

2017 Drake Law General Practice Review

Consumer Protection

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THURSDAY, DECEMBER 7, 2017
8:45 – 9:45

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The Consumer Financial Protection Bureau (CFPB)



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Bureau Leadership Updates – Richard Cordray replacement

Wednesday, November 15, 2017

Director Richard Cordray announced he would resign at the end of November.

Friday, November 24, 2017

Richard Cordray resigned early. He named his chief of staff, Leandra English, as the agency's deputy director.



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Bureau Leadership Updates – Richard Cordray replacement

Friday, November 24, 2017

President Trump appoints his budget director, Mick Mulvaney, as the temporary director of the CFPB.

He would keep his job as the head of OMB
He has been a vocal opponent of the CFPB



Sunday, November 26, 2017

Leandra English sues President Trump over dueling appointments

Monday, November 27, 2017

Both “directors” show up to lead the agency

Tuesday, November 28, 2017

U.S. District Judge Timothy J. Kelly rules that Mulvaney is entitled to serve as acting director of the CFPB

Bureau Leadership Updates – Richard Cordray Replacement

1998 Presidential Vacancies Reform Act

[5 U.S.C. 3345](#)

[5 U.S.C. 3346](#)

Dodd Frank Wall Street Reform Act

P.L. 111-203, § 1011, 124 Stat. 1376, 1964(July 21, 2010)

12 U.S.C. 5491(b)(5)

“(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

- (A) be appointed by the Director; and
- (B) serve as acting Director in the absence or unavailability of the Director.”

Bureau Leadership Updates – PHH case – Constitutional Provision, Article II, § 3

III. The President

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; **he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.**



CFPB Regulations - Arbitration

[Arbitration Agreements](#), 82 F.R. 33210 (July 19, 2017)

Consumer is required to ARBITRATE all disputes with COMPANY . . . Consumer is prohibited under this Agreement from bringing a lawsuit or being a member of a class action dispute against COMPANY . . .



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CFPB Regulations - Arbitration

CFPB rule was [invalidated](#) under the Congressional Review Act on October 25, 2017

Congressional Review Act (5 U.S.C. 801-808)(1996)

- Applies to any rule with an annual impact of \$100 million or more
- Rule cannot take effect until 60 days (excluding days either House of Congress is adjourned for more than 3 days) after it is submitted to Congress or published in the Federal Register
- If both houses of Congress pass a resolution of disapproval within the 60 day period that is signed by the President, the rule is invalidated.
- The agency cannot attempt a new, similar rule.

"A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. (b)(2).

- Not subject to judicial review
- (See [here](#) for list of the times the CRA has been used by Congress. It's use has spiked significantly since January 2017.)

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CFPB Regulations - TRID

Amendments to the Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z), 82 F.R. 37656 (August 11, 2017)

- Original Trid Rule: 78 F.R. 79730 (Dec. 31, 2013) (effective October 3, 2015):

[Integrated Mortgage Disclosures \(TRID\)](#)

- Sample Trid Disclosure:

- New Rule: [82 F.R. 37656 \(August 11, 2017\)](#)

Closing Disclosure		APR	
APR	Rate	APR	Rate
3.75%	3.75%	3.75%	3.75%
4.00%	4.00%	4.00%	4.00%
4.25%	4.25%	4.25%	4.25%
4.50%	4.50%	4.50%	4.50%
4.75%	4.75%	4.75%	4.75%
5.00%	5.00%	5.00%	5.00%
5.25%	5.25%	5.25%	5.25%
5.50%	5.50%	5.50%	5.50%
5.75%	5.75%	5.75%	5.75%
6.00%	6.00%	6.00%	6.00%
6.25%	6.25%	6.25%	6.25%
6.50%	6.50%	6.50%	6.50%
6.75%	6.75%	6.75%	6.75%
7.00%	7.00%	7.00%	7.00%
7.25%	7.25%	7.25%	7.25%
7.50%	7.50%	7.50%	7.50%
7.75%	7.75%	7.75%	7.75%
8.00%	8.00%	8.00%	8.00%
8.25%	8.25%	8.25%	8.25%
8.50%	8.50%	8.50%	8.50%
8.75%	8.75%	8.75%	8.75%
9.00%	9.00%	9.00%	9.00%
9.25%	9.25%	9.25%	9.25%
9.50%	9.50%	9.50%	9.50%
9.75%	9.75%	9.75%	9.75%
10.00%	10.00%	10.00%	10.00%

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CFPB Regulations – Payday Loans

[*Payday, Vehicle Title, and Certain High Cost Installment Loans](#), 82 F.R. 54472 (November 17, 2017)



300% A.P.R.

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CFPB Regulations – Prepaid Cards

[*Pre-paid accounts under the electronic Fund Transfer Act \(regulation E\) and the Truth in Lending Act](#) – delay of effective date until April 1, 2018



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Supervisory Highlights

Spring 2017

- Mortgage servicing –
 - failure to follow facially complete rules
 - Payment of wrong consumer's insurance premiums with escrow funds
- Student Loan Servicing
 - Failure to reverse adverse consequences of erroneous deferment terminations

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Supervisory Highlights

Summer 2017

- Auto Repossessions–
 - Repossessing vehicles after repossession was supposed to be cancelled due to sufficient borrower payments or settlement agreement
 - Affected consumers had their repo fees refunded
- Debt Collection
 - Failure to verify contact with correct party, resulting in impermissible communication with third party
- Deposit Accounts
 - Failure to follow Regulation E error resolution requirements.

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Supervisory Highlights

Summer 2017

- Payday loans
 - Unwanted workplace collection calls
 - Repeated collection calls to personal and work references
 - Misrepresentations of comparison to competitors
 - Unauthorized debits from borrower's accounts

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Enforcement Actions Highlights

Spring 2017

- Experian, Equifax and Transunion – deceiving customers into believing credit scores released to customers were the same as those used by lenders to make credit decisions.
- Equifax and Transunion – signing consumers up for credit scores and credit related products that were “free” at first but then automatically converted to a monthly fee program.
- CitiFinancial Servicing and CitiMortgage – failure to inform borrowers about loss mitigation options when borrowers asked for payment deferment..
- CitiFinancial Servicing and CitiMortgage – requesting unnecessary and/or duplicate documents from borrowers who had applied for loss mitigation



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Enforcement Actions Highlights

- Moneytree, Inc. –
 - Lying about the price of check cashing services;
 - Threatening to possess consumer's vehicle when payment on an unsecured loan was late;
 - Withdrawing funds from consumer's bank account without authorization.
- CFPB found "significant weaknesses in Moneytree's compliance management system through multiple supervisory examinations of Moneytree's lending, marketing, and collections activities."



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Enforcement Actions Highlights

Summer 2017

- Fay Servicing – failure to send required information to consumers applying for loss mitigation.
- Nationstar Mortgage LLC, d/b/a Mr. Cooper – Failure to report accurate data under the Home Mortgage Disclosure Act (12 U.S.C. 2801-2811)

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Enforcement Actions Highlights

Other enforcement cases

- Lawsuit filed against collection law firm of Weltman, Weinberg & Reis, L.P.A. – falsely representing in millions of collections letters that attorneys were involved in debt collections.
- RD Legal Funding, et al. – scamming 9/11 heroes out of money intended to cover medical costs, lost income, and other critical needs
- Williamson Law Firm, et al. – charging illegal fees to consumers seeking debt relief

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Local Complaint Data

- Iowans have submitted a total of 3775 complaints since 2011
- In 2017 Iowans filed 804 Complaints between January 1, 2017 and November 29, 2017

Available at: <https://www.consumerfinance.gov/data-research/consumer-complaints/>

Sortable by:

- date received
- Product
- Sub-product
- Issue
- Sub-issue
- Company
- State
- Zip Code
- Company response and whether timely

Iowa UDAP statute – private actions

IOWA CODE SECTION 714H
EFFECTIVE JULY 1, 2009

Hubert v. General Nutrition Corp., 20137 WL 3971912 (W.D. PA 2017)

Facts:
Class Plaintiffs allege they purchased sports nutrition and weight loss dietary supplements from GNC that:

- contained 3 components that posed serious health risks;
- were not marketable as dietary supplements;
- and were mislabeled.



Main issue:
Do plaintiffs have **standing** to bring claims, including for violation of Iowa Code 714H?

Holding:
Class plaintiffs “have not sufficiently alleged that they suffered an economic injury to satisfy the injury-in-fact element. Therefore, Plaintiffs have failed to establish that they have standing to bring the present action.”

In re Takata Airbag Prods. Liability Litigation, MDL No. 2599, 2017 WL 2406711 (S.D. Fla. 2017)

Facts:

Plaintiffs sue for economic loss and personal injury from airbags manufactured by Takata and installed in various cars.

Main Consumer fraud issue:

Do plaintiffs have **standing** to bring claims for violation of various consumer fraud statutes, including Iowa Code 714H, despite lack of privity with Takata?

Holding:

"The economic harm allegedly suffered by Plaintiffs flows directly from Takata's alleged concealment of the airbag defect. Accepting these allegations as true, as the Court must at this stage, Plaintiffs sufficiently allege facts indicating that Takata's deception was aimed at consumers, despite the lack of direct privity. Therefore, Takata's motion to dismiss the consumer protection counts for lack of consumer-directed conduct is **DENIED.**"



Peter v. In and Out, and Carmax, 2017 Iowa Dist. LEXIS 1 (Oct. 25, 2017)

Facts:

Carmax → Carmax → In and Out → Peters
Customer

Main issue:

Can a contract between businesses (here the sale of the car by Carmax to In and Out) serve as the basis for a consumer fraud claim under Iowa Code 714H?

Holding:

714H applies even though Carmax sold the car to it was sold to a consumer.

- Court notes that to hold otherwise would allow sellers to escape 714H liability by simply selling merchandise to another business before the item was sold to a consumer.



Iowa UDAP statute – AG actions

IOWA CODE SECTION 714.16

State ex re. Miller v. Awakened, Inc., 2017 WL 4317295 (Ia. Ct. App. 2017)

Facts:

- AG sued massage school Awakened, and its owners, for violation of Iowa Code 714.16.
- The AG issued a subpoena, and was forced to file an application in district court to enforce the subpoena.
- The state then asked the court to award its attorneys fees and investigation costs of \$12,150

Relevant statute:

"In an **action brought under this section**, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state." Iowa Code 714.16(11).

Main issue:

Can the state recover its costs of enforcing a subpoena before it brings an action for violation of Iowa Code 714.16?

Holding:

No. This action was "premature."



Debt Collection

FEDERAL LAW – FDCPA – 15 U.S.C. §§1692-1692P

STATE LAW – IDCPA – IOWA CODE §§537.7101 – 537.7103
Cause of Action – Iowa Code Section §537.5201

Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017)

Facts:

Midland Funding filed a proof of claim in Johnson's Chapter 13 bankruptcy on a debt that was obviously time barred under Alabama law. The claim was disallowed by the bankruptcy court after Johnson objected to the claim.



Johnson later sued Midland, claiming that filing the proof of claim violated the Fair Debt Collection Practices Act, 15 U.S.C. 1692e and 1692f.

Relevant Statutory Provisions:

1692e – prohibits debt collectors from using any "false deceptive or misleading representation or means in connection with the collection of any debt."

1692f - prohibits debt collectors from using any "unfair or unconscionable means to collect or attempt to collect any debt."

Holding

Filing a proof of claim on a time-barred debt is not a violation of the FDCPA.

Henson v. Santander Consumer USA, Inc.,
137 S. Ct. 1718 (2017)

Facts:

Santander Consumer USA, Inc. purchased automobile loans that were in default from CitiFinancial Auto.

Debtors against whom Santander sought to collect the auto loans sued for Santander's alleged violations of the FDCPA.

Santander claimed that it was not a debt collector covered by the FDCPA.



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Henson v. Santander Consumer USA, Inc., 137 S.
Ct. 1718 (2017)

Relevant Statutory Provisions:

"The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692f(6).

Holding

A purchaser of a defaulted debt is not a debt collector under 15 U.S.C. 1692f(6), which defines a debt collector as someone who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."

Note:

A purchaser of a defaulted debt may still be found to be a debt collector under 15 U.S.C. 1692f(6) if the purchaser "uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts."

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Standing –
Spokeo v. Robins

136 S. CT. 1540 (MAY 16, 2016)

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Demarais v. Gurstel Chargo, P.A., 869 F.3d 685 (8th Ci r. 2017)



Facts:

Demarais owed debt to Citibank, which was charged off no later than 2010.

RAzOR Capital, LLC claimed to be Citibank's successor in interest and filed a lawsuit against Demarais.

Gurstel represented RAzOR in the lawsuit.

Gurstel engaged in bad conduct in the lawsuit and Demarais sued for violation of the FDCPA.

Holding:

"Demarais has alleged concrete injuries in fact and has standing to sue Gurstel Chargo." Id. at 693.
