

What the CFPB Has Been up To

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Checking in on what the Consumer Financial Protection Bureau (“CFPB”) has been up to for the last month, in case you missed it (and with some commentary):

1. On October 4, the Federal banking regulators, including the CFPB, **announced** updated thresholds for when **Regulation Z (credit)** and **Regulation M (leasing)** will apply to consumer credit transactions (other than mortgages and private student loans). Based upon a 3.4 annual increase in the consumer price index (“CPI-W”), these regulations cover transactions of \$71,900 or less, starting in 2025, up from \$69,500 in 2024. Meanwhile the 2025 threshold for **special appraisal requirements for higher-priced mortgage loans** applying was increased to \$33,500 from \$32,400.
2. On October 1, CFPB Director Rohit Chopra participated in an event at the White House to discuss how the CFPB is addressing medical debt and its impact on consumers. In his **prepared remarks**, Director Chopra referenced a new **advisory opinion** under the auspices of the Fair Debt Collection Practices Act (“FDCPA”) and Regulation F regarding “Deceptive and Unfair Collection of Medical Debt” and **consumer advisory** detailing rights consumer have when being contacted by a medical debt collector (such as being able to obtain an itemized list of charges and to negotiate the amount owed). The CFPB also published a **blog post** addressing “Medical Debt and Non-Profit Hospital Billing Practices.”

The guidance provided to the financial services industry in the advisory opinion was targeted to debt collectors and stated that “debt collectors are strictly liable under the FDCPA and Regulation F” should they engage in the following “unlawful practices when collecting medical bills”: 1) collecting an amount not owed because it was already paid; 2) collecting amounts not owed due to Federal or state law, such as the Nursing Home Reform Act that prohibits nursing homes from requiring to third parties to pay; 3) collecting amounts above what can be charged under Federal or state law; 4) collecting amounts for services not received; 5) misrepresenting the consumer’s legal obligations regarding the medical debt; and 6) collecting unsubstantiated medical bills. The advisory opinion also explained that medical debt collectors may not argue that medical debts are not “in default” and therefore the FDCPA and Regulation F does not apply. It advises, “in the context of medical debt, amounts owed are not typically paid on a regular, recurring schedule over time pursuant to the terms of a contract. To the contrary . . . medical debts are contractually generally due in full at a given time. Medical debt collectors therefore do not ‘service’ debts on an ongoing basis” like other debt collectors, and therefore the amounts being collected upon are in default.

Strict liability for these debt collectors could have a meaningful impact on how medical debts are collected going forward, which would eventually impact medical providers. The CFPB chose to target the debt collectors because they are clearly “covered persons” per the Consumer Financial Protection Act (“CFPA”). For many reasons, the argument that medical costs themselves are financial services becomes murky and buried in a heap of competing public policy arguments, which means that the CFPB has a much harder time issuing guidance directly to those medical providers themselves.

3. In **comments** related to a **report issued by the CFPB on Cash-Back Fees**, issued on August 26, Director Chopra remarked that “physical cash is still a critical component of a resilient financial system and dynamic economy” and acknowledged that “in the event of a major cyberattack on our nation’s energy, telecommunications or banking infrastructure, we must be prepared for people and businesses to buy and sell goods and services in cash.” Recognition of how the dollar bill still represents freedom and crucial utility is sometimes hard to come by among Federal banking regulators these days, and so the CFPB’s focus on fees

being charged for cash-back being given at the point of sale, especially at large retailers, is important. As part of the report, the CFPB identified that cash-back transactions may happen more frequently in rural areas that are “subject to persistent poverty,” meaning that the impact of cash-back fees may disproportionately fall on vulnerable populations. Contrasting the charging of cash-back fees to the relatively high fees charged at out-of-network ATMs, the CFPB found that average ATM withdrawal amounts far exceeded the cash-back limits put into place by retailers that charge a fee, meaning that “a consumer has a greater ability to distribute the cost of the fee across a larger amount of cash than with cash back.” Retailers who charge a fee for cash-back should tread carefully. There are some jurisdictional impediments to the CFPB taking action, but the charging of a fee for what is at least partially a financial transaction could be an easy way for the CFPB to clear those hurdles.

4. Finally, on September 20, the CFPB issued a [proposed rule](#) with comments due on November 4 regarding amendments to the Remittance Transfer sections of Regulation E. Described in the [press release](#) as a “narrow amendment” the printed Federal Register notice still is 19 pages long. But, basically, the proposed rule seeks to update certain disclosure requirements and about a dozen different model forms to address a couple of issues. First, the CFPB wants to minimize the number of calls it receives regarding remittance transfer issues, due to required disclosures directing consumers to reach out to the CFPB. Stating that “as many as 35% of the total telephone calls received” by the CFPB are as a result of this disclosure, the CFPB seeks to introduce a revised disclosure statement that “would state that the sender can contact the State licensing agency and the CFPB if the sender has unresolved problems with the remittance transfer or complaints about the remittance transfer provider.” Second, and related, the CFPB wants to update the model forms indicated so that remittance transfer provider contact information is “more prominent and easier to locate by consumers.”