

## [Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, \(Jan. 29, 2021\)](#)

Banking and Finance Law Daily Wrap Up

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By WK Editorial Staff

A weekly roundup of other items of interest to the banking and finance law community.

**COMMUNITY DEVELOPMENT**—President Biden has released a [Memorandum](#) on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies. The memorandum provides that the federal government must work with communities to end housing discrimination and to provide redress to those who have experienced housing discrimination. The memorandum also directs the Secretary of Housing and Urban Development to examine the effects of the Aug. 7, 2020, final rule entitled "Preserving Community and Neighborhood Choice" has had on HUD's statutory duty to affirmatively further fair housing. Sen. Sherrod Brown (D-Ohio), the presumed incoming chairman of the Senate Banking Committee, and Rep. Maxine Waters (D-Calif), the Chairwoman of the House Financial Services Committee, both applauded President Biden's memorandum. Brown [said](#), "I applaud President Biden for taking swift action to direct the Department of Housing and Urban Development to fulfill the promise of the Fair Housing Act." [Added](#) Waters, "I am pleased that President Biden has issued this important executive action to reassert the federal government's commitment to fair housing and to begin to reverse the Trump Administration's harmful actions to erode fair housing." Jesse Van Tol, CEO of the National Community Reinvestment Coalition (NCRC), also expressed the NCRC's support, [saying](#) that the president's action "makes clear that racial equity will be at the core of the administration's public engagements, policy design and program delivery going forward."

**DEBT COLLECTION—W.D. Pa.:** The federal trial court for the Western District of Pennsylvania dismissed (with prejudice) a consumer's claims against defendant Portfolio Recovery Associates, LLC under Pennsylvania's Fair Credit Extension Uniformity Act, Consumer Credit Code, and Unfair Trade Practices and Consumer Protection Law, as well as under the federal Fair Debt Collection Practices Act. In reaching its decision, the court rejected the consumer's two theories that: (i) Portfolio Recovery used misleading and/or unfair means to collect the consumer's alleged debt by filing a state court action against her without first satisfying statutory pre-suit notice procedures under Pennsylvania law; and (ii) because Portfolio Recovery was not licensed under the Pennsylvania Consumer Discount Company Act, the company did not obtain the necessary "prior written approval of the Department of Banking" and was not legally authorized to collect interest or fees on the consumer's pertinent account in excess of 6 percent ([Lutz v. Portfolio Recovery Associates, LLC](#), Jan. 19, 2021, Wiegand, C.).

**DEBT COLLECTION—11th Cir.:** In an unpublished opinion, a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit decided that Midland Funding LLC could not be held liable for false representations that a separate entity, Midland Credit Management, Inc., allegedly made on behalf of Midland Funding in violation of provisions of the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692e) and the Florida Consumer Collection Practices Act (Fla. Stat. § 559.72(9)). One of the appellate panel members filed a dissenting opinion ([Rivas v. Midland Funding, LLC](#), Jan. 27, 2021, Brasher, A.).

**DODD-FRANK ACT**—The Office of the Comptroller of the Currency has published a [notice](#) and request for comments on a continuing information collection concerning a revision to a regulatory reporting requirement for national banks and federal savings associations titled, "Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$250 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act." The Dodd-Frank Act requires certain financial

companies, including national banks and federal savings associations, to conduct annual stress tests and the primary financial regulatory agency of those financial companies to issue regulations implementing the stress test requirements as well as a report to be submitted at that time. The OCC is proposing to revise its reporting requirements to mirror those of the Federal Reserve Board for covered institutions with total consolidated assets of \$250 billion or more. Comments are due by March 29, 2021.

**LOANS—10th Cir.:** The U.S. Court of Appeals for the Tenth Circuit ruled that the economic-loss rule in Colorado prevented a borrower from prevailing on her request for tort remedies pertaining to the borrower's claim that a lender wrongfully failed to carry out its promise to modify the borrower's mortgage loan. Upholding the federal trial court's summary judgment in favor of U.S. Bank and Wells Fargo Bank, the appellate court determined that the borrower failed to establish any special, independent duty by the financial institutions to the borrower apart from their contractual relationship and failed to adequately present proof of compensatory damages ([Mayotte v. U.S. Bank, N.A.](#), Jan. 22, 2021, Bacharach, R.).

Attorneys: Brad Kloewer (Cain & Skarnulis PLLC) for Mary Mayotte. Andrew M. Jacobs and Anna M. Adams (Law Offices of Snell & Wilmer) for U.S. Bank, N.A. and Wells Fargo Bank, N.A. Kevin Abramowicz (East End Trial Group, LLC) for Michael Lutz. David L. Hartsell (McGuireWoods LLP) for Portfolio Recovery Associates, LLC. Gregory Andrew Beck (Law Office of Gregory A. Beck) and Donald A. Yarbrough (Donald A. Yarbrough, Attorney at Law) for Manuel E. Rivas. Lauren Marshall Burnette (Messer Strickler, Ltd.) for Midland Funding, LLC.

Companies: Midland Credit Management, Inc.; Midland Funding, LLC; National Community Reinvestment Coalition; Portfolio Recovery Associates, LLC; U.S. Bank, N.A.; Wells Fargo Bank, N.A

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