in connection with their marketing, sales, and billing of add-on products to ensure compliance with the CFPB's regulations, and those of other regulators such as the OCC and the Federal Reserve Board."

2. **Wells Fargo fined record $100 million for opening unauthorized accounts.** Perhaps the most publicized CFPB enforcement action in 2016, the CFPB fined Wells Fargo $100 million in September for its "cross selling" practices that led employees to open two million unauthorized deposit and credit card accounts (see *Banking and Finance Law Daily*, Sept. 8, 2016).

   The CFPB noted that the bank's cross selling practices of offering many consumer financial products and services would have been "common and accepted business practice" if it were based on "efforts to generate more business from existing customers based on strong customer satisfaction and excellent customer service."

However, the bureau found that the bank had compensation incentive programs for its employees that encouraged them to sign up existing clients for deposit accounts, credit cards, debit cards, and online banking, and the bank failed to monitor the implementation of these programs with adequate care. Therefore, the CFPB determined that the bank engaged in unfair, deceptive, or abusive acts or practices.

A related enforcement action by the OCC required Well Fargo to pay an additional $35 million civil money penalty and restitution to customers who were harmed by the bank's unsafe or unsound sales practices.

1. **CFPB secures $172.8 million judgment against debt-relief company Morgan Drexen**. Securing the largest judgment in 2016, the CFPB obtained a final judgment against Morgan Drexen, Inc., in March 2016, resolving a longstanding action against the debt relief company. In 2013, the bureau accused Morgan Drexen of presenting to consumers a contract for bankruptcy-related services that was actually a ruse designed to disguise impermissible upfront fees for debt relief work. The final judgment included approximately $132.8 million in restitution to affected consumers, a $40 million civil penalty, and the incorporation of a permanent injunction imposed against the debt-relief company in June 2015 (see *Banking and Finance Law Daily*, March 18, 2016).

   Among other things, the court determined that Morgan Drexen violated the Telemarketing Sales Rule by charging unlawful up-front fees for debt-relief services and by misrepresenting those services. Similarly, the court determined that Morgan Drexen violated the Dodd-Frank Act by charging up-front fees, misrepresenting its services, and engaging in deceptive acts or practices.

   Moreover, the court determined that, during the course of the CFPB's litigation against Morgan Drexen, the debt-relief company had falsified evidence and engaged in practices that "undermined the integrity of the judicial proceedings." Accordingly, the court asserted that Morgan Drexen's conduct, at a minimum, "was reckless" if not willful in this regard.

Future enforcement actions. Although the CFPB shows no sign of slowing down in 2017, a transition to a Trump Administration, combined with a conservative majority in Congress, could result in leadership and structural changes at the bureau.

In addition, the Financial CHOICE Act (H.R. 5983), which was introduced in the last Congress and approved by the House Financial Services Committee on Sept. 13, 2016, would change the structure of the CFPB and subject the bureau to Congressional oversight and appropriations. While the legislation would need to be reintroduced in the next Congress, the platforms of both the Republican majority and the Trump Administration would support its reintroduction.

Although these changes are more likely to limit the bureau's rulemaking capabilities than enforcement activities, increased Congressional scrutiny and a potential change in leadership could impact the scope and pace of enforcement actions in 2017.

