Ten Current Issues Affecting Consumer Financial Services Law

Alvin C. Harrell
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By Alvin C. Harrell

I. Introduction

Consumer financial services law is a broad topic that encompasses more than obvious "core" subjects such as Truth in Lending, consumer protection and regulatory compliance. This article seeks to highlight ten trends or developments that are affecting consumer financial services law as broadly defined. The number (ten) is arbitrary and was chosen as a round number. As a result, some important topics and current issues had to be excluded. In effect, in random order, this is a proposed "top ten" list of current issues.

It should be noted that these issues affect more than just the provision of consumer financial services. Because of the importance of financial services to the entire national economy, these issues have broad ramifications. However, there is not likely to be much consensus as to how these issues should be addressed (either in individual cases or as a matter of public policy).

Nonetheless, perhaps there can be agreement that these issues are important, even as some might argue that other issues are more so. Consequently, it is worthwhile to highlight these issues as deserving attention in the months and years ahead.

II. The Demise of Private Subprime Mortgage Lending

This is a crucial issue that does not seem to receive much attention. For some reason, even academics, policy makers and media commentators do not seem eager to talk about this, though addressing such things is normally their livelihood. Some may be unaware of the issue or consider it to be too mysterious or complex. Still others may consider the status quo to be desirable. The U.S. House of Representatives has raised the issue, at least in a broad sense, but even the members of the relevant Committee seem to think only that there is some possibility subprime mortgage credit is being constrained.

So, to state what should be obvious: Subprime mortgage loans are no longer being funded by mainstream private lenders. This is a major departure from the twentieth century American economic model. Moreover, this is not only apparent; it is intentional. American public policy subsequent to 2006, as ultimately codified in the Dodd-Frank Act of 2010, is premised on the proposition that excessive subprime mortgage availability was the primary cause of the 1993–2006 housing boom and subsequent crash, and policy-makers set out in

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1. For example, see the Opinion Statement of the Conference on Consumer Finance Law, as published periodically in this journal.

2. This is a difficult and complex topic that is beyond the scope of this paper.


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full force to reverse this by constraining such credit. This effort was wildly successful, resulting in not merely a decline but the near-total demise of private mainstream subprime mortgage lending.

As a result, many subprime borrowers can no longer get a loan to buy a home, despite a massively accommodative Federal Reserve Board monetary policy and historically low interest rates. Perhaps that is good for some of these consumers. For others, probably not. In any event, the number of renters is up, and the cost of renting is up: investors are doing well by buying foreclosed homes and renting or flipping them to subprime buyers using creative seller-financing techniques. Perhaps it will all work out -- the media, and many in the legal profession, academia, and the executive branch of the federal government seem well satisfied with the results. Perhaps, as some expect, increased government programs will fill the void. But we should recognize that a basic facet of the private economy has changed, and the consequences (including diminished prospects for subprime home ownership) are significant.

III. Regulation of the Banking System Is Being Used to Cut-Off Financial Services to Selected Types of Bank Customers

Along with subprime mortgage lending, another target of the twenty-first century regulatory model is electronic payment services. This is illustrated by "Operation Choke Point," a joint Department of Justice (DOJ) and Bureau of Consumer Financial Protection (CFPB) enforcement program designed to cut-off ("choke off") electronic banking services for various types of businesses (e.g., internet and tribal-affiliated payday lenders, to name just two) that the DOJ and CFPB disfavor but (for whatever reason) generally have chosen not to confront more directly.

One need not defend any particular targets of this program in order to note some extraordinary legal aspects of this enforcement approach. First, the criteria for identifying the businesses that banks are supposed to "choke off" from the banking system are somewhat ambiguous (e.g., covering "high-risk" transactions and business models). Secondly, by channeling public enforcement actions through private banking transactions, this essentially deputizes banks to enforce DOJ and CFPB penalties in ways that may put legitimate companies in jeopardy without any public transparency, due process or legal recourse.

Probably we should have seen this coming. As banking regulation has expanded dramatically in recent decades, and (partly as a result) the banking system has consolidated into fewer and larger institutions (a trend enhanced by the Dodd-Frank Act), banks have become more and more like federal public utilities focused on regulatory concerns. Moreover, the Bank Secrecy Act (BSA) and related laws have long required banks to monitor their customers' transactions and report suspicious activities to federal authorities, and the regulatory scrutiny of these obligations has increased significantly since the September 11, 2001 terror attacks. The Specially Designated Nationals (SDN) list places individuals outside of access to the financial system (among other things) without any significant due process rights. Perhaps it is a logical next step to require banks to go beyond merely reporting suspicious activity and enforcing the SDN list, to identifying new targets and imposing what are essentially private law enforcement actions based on broad, subjective regulatory criteria. But it is a significant step nonetheless.
IV. Private Student Lending and For-Profit Education

Those of us who are educated at the postgraduate university level may find it easy to feel disdain for private student lenders and the operators of vocational trade schools. Current public policies apparently reflect this disdain, and now have translated it into outright legal hostility.14

An academic colleague said to me a few years ago (just before law school applications began to drop precipitously nationwide) that there was no reason for universities to worry because there was "a federal plan to save higher education." Apparently that plan includes nationalized student lending and generous debt forgiveness programs for federal loans.15 While this may or may not turn out to be an optimal solution,16 the sentiment apparently does not extend to for-profit trade schools.17

Trade schools can be valuable, even essential for enhancing the prospects of many students.18 Obviously, given the nature of the customer base and the difficulties that young people often have in finding their proper role in a productive society, the resulting costs, failures and drop-out rates will be high and frustrating. Thus, one of the troubling aspects of the current attacks on these schools is the reliance on failure and drop-out rates as evidence that the schools are engaging in abusive behavior. This could easily become a troubling attack on academic rigor and standards, with potentially broad implications.19 Do we really want nurses and welders and airplane mechanics to be graduated regardless of merit?

V. Federal Regulation of Private Debt Collection

This has obviously become a high-profile issue in the twenty-first century, and promises to become even more so as the CFPB weighs in with its forthcoming regulations to implement the Fair Debt Collection Practices Act (FDCPA).20 The CFPB published its ANPR in November 2013, identifying issues that may signal forthcoming major changes in the structure of debtor-creditor law.21

Included among these is a possible extension of the scope of the FDCPA (or at least parts of it) to creditors collecting their own debts.22 The ANPR indicates that the CFPB is considering such an expansion, using the CFPR’s authority to regulate and prohibit unfair, deceptive and abusive acts and practices (UDAAP).23 The lengthy comment and deliberation period since issuance of the ANPR may suggest that the CFPB is contemplating the enormity and potential for broad consequences of such a change.

The FDCPA obviously has become a minifield for debt collectors, essentially creating strict liability for technical errors based on legal ambiguities, divergent views and uncertainties that can make compliance very difficult.24 Consumers also suffer, by reason of uncertainties and complications regarding their legal rights, and an adverse impact on the cost and availability of consumer credit. Another result is the trend toward more aggressive debt collection by specialist firms focused on maximum efforts within the parameters of FDCPA compliance.25 Consequently, many debt collectors and consumers’ counsel probably would welcome implementing rules that clarified the law, and there is considerable support for this among participants in the CFPB project.26 There is some hope that this will be a rare case of law reform that improves and clarifies the law for all concerned.27

Of course, as we have seen many times with other laws including the Truth in Lending Act,28 more rules do not necessarily mean greater clarity. It remains to be seen whether the CFPB will be successful in rationalizing and clarifying the legal requirements for collection of consumer debts. Moreover, if the requirements of the FDCPA are extended to cover creditors collecting their own debts, this may result in fundamental, adverse changes to the relationship between businesses and their customers.
again with significant implications. It is possible that the current adverse effects of the FDPCA could be magnified and spread across new sectors of the economy, rather than being reduced.

As recognized in the original enactment of the FDPCA, the relation between creditors and consumer debtors commonly is part of an overall business-customer relation that encompasses a wide range of considerations on both sides. Among other things, the potential for and anticipation of such things as future transactions, favorable word-of-mouth (and, now, Internet) referrals, credit or performance reports, and long-term or associated relationships (that is, after all, how legitimate businesses grow and prosper) create a mutual need for each party to accommodate the other to the extent possible. This is a reason why many private business transactions involve a relatively pleasant interaction, as compared to alternative scenarios where these incentives are absent.

As a result, many business-customer relationships are characterized by friendly and cooperative communications and arrangements conducted informally between parties who are not lawyers and are instead focused on maintaining good relations with each other. This interaction is part of what makes for a pleasant lifestyle, and in the context of financial transactions helps to expand the availability of affordable consumer credit. It is not the only factor at issue, but it is an important one.

If the basic legal regime for business-customer relations is fundamentally adversarial, e.g., by creating an adversarial or highly-technical legal environment for the relation between a retail business and its consumer credit customers concerning routine issues and transactions, equivalent to the legal requirements imposed on debt collectors under the FDPCA, this could alter fundamentally the way businesses and consumers view and treat each other. Indeed, to some extent that would be the purpose of such a change (i.e., forcing consumer transactions into the parameters of a regulation), and perhaps in some instances it would be beneficial. But, if the basic customer relation is changed from one that is fundamentally accommodating to one that is more legalistic and adversarial (based on the potential for liability based on technical errors, as in the FDPCA), there will be a mixed impact on consumers as well as businesses.

In this event, among other things, it is likely that more consumer credit issues will be handled by specialized legal staff rather than customer service personnel. Moreover, in some way or another, the increased costs of compliance and servicing (and the increased risks of liability) will be passed on to consumers, e.g., in the form of higher prices or reduced transaction availability. These are fundamental issues that go to the nature of our economic relationships, and deserve to be fully considered in this context.

VI. Regulation of the Internet

Something is popular and important as the Internet inevitably will attract the attention of regulators and other public officials worldwide. And so it has, from China to Turkey to Russia to Brazil and in the United States. Censorship in other countries is obviously an issue, and in the United States the issue of "net neutrality" has now come to the forefront. Then there is the core issue of regulatory jurisdiction itself. Separately, basic issues relating to Internet lending (and related matters, e.g., regarding tribal jurisdiction) have yet to be thoroughly addressed. "Operation Choke Point," noted above at Part III, seems partly an effort to bypass these issues rather than to confront them directly.

Clearly, the free and open worldwide Internet that many take for granted is not a sure thing for all time. The natural tendency for governments to want to regulate, sometimes with the best of intentions, does not disappear in this context. Clearly, there is a constant need for interested parties to focus on these issues.

VII. TILA/RESPA Integrated Disclosure Rule

This is one of the biggest news items relating to the regulation of residential mortgage lending in many years.
out of the market. Others may curtail residential mortgage lending until they see how well the new rules will work.

Thus, the prospects for private mortgage lending remain unclear, and significant risks remain (for lenders, consumers, and the American economy).\textsuperscript{39} TILA/RESPA reform, even if optimal, cannot solve the full range of problems created by a massive overlay of complex federal laws and regulations. But if the new TILA/RESPA Integrated Disclosure rule creates a more simple, clear and effective disclosure regime, it will be a major accomplishment for the CFPB and a milestone in the development of consumer credit law.

VIII. The Decline of Community Banking and the Impact of Increased Concentration in the Banking Industry

Obviously, since the 1980s the American banking and financial system has experienced dramatic change. These changes are now accelerating. This is not entirely unprecedented, as dramatic change has been a hallmark of American financial history. “Free banking” fueled the settlement of the American West.\textsuperscript{40} The rise of state-chartered banks following the Civil War was related to their invention of the modern checking account in response to a federal tax on state bank notes.\textsuperscript{41} The Uniform Negotiable Instruments Law and related Bank Collection Code (the predecessors of UCC Articles 3 and 4) further fueled the growth of the economy and banking system.\textsuperscript{42} The federalization of much banking regulation in the 1930s, with creation of the FDIC and FSLIC, again significantly changed the nature of banking.\textsuperscript{43} Enactment of the UCC in the 1950s contributed to a dramatic expansion in the availability of banking and financial services.\textsuperscript{44} For the most part, all of these developments facilitated an increased availability of financial services to fund private economic transactions.

The twenty-first century has seen an important reversal of some of these trends and developments, with a new emphasis on restricting access to private financial services.\textsuperscript{45} As a part of this trend, there has been a significant increase in the legal and regulatory burdens imposed on banks.\textsuperscript{46} This in turn has contributed to a decline in the number of community banks, and a corresponding increase in the size and market share of larger banks.\textsuperscript{47} In total effect, there is an increasing consolidation and concentration in the banking sector of the economy. This is evident to nearly everyone.

Nonetheless, and due partly to the growth of financial services outside the regulated banking system, the American financial system remains decentralized and diverse. Increasingly, non-bank entities are conducting transactions formerly done through banks.\textsuperscript{48} This includes electronic payment systems and even electronic alternatives to money.\textsuperscript{49} These alternative payment systems are coming under increased legal and regulatory scrutiny,\textsuperscript{50} and it is unclear whether or to what extent they
will remain viable in their present form. Nonetheless, the point is illustrated that, as one segment of the financial market contracts, another is likely to expand.\(^{52}\)

Not all of the banking alternatives are electronic. Pawn shops are an obvious example.\(^{53}\) Seller-financing, micro-lending, arrangements with family and friends, and other types of specialized non-bank financial and payment arrangements are also in evidence.\(^{54}\) Some of these are heavily regulated and some are not.\(^{55}\) Even as common financing sources such as payday lending and check-cashing services come under increasing fire, other alternatives are likely to emerge, though possibly more costly and less efficient for the economy.

The result may be an increasingly "barbell"-shaped financial marketplace, with increased concentration among banks and other heavily-regulated financial institutions at the upper end, and increased numbers of small, non-bank transactions and service providers at the lower end, while traditional actions in the middle by intermediaries like community banks are increasingly squeezed out by the disproportionate burden of federal regulation. If so, the financial marketplace will likely be re-invented again, primarily by non-bank financial services providers able to create business models that overcome or avoid the burdens being imposed on community banks. The alternative is for consumer financial needs to be unmet by legitimate financial service providers.

**IX. Cybersecurity, Privacy, Identity Theft, Money Laundering and Electronic Money and Payments**

Many of the issues noted below have been a major focus of public policy since at least September 11, 2001. But, instead of subsiding as such things sometimes do, the emphasis has increased. Probably in part this is the result of the continuing expansion of electronic commerce, which serves to emphasize some issues that previously may have been considered peripheral to consumer law.\(^{56}\)

The advent of electronic payment systems and monetary equivalents creates yet another dimension. Mixing in the continuing concerns about (and regulations addressing) identity theft, privacy, information security, money laundering and terrorism provides a mixture of difficult and important issues that continually presents challenges and shows no sign of going away.

Much of this is commonly lumped under the heading of the Bank Secrecy Act (BSA), but the BSA is a kind of catch-all shorthand for an amalgamation of separate laws and regulations, and the enforcement and compliance policies of federal entities such as the Office of Foreign Assets Control (OFAC) and National Security Agency (NSA).\(^{57}\) The scope of BSA issues is very broad, involving duties and potential liabilities on a scale probably not understood by most Americans. But much of the current focus is on compliance, monitoring and public enforcement, rather than the applicable substantive law or private rights.\(^{58}\) Consequently, there is an additional range of issues relating to basic commercial and consumer law concerns, largely outside the scope of traditional BSA compliance.

An obvious example relates to electronic payment systems. The laws of checks and deposit accounts is relatively well settled, thanks to UCC Articles 3 and 4, and UCC Article 4A (in conjunction with automated clearing house (ACH) system rules and agreements)\(^{59}\) does the same for ACH payments, but some of the newer electronic payment mechanisms still lack a clear legal foundation or structure.

A specific example that has been the subject of numerous news reports is the use of bitcoins and other electronic substitutes for money.\(^{60}\) These and related issues are the subject of a Uniform Law Commission (ULC) Study Committee.\(^{61}\)

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52. At least as long as there is a general freedom of contract under state law. See, e.g., infra Part IX. An example of this dramatic expansion of pawn shops is the alternative of the PPU "Credit Purchase Roll" essentially banning consumerism, non-purchase money, security interests in household goods. See 16 CFR 393.444. It can be noted that, in other countries where a comparable regulatory structure has effectively been rendered private financial transaction, generally there is no underlying common law doctrine to recognize private contracts. In the common law foundation that continues to signify American exceptionalism. See, e.g., retail in person, United States v. United American Residence, Wall St. J., Dec. 19, 2014, at A11.

53. See infra note 52.

54. See examples 49-52. Formally, the increased dependence on family and friends in society to make transactions has led to the "credit border," a term often used in the relationship, which may be the lack of an effective legal structure for non-bank financial transactions.


58. See supra notes 49-52. Formally, the increased dependence on family and friends in society to make transactions has led to the "credit border," a term often used in the relationship, which may be the lack of an effective legal structure for non-bank financial transactions.


60. See infra notes 52 and 54.}

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and this is a logical forum for exploring all the relevant legal issues, since the ULC is well-positioned to integrate any resulting substantive rules with the existing UCC payment system structure. Previous ULC efforts to provide a uniform payments code integrating all such rules in a single statute failed, in part due to basic and inherent disparities between the alternative payment mechanisms. The current ULC approach seems better suited to avoiding this problem, offering significantly better chances of success.

X. CFPB Regulation of Auto Finance and Fair Lending Issues

These issues have been among the most controversial of the CFPB initiatives. The Dodd-Frank Act, which created the CFPB, exempts auto sales and the vehicle finance industry from CFPB jurisdiction to some extent. But of course not entirely. The act, for example, exempts auto sales and finance transactions that do not involve federal credit or credit extended by government agencies or government-sponsored enterprises. Additionally, the act exempts auto sales and finance transactions that are not part of a “pattern or practice” of engaging in unfair, deceptive, and abusive acts and practices (UDAAP) and enforcement of Federal Consumer Laws such as the Equal Credit Opportunity Act (ECOA). Moreover, the CFPB can expand its authority in some cases by acting in coordination with other federal authorities such as the FTC or DOJ. But the text of applicable federal statutes, even if badly written or ambiguous, imposes some limits on federal regulatory authority. The scope of CFPB authority is both broad and deep, but not unlimited. Uncertainties regarding the limits and appropriate protocols for addressing “gray areas” of substantive law are highlighted in this context with respect to auto sales finance and fair lending issues.

These issues go to the heart of the American legal system, and your author cannot predict with any precision how they will be resolved. But it is clear that legal and economic consequences will be significant. At this writing, vehicle sales and finance transactions are one of the few bright spots in an otherwise disappointing national economic recovery. Unlike housing and some other industry segments, vehicle sales and finance transactions have followed a more traditional path of substantial recovery from the 2007–2009 recession. It is fair to ask whether this might be partly because car sales and finance transactions have been largely spared from the kind of legal and regulatory burdens and uncertainties imposed on home mortgage lending since 2008. If so, a similar regulatory focus on auto sales and finance could have an adverse impact on a major component of current economic growth.

Some aspects of auto sales and finance clearly are outside the limits of the Dodd-Frank Act and exempt from CFPB authority and therefore may be at more risk of regulatory scrutiny, at least for consumer transactions. But long-term uncertainty about CFPB’s potential for efforts to expand its authority in various ways has been a source of litigating behavior and/or legislative and judicially imposed constraints.

At this point it promises to be a long and rocky road for all concerned, including possibly some businesses and consumers and even the general economy. Clearly it will have implications for the Dodd-Frank Act, and the CFPB at the center of a legal storm with potentially significant and broad legal and economic consequences.

XI. The Role of Contracts Law and Private Litigation in the Age of the Super Administrative State—A Tale of Two Americas

Presidential candidate John Edwards was well known for his campaign theme of “two Americas” (essentially rich and poor), a theme that apparently resonated with many Americans. Others on
both sides of the political aisle have subsequently echoed similar themes in various contexts. Growing disparities in incomes and opportunities are problematic and have been widely-cited. Less widely-recognized is the related role of a growing divide in our legal and credit systems, with respect to contract law and private rights and remedies. Clearly this is the age of the Super Administrative State, a phenomenon evident in nearly every aspect of life but amply so in consumer finance thanks partly to the Dodd-Frank Act and CFPB. Many of the major developments cited in this article relate to this expanding administrative state. There is probably little disagreement on this point. And, clearly it cuts across many industry and legal segments.

However, in terms of private credit transactions, the expansion of the administrative state largely has been limited to consumer transactions. In part this is because of statutory limitations, e.g., in the Dodd-Frank Act, FDCPA and TILA and the UDAP rules (though not the ECOA). In part it is because, outside these consumer protection laws, in private transactions the prevailing substantive law is the common law of contracts, property and torts (as sometimes codified or supplemented in the UCC).

In private commercial transactions where these laws govern, party autonomy remains a primary legal consideration, resulting in a focus on private rights and traditional judicial remedies. In contrast, the current focus in consumer transactions is compliance with regulatory mandates and public enforcement actions.

This has long been true to some extent but it is a distinction that now has greater importance than ever before. It signals a declining emphasis on private litigation and remedies in consumer transactions. It also means that swaths of the American public are now cut off from private transactions that are no longer available as a result of increased federal mandates, from health care plans to private student loans, bank accounts and electronic payment systems, credit cards, and subprime mortgage loans, while such transactions are more readily available to commercial customers and some other members of the public. In some cases this disparity relates to the legal divide between commercial and consumer transactions.

As a result, many consumers are now dependent on federal programs for such transactions, and if they don’t qualify they are just out of luck, even though, e.g., an equivalent commercial transaction is readily available. As noted above in Part II., a prime example is residential mortgage lending. Many subprime consumer borrowers cannot get a home mortgage loan today, while an equivalent investor buying the same house in a commercial transaction can easily obtain a relatively low-cost mortgage loan. This is the modern tale of two Americas.

XII. Conclusion

A common theme runs through-out many of the issues noted here, in that they are related one way or another to three overriding trends in consumer law and transactions: (1) the expanding federal administrative state, (2) the continuing, disappointing state of economic growth, employment rates, and income levels; and (3) the expansion of electronic commerce. This observation is not rocket science, but it can be noted that in some ways there is a relation between these trends (not only in the United States but world-wide), and it is a suitable role for the legal profession to call attention to the resulting trade-offs and perhaps note alternative solutions.

To the extent that problems derived from the current economic malaise (including increased income inequalities) are related to legal and regulatory restrictions that discourage consumers and businesses from entering mutually beneficial economic transactions (an issue that few outside the legal profession are well positioned to understand), a continuing emphasis on low interest rates and an expansive monetary policy is likely to pump-up selected financial markets without commensurate benefits to the "real" economy, i.e., creating new financial "bubbles." Yet if expansive monetary policies are reversed without addressing the underlying legal issues noted in this article, the problems could become even worse (e.g., the bubbles could burst). The consensus policy emphasis on interest rates, taxes, and budget deficits alone will not address these other crucial issues, yet remains the focus of almost all

(Continued on page 298)
News Groups Oppose Opt-In for CFPB’s Disclosure of Complaint Narratives

By Barbara S. Mishkin*

While the industry continued to voice its opposition to the Consumer Financial Protection Bureau’s (CFPB’s) proposal to publicly disclose consumer complaint narratives, some news groups thought the CFPB’s proposal didn’t go far enough. The Reporters Committee and eight news organizations submitted a comment letter asking the CFPB to remove from its proposal the requirement for a consumer to consent to disclosure of his or her narrative. They assert in the comment letter that the complaints are already subject to disclosure as public records under the Freedom of Information Act, regardless of whether the sender opts to post them online. The CFPB has now finalized the proposal. See http://www.cfpbmonitor.com/2015/03/20/cfpb-adopts-plan-to-publicly-disclose-consumer-complaint-narratives/.


The SEC and the Internet...

(Continued from page 281)

Because of new technologies, these cases require innovative approaches to combating securities fraud. The flow of capital necessary to create economic growth and jobs depends on public confidence in financial intermediaries. The SEC is facing an enormous task in regulating Internet-based fraud, but the SEC’s success is integral to the efficient functioning of global capital markets.

CFPB Provides Guidance...

(Continued from page 345)

1026.20(b) and, therefore, unless a change in the obligors satisfies the definition of an “assumption” under that section, the change does not trigger the ATR rule requirements. The guidance then notes that an “assumption” for purposes of section 1026.20(b) occurs when a creditor agrees in writing to accept a new consumer as a primary obligor on an existing mortgage loan, and the loan would constitute a residential mortgage transaction for that new consumer. Under Regulation Z, a residential mortgage transaction is a transaction in which a consumer finances the acquisition or initial construction of the consumer’s principal dwelling.

The CFPB interprets the ATR rule as not applying when a creditor agrees in writing to allow a successor to become the obligor on an existing mortgage loan because there is no assumption for Regulation Z section 1026.20(b) purposes. Because the successor had previously acquired title to the property, the transaction is not a residential mortgage transaction for the successor and, therefore, is not an assumption subject to the ATR rule.

The guidance notes that the transaction still is a consumer credit transaction and is subject to other Regulation Z requirements, including the requirement to provide monthly statements under Regulation Z section 1026.41 and the requirements to provide notices of interest rate adjustments under Regulation Z sections 1026.20(c) and (d).

CFPB Issues Final Rule...

(Continued from page 359)

the other specific opportunities identified by the CFPB have been addressed (the ATM sticker notice which was eliminated by Congress in 2012 and the credit card independent ability to pay requirement for applicants who are twenty-one years old or older which the CFPB eliminated in 2013), other streamlining opportunities identified by the CFPB and commenters continue to await the CFPB’s attention. In the December 2012 notice, the CFPB suggested that it would focus on streamlining once it had completed the mortgage-related rulemaking required by the Dodd-Frank Act. Now that such rulemaking has largely been completed, perhaps the CFPB will make streamlining a higher priority.

* Barbara S. Mishkin is Of Counsel with Ballard Spahr LLP in Philadelphia, PA. This article is derived from the firm’s CFPB Monitor, available at http://www.cfpbmonitor.com/2015/03/20/cfpb-adopts-plan-to-publicly-disclose-consumer-complaint-narratives/. Copyright © Ballard Spahr LLP. Reproduced with permission. Content is general information only, not legal advice or legal opinion based on any specific facts or circumstances.

1. No wonder the public is confused. See e.g., Connie Culp, Associated Press, More in U.S. find fewer of the day more complicated, Oklahoma, Sept. 28, 2014, at 11A (“Most people in the United States say the issues facing the country are getting harder to fathom”). Paul Krugman has accurately portrayed the current situation as an economy at “rock bottom” despite six years of monetary accommodation and zero interest rates, and he also criticizes those who believe the problems will be solved by reducing federal deficits and public spending. See, e.g., Krugman, supra note 54. But he seems to offer no better solution than to pursue more of the same policies that have so recently failed (higher deficits and spending). Ed. In fact, rather than these approaches will address the current plight of consumers cut off from private financial transactions by an overbearing legal and regulatory environment. See, e.g., John H. Cochrane, Opinion, An autopsy for the Keynesians, Wall St. J., Dec. 22, 2014, at A12; Hansich Mccar, Opinion, Quantitative Easing Won’t Lift Europe’s Economy, Wall St. J., Dec. 23, 2014, at A12. With the media, policy makers and even many economists so far off the mark, no wonder the public is confused and consensus is so elusive.