

# Consumer Financial Services Alert

An informational newsletter from Goodwin Procter LLP

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➤ **Seventh Circuit Holds that Creditors’ Mailers Meet FCRA “Firm Offer” Requirements**

The Seventh Circuit issued a key decision in three appeals alleging violations of the prescreening provisions of the Fair Credit Reporting Act. In *Murray v. New Cingular Wireless Services, Inc.*, the Court held that a mailer making a pure offer of credit or insurance need not provide “value” to the recipient, making clear that its prior decision in *Cole v. U.S. Capital, Inc.*, 389 F.3d 719 (7<sup>th</sup> Cir. 2004), which had examined whether a mailer stated “value,” applied solely to situations where a mailer made an offer of merchandise along with an offer of credit. The Court also held that a prescreened mailer need not state all material terms of the credit or insurance product at issue, a requirement that it found was inconsistent with FCRA and would confuse recipients. The decision aligns the Seventh Circuit with recent decisions by the First Circuit and other district courts holding that FCRA is satisfied so long as a creditor or insurer honors its firm offer. [Click here](#) for a copy of *Murray v. New Cingular Wireless Services, Inc.*, No. 06-2477 (Apr. 16, 2009).

➤ **Federal Judge Dismisses Fraud Lawsuit**

A federal judge in the Eastern District of Pennsylvania dismissed in its entirety a putative class action brought against Countrywide Home Loans and several other lenders involving a rogue mortgage broker who defrauded more than 800 borrowers in a complicated Ponzi scheme. When the Ponzi scheme collapsed, the broker filed bankruptcy, and the borrowers sued their mortgage lenders, claiming that the broker was the servicing agent of the lenders, and the lenders should be held liable for the broker’s actions. In granting a motion to dismiss in *Jones v. ABN Amro Mortgage Group, Inc.*, the court ruled that (1) the plaintiffs could not sue in tort for claims arising from mortgage contracts; (2) the terms of the mortgages negated any claim that the broker was the lenders’ servicing agent; and (3) no common law agency relationship existed between the lenders and the broker. Goodwin Procter partner Tom Hefferon represented Countrywide in this matter. [Click here](#) for a copy of *Jones*

*v. ABN Amro Mortgage Group, Inc.*, Civ. Action No. 07-4328 (E.D. Pa. Apr. 10, 2008).

➤ **House Subcommittee Holds Hearings on Credit Card Reform Bill**

The Subcommittee on Financial Institutions and Consumer Credit of the House Financial Services Committee held a hearing on credit card reform. More than half of the 15 witnesses who testified, including FDIC Vice Chairman Martin Gruenberg, endorsed H.R. 5244, the Credit Cardholder's Bill of Rights Act of 2008. H.R. 5244 would amend the Truth in Lending Act and Regulation Z to allow cardholders to opt-out of rate increases; prohibit retroactive rate increases on existing balances; prevent "universal default" rate increases; bar creditors from changing any term of the contract until contract renewal; require payments to be allocated proportionately among balances with different rates; restrict the frequency of overlimit fees; ban the two-cycle method of calculating finance charges; require statements be mailed 25 days before due dates; and require statements to provide information on obtaining the payoff balance. While acknowledging some industry practices may need to be changed, credit card issuers that testified warned that the bill could have the unintended consequences of making credit less available and more expensive. [Click here](#) for a copy of H.R. 5244.

➤ **OCC Chief Counsel Testifies on Credit Card Bill**

Chief Counsel and First Senior Deputy Comptroller Julie L. Williams testified before the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Financial Services on H.R. 5244, the Credit Cardholders' Bill of Rights Act of 2008. [Click here](#) for a copy of Ms. Williams' oral statement and [here](#) for her written testimony.

➤ **FDIC to Conduct National Survey of Banks' Efforts to Serve the "Unbanked"**

The FDIC will conduct a nationwide survey of insured depository institutions to assess their efforts to serve unbanked and underbanked individuals and families. Survey questionnaires will be sent to a sample of institutions during the second quarter of 2008. Questions will focus on banks' financial education and outreach strategies; deposit, payment and credit products offered to entry-level consumers; and other related topics. [Click here](#) to jump to an FDIC webpage containing links to the related press release, FAQs, survey questionnaire and other materials.

➤ **FTC Files Staff Comment on Proposed HOEPA Rules**

The FTC filed with the FRB a staff comment on the FRB's proposed Truth in Lending Act and Home Ownership Equity Protection Act rules. [Click here](#) for a copy of the comment.

➤ **HUD Expands FHASecure Program**

HUD announced an expansion of FHASecure, a program that allows families with good credit histories who had been making timely mortgage payments before their loans reset, but are now in default, to qualify for refinancing. The program expansion creates two new categories of eligible borrowers: (1) borrowers with adjustable rate mortgages who were late on two consecutive monthly payments or at two different times over the previous 12 months (97% LTV ratio required) and (2) borrowers with adjustable rate mortgages who were late on three consecutive monthly payments or at three different times over the previous 12 months (90% LTV ratio required). Lenders will be required to ensure borrowers have the capacity to repay their mortgages, show a reasonable credit and employment history, and fully document and verify their incomes. The new loan amount would be based upon a new appraisal by an FHA-approved appraiser. Borrowers will still be required to pay upfront and annual premiums on their loans. [Click here](#) for a copy of HUD's press release.

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