Supervisory Highlights

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Consumer Financial
Protection Bureau

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1. Introduction

The CFPB is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The supervision of institutions that offer financial products and services – both banks and nonbanks – is one of the tools available to the Bureau to help meet this goal. In this ninth edition of *Supervisory Highlights*, the Bureau shares recent supervisory observations in the areas of consumer reporting, debt collection, mortgage origination, mortgage servicing, student loan servicing, and fair lending. One of the Bureau's goals is to provide information that enables industry participants to ensure their operations remain in compliance with Federal consumer financial law. The findings reported here reflect information obtained from supervisory activities completed during the period under review as captured in examination reports or supervisory letters. In some instances, not all corrective actions, including through enforcement, have been completed at the time of releasing this report.

The Bureau's supervisory activities have either led to or supported six recent public enforcement actions, resulting in $764.9 million being returned to consumers and $50.7 million in civil money penalties.[1] The Bureau also imposed other corrective actions at these institutions, including requiring improved compliance management systems (CMS), processes, and controls. In addition to these public enforcement actions, Supervision continues to resolve violations using non-public supervisory actions. When Supervision examinations determine that a supervised entity has violated a statute or regulation, the CFPB directs the entity to implement appropriate corrective measures, including remediation of consumer harm when appropriate.

[1] The CFPB's Office of Enforcement also brought other actions unrelated to supervisory activities.

Recent supervisory resolutions have resulted in restitution[2] of approximately $107 million to more than 238,000 consumers. Other corrective actions have included, among other things, correction of information submitted to consumer reporting agencies (CRAs), creation and implementation of new policies and procedures, and cessation of particular deceptive practices.

The CFPB supervises insured depository institutions and insured credit unions with total assets of more than $10 billion, and their affiliates. In addition, the Bureau has authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to supervise nonbanks, regardless of size, in certain specific markets: mortgage companies (originators, brokers, servicers, and providers of loan modification or foreclosure relief services); payday lenders; and private education lenders.

The CFPB may also supervise “larger participants” in other nonbank markets as the Bureau defines by rule. To date, the Bureau has issued five rules defining larger participants in the following markets: consumer reporting (effective September 2012), consumer debt collection (effective January 2013), student loan servicing (effective March 2014), international money transfers (effective December 2014) and, most recently, automobile financing (effective August 2015).

This report highlights supervision work generally completed between May 2015 and August 2015. Any questions or comments from supervised entities can be directed to CFPB_Supervision@cfpb.gov.

[2] The term “restitution” as used in this report refers specifically to monetary relief (or redress) to consumers, whereas remediation includes both monetary and non-monetary forms of relief.

2. Supervisory observations

Summarized below are some recent supervisory examination observations in consumer reporting, debt collection, mortgage origination, mortgage servicing, student loan servicing, and fair lending.

Companies that furnish information to consumer reporting agencies must comply with the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V.[3] These furnishers have a considerable impact on consumers and their ability to obtain credit. This issue of *Supervisory Highlights* reports on observations regarding such furnishing activities across a number of product areas. (*See* sections 2.1, 2.2.3, 2.5 and 2.5.6).

2.1 Consumer reporting

CFPB examiners (examiners) conducted one or more reviews of compliance with furnisher obligations under the FCRA and Regulation V at depository institutions. The reviews focused on furnishing activities to consumer reporting agencies (CRAs) that specialize in reporting on consumers' deposit account information.

Examiners found that one or more entities failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information furnished to CRAs, as required by Regulation V.[4] Examiners found that while one or more entities had policies and procedures addressing accuracy and integrity with respect to their furnishing of information to

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[3] 15 USC 1681 *et seq.*; 12 CFR Part 1022.

[4] 12 CFR 1022.42.

CRAs on credit accounts, they failed to have policies and procedures addressing accuracy and integrity with respect to their furnishing information on deposit accounts. Regulation V requires that such policies and procedures be appropriate to the nature, size, complexity, and scope of each furnisher's activities, and requires that furnishers consider Appendix E of Regulation V, the "Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies," and incorporate those guidelines as appropriate.[5] In addition, examiners found that one or more entities failed to periodically review and update their policies and procedures, as required by Regulation V.[6]

Regulation V also requires furnishers to provide consumers with notice of the results of investigations of direct disputes of information furnished to CRAs.[7] Examiners identified one or more entities that failed to provide such notice to consumers and thus violated Regulation V.

Furnishers are also users of consumer reports and, when acting in their capacity as users, are required by the FCRA to provide consumers with adverse action notices when they take any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report.[8] Examiners found that one or more entities, in violation of the FCRA,[9] sent adverse action notices to consumers that failed to include the name, address, and telephone number of the CRA that provided the information relied upon when the adverse action was taken.

Examiners further identified weaknesses at one or more entities with respect to processes, policies, and procedures for ensuring proper handling of disputes in compliance with their obligations under the FCRA[10] and Regulation V.[11] Specifically, they failed to distinguish FCRA

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[5] *Id.*

[6] *Id.*

[7] 12 CFR 1022.43(e)(3).

[8] 15 USC 1681m(a)(1).

[9] 15 USC 1681m(a)(3).

[10] 15 USC 1681s-2(b).

[11] 12 CFR 1022.43(e).

disputes from other communications (*e.g.*, complaints) they received, and failed to monitor and track direct FCRA disputes they received from consumers and indirect FCRA disputes they received from CRAs. These systemic deficiencies compromised the ability of these entities to assess their compliance with their dispute obligations, including their obligations to conduct a reasonable investigation, review all relevant information, and respond within certain time frames. Supervision directed one or more entities to update and implement dispute handling policies and procedures and to create a coordinated monitoring system in order to ensure all direct and indirect disputes of deposit information are tracked, investigated, and resolved completely and within the timeframes required.[12]

The CFPB expects financial institutions under its supervision to maintain an adequate CMS tailored to their operations. This includes oversight and training with respect to the policies and procedures used to furnish information to CRAs. For example, one or more entities furnishing negative information about consumers' use of deposit accounts (in particular, fraud and account abuse) to specialty CRAs failed to establish policies, procedures or processes governing this furnishing. They also failed to train employees and oversee such furnishing. Supervision directed one or more entities to establish and implement policies and procedures and conduct training on such furnishing.

2.2 Debt collection

2.2.1 Failure to state that a call is from a debt collector

The Fair Debt Collection Practices Act (FDCPA) requires debt collectors to make certain disclosures in their first communication with a consumer. In subsequent communications, among other things, they must state that the communication is from a debt collector.[13] During the examination of one or more debt collectors, examiners determined that the collectors' employees did not always state during subsequent phone calls that the calls were from debt

[12] *See* 12 CFR 1022.43(e) and 15 USC 1681s-2(b).

[13] 15 USC 1692e(11).

collectors. Supervision directed the debt collectors to improve training with regard to the FDCPA's requirement to provide these disclosures.

2.2.2 Failure to implement consumer requests regarding communications

The FDCPA requires debt collectors to limit their communications with consumers in certain ways. Among other things, the law generally prohibits a debt collector from contacting a consumer the debt collector knows is represented by an attorney,[14] and it prohibits a debt collector from contacting a consumer at his or her place of employment if the debt collector "knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication."[15] During one or more examinations, examiners determined that debt collectors had inadequate systems in place to comply with these requirements, creating a risk of violating the FDCPA. When consumers made verbal requests regarding phone calls, such as a request not to be called at work, the debt collectors' agents would note the request in one of several places in the account notes. The debt collectors did not, however, remove or block the affected telephone numbers in their dialer systems. Not removing or blocking the numbers and the placement of do-not-call request notes in different places by different teams of agents created risks that a consumer would receive calls that violated the FDCPA. Supervision directed the collectors to improve their training so that agents would annotate accounts and check for dialing restrictions in a consistent manner.

2.2.3 Reasonable written policies and procedures under Regulation V

Regulation V requires furnishers to "establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers" that it furnishes to a CRA.[16] Examiners determined that one or more debt collectors that furnish to CRAs had failed to meet this requirement. The policies and procedures reviewed lacked

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[14] 15 USC 1692c(a)(2).

[15] 15 USC 1692c(a)(3).

[16] 12 CFR 1022.42.

sufficient guidance with respect to how employees should handle consumer disputes made pursuant to Regulation V. At times, the policies and procedures also contradicted legal requirements, such as requiring employees to respond to some disputes by deleting tradelines instead of conducting an investigation.[17] Additionally, the policies and procedures did not provide adequate guidance on identifying disputes made under Regulation V and/or made under the FDCPA. Identifying these types of disputes is important because these laws have different requirements for companies that respond to disputes and because they confer different rights and protections on consumers. Supervision directed the debt collectors to establish and implement reasonable written policies and procedures as required by Regulation V.

2.3 Mortgage origination

In mortgage origination examinations, Supervision continues to evaluate compliance with rules implemented pursuant to Title XIV of the Dodd-Frank Act.[18] While examiners have found that supervised entities, in general, effectively implemented and demonstrated compliance with the rule changes, there were instances of non-compliance with certain Title XIV rules, as discussed in detail below. There were also findings of violations of disclosure requirements pursuant to the Real Estate Settlement Procedures Act (RESPA),[19] implemented by Regulation X; the Truth in Lending Act (TILA),[20] implemented by Regulation Z; and consumer financial privacy rules, implemented by Regulation P.[21]

[17] *See* CFPB Bulletin 2014-01 (Feb. 27, 2014) (discussing the obligation of debt buyers, debt collectors and others who furnish information to CRAs to investigate disputes instead of deleting tradelines), *available at* http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.

[18] The Title XIV rule changes cover loan originators (12 CFR 1026.36), the ability-to-repay (12 CFR 1026.43), appraisals and valuations (12 CFR 1002.14 and 12 CFR 1026.35), high-cost mortgages (12 CFR 1026.31 and 12 CFR 1024.20), and escrows for higher-priced mortgage loans (12 CFR 1026.35).

[19] 12 USC 2605 *et seq.*

[20] 15 USC 1601 *et seq.*

[21] 12 CFR Part 1016.

2.3.1 Failing to fully comply with the requirement that charges at settlement not exceed amounts on the good faith estimate by more than specified tolerances

Regulation X provides zero tolerance for increases from the estimates set forth in the consumer's good faith estimate (GFE) for the origination charge, the credit or charge for the interest rate chosen, the adjusted origination charge, and transfer taxes.[22] At one or more entities, examiners found GFEs that listed certain estimated charges that Regulation X does not permit to increase at settlement, yet the actual charges at settlement for these items increased. In such cases, Supervision required the entities to provide restitution to the borrower.

For certain other charges, such as lender-required services and government recording charges, the sum of such charges at settlement may not be greater than 10 percent above the sum of the amounts included on the GFE for these items.[23] In one or more examinations, examiners found that the GFE included estimated charges for which the sum could not increase by more than 10 percent at settlement, yet the sum of actual charges at settlement exceeded the 10 percent tolerance.

Further, Regulation X states that the loan originator is bound, within the tolerances discussed above, to the settlement charges and terms listed in the GFE unless a revised GFE is provided before settlement or the GFE expires.[24] A revised GFE may be provided if there are changed circumstances as specified by Regulation X.[25] The loan originator must document the reason for any revised GFE provided to the consumer and must retain such documentation for no fewer than three years after settlement.[26] In one or more examinations, Supervision determined that loan originator(s) failed to properly document changed circumstances to support charges that increased at settlement beyond the allowable tolerances.

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[22] 12 CFR 1024.7(e)(1).

[23] 12 CFR 1024.7(e)(2).

[24] 12 CFR 1024.7(f).

[25] *Id.*

[26] *Id.*

Supervision required the entities to develop and implement a corrective action plan that included new procedures to address the root cause of the violations and ensure compliance with applicable tolerances. Loan originators were also required to properly document changed circumstances, and to image and retain that documentation for the required period. In addition, supervised entities were required to provide remediation to affected consumers who were improperly charged excessive amounts.

2.3.2 Failing to fully comply with requirements for completion of HUD-1 settlement statements

Regulation X requires the use of the HUD-1 or HUD-1A (the "settlement statement") in every settlement involving a federally-related mortgage loan for which there is both a borrower and a seller, and sets forth specific instructions for completion of the settlement statement.[27] The settlement statement must state actual settlement charges paid by the borrower and seller, and must separately itemize each third-party charge paid by the borrower and seller.[28] Violation of any of these requirements is a violation of Regulation X.[29]

At one or more entities, examiners found that supervised entities violated Regulation X by non-compliance with these requirements, including, for example, the following:

- Third-party fees listed on the settlement statement not matching corresponding invoices;
- Inaccurate addition of dollar amounts, resulting in inaccuracies on the settlement statement;
- Failure to specifically identify on the settlement statement the recipient of fees for third-party services; and
- Appraisal fees on the settlement statement for loans where an appraisal was not required or was not obtained.

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[27] 12 CFR 1024.8.

[28] 12 CFR 1024.8(b).

[29] 12 CFR 1024.8(c).

These violations demonstrated weaknesses in the supervised entities' monitoring and corrective action processes regarding compliance with Regulation X. In response, Supervision directed the entities to complete system changes to enhance compliance oversight and prevent further such violations. Additionally, Supervision directed the entities to conduct a further review of their loan files to determine whether additional consumers were similarly affected, and to provide restitution to all affected consumers.

2.3.3 Failing to fully comply with requirements to provide homeownership counseling disclosure

Regulation X requires a lender to provide a loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location not later than three business days after receipt of a loan application.[30] Examiners found in one or more examinations that the list was never provided to the consumer and other instances where the list was not provided within three business days of receiving the application. Generally, these violations were due to weaknesses in the entities' monitoring for compliance with regulatory requirements. Supervision notified the entities' management of these violations and appropriate corrective action was taken to improve the entities' compliance management system and prevent future such violations.

2.3.4 Failing to fully comply with the requirement to provide accurate loan servicing disclosure statement

Regulation X requires that within three business days after applying for a first-lien mortgage loan, a consumer must be provided with a servicing disclosure statement that states whether the mortgage loan may be assigned, sold, or transferred.[31] In one or more examinations, examiners determined that loan servicing disclosure notices provided to consumers failed to provide accurate information about the loan originator's intent to retain, assign, sell or transfer servicing. These violations were not detected by the supervised entities through regular monitoring processes and procedures. Supervision notified the entities' management of these

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[30] 12 CFR 1024.20(a)(1).

[31] 12 CFR 1024.33(a).

violations and appropriate corrective action was taken to improve the entities' compliance management system and prevent future such violations.

2.3.5 Failing to fully comply with consumer financial information privacy requirements

Regulation P requires a clear and conspicuous initial notice to a customer that accurately reflects the loan originator's privacy policies and practices.[32] During one or more examinations, examiners found instances in which a loan originator maintained multiple versions of the initial privacy notice, which were inconsistent with each other, or more than one version of the notice was found within individual loan files. Further, some privacy notices did not identify affiliates or properly disclose that nonpublic personal information was shared with affiliates. These violations reveal weaknesses in the supervised entities' management oversight and monitoring and corrective action functions. Supervision notified the entities' management of these violations and appropriate corrective action was taken to improve the entities' compliance management system and prevent future such violations.

2.3.6 Failing to require employees engaged in loan originator activities to register with the NMLSR

Under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)[33] and its implementing regulation, Regulation G, covered financial institutions may not permit employees of the institution to act as mortgage loan originators for the institution unless such employee is registered with the Nationwide Mortgage Licensing System and Registry (NMLSR).[34] Further, TILA and its implementing regulation, Regulation Z, require loan originator organizations to ensure registration of loan originators pursuant to the SAFE Act and Regulation G.[35] Regulation G defines the activities of a mortgage loan originator to generally

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[32] 12 CFR 1016.4(a)(1).

[33] 12 USC 5101 *et seq.*

[34] 12 CFR 1007.102 and 103.

[35] 12 CFR 1026.36(a) and (f).

include taking a residential mortgage loan application (including indirectly receiving the information contained in the application in order to make an offer or negotiate a loan) and offering or negotiating terms for a residential mortgage loan.[36] Regulation Z defines the activities of loan originators to generally include, among other activities, taking an application, or offering or negotiating an extension of consumer credit.[37]

During one or more examinations, examiners found violations of Regulation G and Regulation Z in connection with one or more entities' failures to require employees who were engaged in covered loan originator and mortgage loan originator activities to be registered with the NMLSR. Specifically, Supervision found that one or more supervised entities did not require employees acting as underwriters for home equity closed-end loans to be registered with the NMLSR when the underwriting activities included taking an application by indirectly receiving the information contained in the application in order to make an offer or negotiate a loan, and offering terms or counter-terms to borrowers. As a result, Supervision directed one or more entities to identify all employees who engage in covered mortgage loan originator or loan originator activities, and to ensure such employees register with the NMLSR.

2.3.7 Failing to reimburse borrowers for understated APRs and finance charges

Regulation Z requires lenders to provide to borrowers a disclosure of the finance charges and annual percentage rates (APRs) within specified accuracy tolerances, and further requires reimbursement to borrowers for understatements of the finance charges or APRs in excess of the accuracy tolerances.[38] During one or more examinations, examiners determined that supervised entities violated Regulation Z by failing to identify understated APRs and required reimbursement. Moreover, examiners determined that the supervised entities had weak monitoring and corrective action processes that did not identify these violations. In such instances, the supervised entities were directed to reimburse affected borrowers and upgrade

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[36] 12 CFR 1007.102.

[37] 12 CFR 1026.36(a).

[38] 12 CFR 1026.18(d), 22(a), and 23(g).

their processes to minimize future occurrences and detect any understatements that nevertheless might occur.

2.4 Mortgage servicing

While Supervision continues to be concerned about the range of legal violations identified at various mortgage servicers, it also recognizes efforts made by certain servicers to develop an adequate compliance position through increased resources devoted to compliance. One or more servicers have made significant improvements in the last several years – for example, examiners observed compliance audits that thoroughly assessed the business unit's internal control environment, clearly identified issues with compliance, detailed management's response, set a target date for resolving the identified issues, and completed the necessary adjustments promptly. At one or more servicers, these audits were part of a wider and adequately resourced compliance framework. Moreover, one or more servicers conducted formal reviews of information technology structures and identified the inadequacies causing earlier problems, including system outages. These reviews led one or more servicers to replace outdated systems, such as deficient document management systems. Supervision continues to see that the inadequacies of outdated or deficient systems pose considerable compliance risk for mortgage servicers, and that improvements and investments in these systems can be essential to achieving an adequate compliance position.

2.4.1 Servicing policies, procedures, and requirements

In planning mortgage servicing examinations, Supervision continues to seek input from established housing counselor networks with broad experience of the issues and challenges that individual consumers confront in their dealings with mortgage servicers.

Regulation X requires servicers to maintain policies and procedures reasonably designed to achieve specific objectives that include: providing timely and accurate information; properly

evaluating loss mitigation applications; and facilitating oversight of, and compliance by, service providers.[39]

In reviewing for these requirements, examiners found policies and procedures reasonably designed to meet the specific objectives laid out in the regulation at one or more servicers. However, examiners found that one or more servicers violated Regulation X because their policies and procedures were not reasonably designed to achieve the following objectives:

- Upon the death of a borrower, promptly identifying and facilitating communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower's mortgage loan.[40] One or more servicers lacked any policies and procedures for identifying and facilitating communication with successors in interest.
- Identifying with specificity all loss mitigation options for which a borrower may be eligible.[41] One or more servicers sent letters to certain borrowers soliciting loss mitigation applications when the servicer's own records showed that the borrowers were not eligible for any loss mitigation option.
- Properly evaluating a loss mitigation application for all options for which the borrower may be eligible based on the loan owner's requirements.[42] One or more servicers evaluated the borrower only for the loss mitigation options that a servicer representative preselected for the borrower.
- Facilitating the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including service provider personnel

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[39] 12 CFR 1024.38(a), (b).

[40] 12 CFR 1024.38(b)(1)(vi).

[41] 12 CFR 1024.38(b)(2)(ii).

[42] 12 CFR 1024.38(b)(2)(v).

responsible for handling foreclosure proceedings.[43] In one or more instances, a servicer's foreclosure attorney sent a foreclosure referral letter to the borrower after the borrower entered into a loss mitigation agreement with the servicer.

Regulation X also requires servicers to maintain certain documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days.[44] Among other things, servicers must maintain a schedule of all transactions credited or debited to the mortgage loan account in such a manner.[45] Examiners found that one or more servicers were neither able to compile a servicing file within five days nor to produce a schedule of fees charged to borrowers in such files.

In the above cases where examiners detected policies, procedures, or requirements not in compliance with Regulation X, Supervision directed servicers to implement policies, procedures, and requirements compliant with Regulation X and to monitor for their effectiveness.

2.4.2 Loss mitigation applications

Regulation X sets forth requirements for soliciting, completing, evaluating, and notifying borrowers of the outcomes of loss mitigation applications. As part of these requirements, a servicer receiving an incomplete loss mitigation application must include in its acknowledgment notice to the borrower, a reasonable date by which the borrower should submit the missing documents and information necessary to complete the application.[46] One or more servicers violated this requirement when they gave borrowers 30 days to submit missing documents, but denied borrowers for loss mitigation before the 30 days elapsed. Supervision directed one or more servicers to implement controls to ensure that borrowers receive a reasonable amount of time to submit missing loss mitigation documents before denying an application.

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[43] 12 CFR 1024.38(b)(3)(iii).

[44] 12 CFR 1024.38(c)(2).

[45] 12 CFR 1024.38(c)(2)(i).

[46] 12 CFR 1024.41(b)(2)(ii).

When denying a loss mitigation application, a servicer must permit borrowers to appeal a denial for any trial or permanent loan modification program available to the borrower if the servicer received the complete application 90 days or more before a scheduled foreclosure sale.[47] In cases in which a borrower has the right to appeal, a servicer must, in its decision letter on the borrower's loss mitigation application, inform the borrower of the appeal right and the date by which the borrower must file the appeal.[48] One or more servicers provided denial letters that failed to communicate a borrower's specific right to appeal. The letters instead generically stated that the borrower may have a right to appeal if the borrower submitted a complete loss mitigation application at least 90 days or more before a scheduled foreclosure sale. By not making an advance determination of whether individual borrowers were actually entitled to an appeal, one or more servicers left borrowers to determine for themselves whether they had a right to appeal the denial of a loan modification. Examiners cited one or more servicers for violating Regulation X. Supervision directed the servicers to include more specific appeal language in their denial letters where appropriate, rather than including generic appeal language in every denial letter.

Regulation Z states that a "contract or other agreement relating to a consumer credit transaction secured by a dwelling . . . may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law."[49] Examiners found one or more servicers required borrowers to sign waivers agreeing that they had no "defenses, set-offs or counterclaims to the indebtedness of borrowers pursuant to the Loan Document" in order to enter mortgage repayment and loan modification plans. Defenses, set-offs and counterclaims pertain to a contract or other agreement to a consumer credit transaction secured by a dwelling. As borrowers were likely to read the waiver as barring them from bringing claims — including Federal claims — related to the mortgage, Supervision cited the

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[47] 12 CFR 1024.41(h).

[48] 12 CFR 1024.41(c)(1)(ii).

[49] 12 CFR 1026.36(h)(2).

waiver language as deceptive and directed one or more servicers to remove it from all loss mitigation agreements.[50]

2.4.3 Homeowners Protection Act

The Homeowners Protection Act (HPA) requires automatic termination of borrower-paid private mortgage insurance (PMI) on the "termination date" if, on that date, the borrower is current on payments.[51] The HPA defines "termination date" as the date on which the mortgage's principal balance is first scheduled to reach 78 percent of the original value of the property securing the loan (irrespective of the outstanding balance for that mortgage on that date).[52] Examiners found one or more servicers violated the HPA by failing to automatically terminate PMI for borrowers that are current on their loans on the termination date. Supervision directed one or more servicers to reimburse affected borrowers and to correct their termination procedures.

In addition to termination, the HPA provides that a borrower may initiate cancellation of PMI coverage by submitting a written request to the servicer. For a borrower who has initiated cancellation, the HPA provides that, if the borrower meets certain requirements, PMI shall be cancelled on the "cancellation date."[53] The HPA defines "cancellation date" as, at the option of the borrower, either: (1) the date on which the principal balance of the mortgage is first scheduled to reach 80 percent of the "original value" of the property (regardless of the outstanding balance), or (2) the date on which the principal balance of the mortgage reaches 80

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[50] 12 USC 5536(a)(1)(B).

[51] 12 USC 4902(b)(1).

[52] 12 USC 4901(18).

[53] 12 USC 4902(a). Those requirements are:

- The borrower must have a good payment history;
- The borrower must be current on the loan;
- The borrower must satisfy any requirement of the holder of the mortgage for certification that the borrower's equity in the property is not subject to a subordinate lien; and
- The borrower must satisfy any requirement of the holder of the mortgage for evidence (of a type established in advance and made known to the borrower by the servicer) that the value of the property has not declined below the original value.

percent of the “original value” of the property based on actual payments.[54] Examiners found that one or more servicers represented to borrowers seeking to cancel PMI that they had to wait until the mortgage balance reached 75 percent of the property’s current value, and until 24 months after origination to cancel PMI. Supervision determined these statements, which conflicted with both the HPA and relevant investor guidelines, to be deceptive.[55] Supervision directed one or more servicers to revise the borrower-initiated PMI cancellation practices and to reimburse borrowers who paid premiums after they were incorrectly denied PMI cancellation.

The HPA requires that servicers return any unearned PMI premiums to the borrower within 45 days after cancelling or terminating a borrower’s PMI.[56] One or more servicers violated the HPA when they held unearned premiums longer than 45 days – for example, for an average of 152 days. One or more servicers also violated the HPA by keeping unearned premiums in borrower escrow accounts indefinitely rather than returning them directly to borrowers within 45 days. Supervision directed one or more servicers to implement new procedures and update applicable policies to ensure that they refunded unearned PMI premiums to the borrower within 45 days as required by the HPA.

2.4.4 Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) applies to debt collectors, including entities that regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.[57] Mortgage servicers are generally debt collectors under the FDCPA if the loan was in default at the time the servicer obtained the loan.[58] Many servicers charge fees to

[54] 12 USC 4901(2).

[55] 12 USC 5536(a)(1)(B).

[56] 12 USC 4902(f)(1).

[57] 15 USC 1692a(6).

[58] *See Bailey v. Sec. Nat. Servicing Corp.*, 154 F.3d 384, 387 (7th Cir. 1998) (stating that if a mortgage servicer “seeks to collect on the original note technically remaining in default . . ., then he is a ‘debt collector’ under the Act so long as the debt was in default at the time he obtained or purchased it.”); 15 USC 1692a(6)(F)(iii) states that an entity is

borrowers to make payments over the phone. However, the FDCPA prohibits collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.[59] One or more servicers violated the FDCPA when they charged fees for taking mortgage payments over the phone to borrowers whose mortgage instruments did not expressly authorize collecting such fees and/or reside in states that do not expressly permit collecting such fees.[60] Supervision directed one or more servicers to review mortgage notes and applicable state law, and to only collect pay-by-phone fees where authorized by contract or state law.

One or more servicers violated the FDCPA when they sent debt validation letters listing debt amounts that the servicer could not verify as accurate. The servicers listed estimates of the debt amount rather than the actual amount the borrower owed. Examiners cited this practice as violating the FDCPA, and Supervision directed one or more servicers to list only accurate and verifiable debt amounts in its debt validation letters.

Examiners found one or more servicers violated the FDCPA when they failed to send debt validation letters to borrowers within five days after the initial communication about the debt, where the borrowers' loans were in default when servicing rights were obtained. Examiners cited this practice as a violation of the FDCPA, and Supervision directed one or more servicers to revise their procedures to ensure that their debt validation notices contained accurate statements of the debt and that they retained documentation to support the debt validation amounts provided in the notices.

2.5 Student loan servicing

The Bureau continues to examine federal and private student loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices

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not a "debt collector" under the FDCPA if the debt being collected "was not in default at the time it was obtained" by that entity.

[59] 15 USC 1692a(6).

[60] *See, e.g.*, *Shami v. Nat'l Enterprise Sys.*, Civ. No. 09-722, 2010 WL 3824151, at *2 (E.D.N.Y. Sept. 23, 2010).

prohibited by the Dodd-Frank Act. As in all applicable markets, Supervision also reviews student loan servicers' practices related to furnishing of consumer information to CRAs for compliance with the FCRA and its implementing regulation, Regulation V. In the Bureau's student loan servicing examinations, examiners have identified several unfair or deceptive acts or practices, as well as FCRA and Regulation V violations.

2.5.1 Allocating partial payments

Examiners identified practices related to partial payments of the type noted in previous editions of *Supervisory Highlights*. Specifically, examiners continue to find entities engaging in the unfair practice of depriving consumers of an effective choice as to how to allocate these partial payments. Most servicers handle multiple student loans for one borrower in combined student loan accounts. Servicers bill borrowers for the sum of the minimum monthly payments for each loan. When a borrower makes a payment that is less than that sum – a "partial payment" – borrowers can direct payments to individual loans. Most servicers have adopted a default payment allocation methodology that governs how such partial payments are allocated among loans in an account when a borrower does not provide instructions.

When a servicer allocates a partial payment proportionally, typically all loans are left delinquent and may each accrue a separate late fee. During one or more examinations, examiners identified servicers that were allocating partial payments proportionally among all loans in the account and failing to communicate the ramifications of this allocation methodology to the affected consumers. In addition, these servicers did not adequately communicate the borrowers' ability to direct payments themselves, nor in some cases did these servicers provide borrowers with the ability to direct payments to individual loans. In some of these cases, the total amount of late fees charged was higher than if the servicer or borrower allocated the payment in another manner. Examiners determined that this practice of failing to give consumers an effective choice of how to allocate payments and of proportionally allocating partial payments in a way that maximizes late fees was unfair because the resulting higher late fees constituted a substantial injury that was not reasonably avoidable or outweighed by countervailing benefits to consumers or competition.

As a result of examiners' findings, one or more servicers changed their allocation methodology so that they allocate partial payments among current loans to the loan with the highest interest rate first, and then the loan with the next highest interest rate. One or more servicers also agreed to provide improved disclosures regarding their allocation methodology and borrowers' ability to direct payments to individual loans.

2.5.2 Issues involving payment systems

Examiners found several issues involving the manner in which servicers' systems process payments. Examiners cited one or more servicers for the unfair practice of processing automatic debits early. Most student loan servicers allow borrowers to make payments on an automatic, recurring basis that are scheduled on the same day every month (usually the due date). Examiners found on one or more occasions that malfunctions in servicers' systems were causing payments to be triggered earlier than the scheduled date. Malfunctions like these could be unfair if they result in substantial, unavoidable injury — here, overdraft fees or non-sufficient funds fees at the consumer's bank resulting from unexpected debits — that is not outweighed by countervailing benefits to consumers or competition. Supervision directed servicers to develop better controls to detect and address system malfunctions of this type, while acknowledging that servicers had already taken some positive steps in response to the processing issues that were identified.

Examiners identified another unfair practice relating to the automatic debit policies of one or more servicers. For borrowers making payments using auto-debits, when a due date falls on a day when the banks are closed (for example, on weekends or holidays), payments are typically processed on the next business day. Because student loans are daily-simple-interest loans, the delay can cause additional interest to accrue. Examiners found that one or more servicers were not crediting payments back to the due date when this delay occurred — a practice that would reverse the additional interest accrual. Examiners also found that one or more servicers did not tell consumers that additional interest would accrue as a result of the auto-debit policy. The examiners found that this practice of failing to credit back to the due date without making clear to users that such payments would not be credited back to the due date and that additional interest would accrue in the interim period was unfair because the injury, aggregated across all borrowers who repay using auto-debit, constituted a substantial injury that was not reasonably avoidable or outweighed by countervailing benefits to consumers or competition. Supervision directed servicers to cease this practice.

2.5.3 Misrepresentations regarding dischargeability of student loans in bankruptcy

CFPB examiners continue to find supervised entities making deceptive statements to consumers about discharging student loans in bankruptcy. Previous editions of *Supervisory Highlights* have reported deceptive statements to consumers that their student loans were not dischargeable. While student loans may be more difficult to discharge than other loans,

applicable law provides that they are dischargeable if a borrower proves that repayment would pose an “undue hardship.”[61]

Recently, examiners have observed one or more servicers deceptively conveying to consumers that their loans are not dischargeable because those consumers have completed bankruptcy. Similar to the statements highlighted in the Fall 2014 edition of *Supervisory Highlights*,[62] examiners found that these statements were also deceptive in light of the fact that borrowers often have avenues to reopen bankruptcy cases or otherwise raise “undue hardship” challenges to the enforceability of student loans. Supervision directed the entity or entities to cease deceptive communications about bankruptcy.

2.5.4 Misrepresentations about late fees

Examiners determined that certain statements by servicers about late fees on Department of Education-held loans are deceptive. While Department of Education loan notes allow for the charging of late fees, the Department of Education does not, at this time, charge late fees on its loans and it instructs its servicers not to do so. Bureau examiners found that one or more servicers were making representations to consumers that late fees may be charged on loans held by the Department of Education. Supervision directed one or more entities to cease making deceptive statements about late fees for loans owned by the Department of Education.

2.5.5 Paying off loans – best practice

Some servicers are taking proactive steps to help borrowers understand what payments they owe. As background, the Bureau has received reports from some borrowers that they are having difficulties when they attempt to pay off their student loans. One particular concern arises when a borrower makes a large lump sum payment, attempting to pay off the entire loan or account, but falls short of the total amount due. Many student loan servicers do not inform borrowers that the payoff attempt failed and cease communicating regularly with the borrower for a significant period of time because the borrower has paid enough to cover subsequent months

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[61] 11 USC 523(a)(8).

[62] *See Supervisory Highlights: Fall 2014*, Section 2.5, *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf.

and does not have a monthly payment due, even though a small balance remains on the loan or account. When this type of situation occurs, borrowers may be left unaware that a balance remains, resulting in months or years of interest accrual, tradelines remaining open in borrowers' credit reports, and potential delinquency or default when monthly payments are again due months or years later.

Examiners observed that one or more servicers continued to communicate with these borrowers during the paid ahead period. These communications convey the remaining balance on the borrower's loans, which can help borrowers seeking to fully pay off their loans understand that they still owe money.

2.5.6 Furnishing and Regulation V

As discussed earlier in this edition of *Supervisory Highlights*, the FCRA and its implementing regulation, Regulation V, require companies that furnish information on consumers to CRAs to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information they furnish. Whether policies and procedures are reasonable depends on the nature, size, complexity, and scope of the entity's furnishing activities. Many student loan servicers have extensive furnishing operations, sending information on millions of consumers to CRAs. During one or more student loan servicing examinations, examiners found policies and procedures that were insufficient to meet the obligations imposed by Regulation V.

At one or more servicers, examiners deemed policies and procedures inadequate, which resulted, in part, from a failure to adequately consider and incorporate the guidelines in Appendix E to 12 CFR 1022. For example:

- Policies and procedures only provided cursory instructions to employees on how to handle investigations of consumer disputes;
- Policies and procedures did not address internal controls such as verifying random samples; and
- Policies and procedures did not consider periodic evaluations of the entities' practices, such as their investigations of disputed information, corrections of inaccurate information, means of communication, and other practices that may affect the accuracy or integrity of information furnished to CRAs, nor was there any documented and regular practice of reviewing exception reports from CRAs.

In light of the extensive nature, size, complexity, and scope of the furnishing activities of one or more student loan servicers, examiners found that these policies and procedures were not reasonable as required by Regulation V. Supervision directed one or more servicers to enhance their policies and procedures regarding the accuracy and integrity of information furnished to CRAs, including by correcting the conduct described in the bullets listed above.

3. Fair lending

3.1 Underwriting disparity findings and remedial actions

CFPB examination teams conduct targeted Equal Credit Opportunity Act (ECOA) reviews at institutions in order to identify and evaluate areas of heightened fair lending risk. These reviews generally focus on a specific line of business, such as mortgages, credit cards, or automobile finance. These reviews typically include a statistical analysis and, in some cases, a loan file review that assesses an institution's compliance with ECOA and its implementing regulation, Regulation B, within the specific business line selected.

A CFPB targeted ECOA review usually begins with the submission of a request for information and data to the institution. Once responses are received, the examination team works together with CFPB economists and analysts to conduct a preliminary review of the information produced by the institution, analyze the accompanying data, and detect areas of heightened fair lending risk. Areas of heightened fair lending risk may be detected in an institution's policies and procedures; through statistical analysis of the data, considering whether similarly-situated applicants and borrowers may have been treated differently because of a prohibited basis; or other circumstances.

The next two stages of a targeted ECOA review are the selection of focal points and the on-site review. Focal points are selected from among the areas of heightened fair lending risk identified during the preliminary stages of an examination. Examples of focal points that may be selected through this process are underwriting, pricing, redlining, or steering on a prohibited basis.

The on-site portion of an examination that follows selection of the focal points generally includes a review of the institution's fair lending compliance management system and an in-depth analysis of the chosen focal points. The in-depth analysis may include a tailored

assessment of the institution's policies and procedures as well as interviews with loan officers, underwriters, other staff, or consumers. The in-depth analysis may also include a loan file review that focuses on a particular segment of the applicant pool – such as marginal applicants, outliers, or applicants who receive exceptions – or a particular question, such as whether the level of assistance provided to similarly-situated applicants was the same.

3.1.1 Underwriting reviews

CFPB examination teams have conducted numerous examinations to determine whether statistical disparities in underwriting outcomes are attributable to race, national origin, or some other prohibited basis characteristic. Many of these examinations have concluded without findings of discrimination. In one or more examinations, however, examiners concluded that the disparities resulted from illegal discrimination in violation of ECOA.

In one or more examinations, examiners concluded that a supervised entity violated ECOA by denying qualified African-American, Hispanic and/or Asian applicants for loan products more frequently than other, similarly situated non-Hispanic white applicants on the basis of race and/or national origin. In these types of examinations, Bureau economists use information provided by an institution to model its underwriting processes for several mortgage products. The economists often use a marginal effects measure to determine the differences in probability of denial for African-American, Hispanic, and Asian applicants relative to non-Hispanic white applicants. This analysis accounts for the legitimate, non-discriminatory credit characteristics considered by an entity in its underwriting processes. In one or more examinations, the analysis identified potential discriminatory denial disparities in multiple product areas.

Focal points were selected and in these particular reviews, examiners conducted file reviews to gain a better understanding of the disparities identified in the statistical analysis. They observed legitimate, non-discriminatory factors unrelated to race or national origin that explained many of the differences in outcome, but not the disparities associated with applicants in one of the prohibited basis groups. Those disparities remained unexplained after the comparative file review. The Bureau sent one or more institutions a Fair Lending Potential Action and Request for Response (PARR-FL) letter communicating potential ECOA findings. After careful consideration of any responses, Supervision cited one or more institutions for an ECOA violation. In these types of matters, institutions are required to provide appropriate relief.

3.1.2 Methodologies that can be used to understand underwriting disparities

In CFPB underwriting reviews, which typically evaluate potential disparities in denial rates, Bureau economists may rely upon marginal effects, in addition to other methods of analysis, such as odds ratios, to measure whether outcomes differ based on race, national origin, sex, or other prohibited bases.

As their name implies, odds ratios measure the ratio of the odds of two different events. In the context of an underwriting analysis, the ratio reflects the odds of a loan application denial between groups of borrowers. For example, in an analysis that compares denial rates for Hispanic and non-Hispanic white applicants, an odds ratio greater than one indicates that the odds of a Hispanic applicant being denied exceed the odds of denial for a non-Hispanic white applicant. However, the "odds" conveyed by an odds ratio are not the same as probabilities and the magnitudes of odds ratios can be difficult to interpret.

For example, an odds ratio of three does not indicate that the denial rate for the test group is three times the denial rate for the control group. An odds ratio of three could result from a number of scenarios, including:

- the test group is denied in 25% of cases, versus 10% of cases for the control group,
- the test group is denied in 75% of cases, versus 50% of cases for the control group,
- the test group is denied in 99% of cases, versus 97% of cases for the control group.[63]

For this and other reasons, the Bureau may use other methods of analysis, including marginal effects to gain a better understanding of the nature and relative magnitude of any underwriting disparities. In contrast to odds ratios, the marginal effect expresses the absolute change in denial probability associated with being a member of a prohibited basis group. Interpreting these marginal effects is straightforward. For example, a marginal effect of 0.10 in an

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[63] An odds ratio in the context of an underwriting analysis is the ratio of the odds of a loan application denial— that is, "the probability of being denied" divided by "the probability of not being denied (that is, approved)" — for the test group and the control group, respectively. In the first example above, the odds ratio is calculated as [0.25 / 0.75] / [0.10 / 0.90], which equals 3. The second example produces an identical odds ratio, since [0.75 / 0.25] / [0.50 / 0.50] also equals 3. The odds ratio for the third example is [0.99 / 0.01] / [0.97 / 0.03], which is about 3.06.

underwriting analysis means the test group will be denied in 10% more cases compared to the control group. Expressed another way, the probability of denial for the test group is 10 percentage points higher than the probability of denial for the control group. When the CFPB calculates marginal effects, it also considers a conditional marginal effect, which provides the increased chances of denial for a group holding all other factors constant, and thus controls for other, legitimate credit characteristics that may affect the probability of denial.

An additional benefit of marginal effects is that they can be compared across groups and institutions. Marginal effects may also be compared to the institution's overall approval and denial rates in the specific product reviewed. In this manner, the CFPB can contextualize the disparity to determine whether it warrants additional inquiry. Marginal effects also may allow us to decide that a particular disparity does not merit additional inquiry. The CFPB selects from among this and other methodologies depending on the focal points identified and other facts related to the specific review.

3.1.3 Varying file selection methods

If a file review is conducted, the methods used to select files may vary depending on the purpose of the review. For example:

- Declined applicants in the group that was potentially discriminated against may be compared with similarly-situated approved applicants in the control group to identify any legitimate, nondiscriminatory explanations for the different treatment. In addition, examination teams may compare denied control group borrowers with approved borrowers in the target group to determine whether any explanations for different treatment apply equally across groups.

- When statistical analysis has been conducted, a sample may be selected and reviewed to determine whether any legitimate decision-making criteria were not captured by the statistical model.

- A file review may help examiners identify evidence of any differences in quality of assistance provided to applicants on a prohibited basis, or evidence of illegal redlining or steering.

- Examiners may review files to determine whether there is any evidence that prohibited bases were explicitly considered in the underwriting process.

- Examiners may review "outlier applicants" in order to understand why applicants who appear to be well-qualified are nonetheless denied, or why applicants who appear poorly qualified are nonetheless approved. Or, examiners may review "marginal applicants," for whom the underwriting decision is less clear, in order to understand how loan officers make decisions on these files.

In each examination where a file review is conducted, the review is tailored to that examination's risk-based focal points. If the examiners identify examples of files that may provide evidence of discrimination, they share the files with the institution to obtain the institution's explanation. If, following the statistical analysis and the file review, the examination team believes that there may be a violation of ECOA, the CFPB may share the findings with the institution in a PARR-FL letter.[64]

When examiners identify underwriting disparities that violate ECOA, Supervision will require the institution to pay remuneration to affected borrowers, which may include application or other fees, costs, and other damages. Institutions also may be required to re-offer credit. In addition, institutions must identify and address any underlying CMS weaknesses that led to the violations.

3.1.4 Managing underwriting risks

There are a number of steps that institutions can take to limit the risk of ECOA violations due to disparate outcomes in underwriting:

1. Ensure that internal monitoring processes review underwriting practices for potential discrimination. Depending on the size and complexity of the institution, consider using statistical methodologies to understand potential disparities.

2. If potential disparities are identified, take steps to determine any root causes of the disparities, including any factors that may be having a disparate effect on a prohibited basis, whether borrowers were wrongly declined, and whether illegal discrimination may have occurred.

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[64] The PARR-FL letter process is described in this edition of *Supervisory Highlights* beginning on page 38.

3. Take appropriate remedial action in the event that discrimination is identified, such as remunerating borrowers who were wrongly denied on a prohibited basis and re-offering credit.

4. Ensure that policies and procedures given to loan officers have clear guidance with respect to:

    a. Making alternative product offerings to applicants and documenting the choice of a particular product.

    b. Applying credit standards to reach underwriting decisions, and documenting the decision-making process.

    c. Granting exceptions to credit standards, and documenting the justifications for the exceptions.

3.2 Settlement update: Ally Financial Inc. and Ally Bank

In December 2013, together with the Department of Justice (DOJ), the Bureau ordered Ally Financial Inc. and Ally Bank to pay $80 million in damages to consumers harmed by Ally's auto loan pricing policies that resulted in discrimination. The Bureau found that Ally had a policy of giving dealers the discretion to increase or "mark up" consumers' interest rates, and paying dealers for those markups. Between April 2011 and December 2013, Ally's discretionary markup policy resulted in African-American, Hispanic, and Asian and Pacific Islander borrowers paying more for auto loans than similarly situated non-Hispanic white borrowers. Ally is also required to pay a settlement administrator to distribute the $80 million in damages to harmed borrowers. Pursuant to the order, Ally also has begun to address the discriminatory effects of its pricing policies after the settlement period. Ally will continue to assess potential discriminatory pricing annually during the term of the order, and pay refunds to minority borrowers for any discriminatory pricing identified.

On June 26, 2015, the settlement administrator sent letters to Ally borrowers identified as potentially eligible for remediation from the settlement fund. These packages contain instructions, in English and Spanish, on how consumers can participate in the settlement. Upon request, materials translated into Mandarin, Cantonese, Vietnamese, Korean, and Tagalog will be made available. Consumers have until October 2015 to respond, after which the agencies will determine the final distribution amount for each eligible borrower. The agencies anticipate allocating the entire settlement fund to harmed borrowers.

4. Remedial actions

4.1 Public enforcement actions

The Bureau's supervisory activities resulted in or supported the following public enforcement actions.

4.1.1 Citibank

On July 21, 2015, the Bureau ordered Citibank, N.A. and certain of its subsidiaries to provide an estimated $700 million in refunds to eligible consumers harmed by illegal practices related to credit card add-on products and services. Roughly seven million consumer accounts were affected by Citibank's deceptive marketing, billing, and administration of debt protection and credit monitoring add-on products. A Citibank subsidiary also deceptively charged expedited payment fees to nearly 1.8 million consumer accounts during collection calls. Citibank and its subsidiaries will pay $35 million in civil money penalties.

Pursuant to the Dodd-Frank Act, the CFPB has the authority to take action against institutions engaging in unfair, deceptive, or abusive practices, or other violations of federal consumer financial law. The CFPB's order requires that Citibank:

- Conveniently reimburse consumers affected by these practices;
- End unfair billing practices so that consumers will no longer be billed for credit monitoring products if they are not receiving the promised benefits; and
- Cease engaging in illegal practices by prohibiting Citibank from marketing all add-on products by telephone or at the point of sale, or engaging in attempts to retain consumers in these products by telephone, until it submits a compliance plan to the CFPB.

4.1.2 Discover Bank

On July 22, 2015, the Bureau took action against Discover Bank and its affiliates for illegal private student loan servicing practices. The CFPB found that Discover overstated the minimum amounts due on billing statements and denied consumers information they needed to obtain federal income tax benefits. Thousands of consumers encountered problems as soon as their loans became due and Discover gave them account statements that overstated their minimum payment. Discover denied consumers information that they would have needed to obtain tax benefits and called consumers' mobile phones at inappropriate times to contact them about their debts.

The CFPB concluded that the company and its affiliates violated the Dodd-Frank Act's prohibitions against unfair and deceptive acts and practices as well as the Fair Debt Collection Practices Act. The CFPB's order requires Discover to refund $16 million to consumers, pay a $2.5 million civil money penalty, and improve its billing, student loan interest reporting, and collection practices.

4.1.3 Paymap Inc. and LoanCare LLC

On July 28, 2015, the CFPB announced an enforcement action against Paymap Inc. and LoanCare LLC for deceiving consumers with advertisements for a mortgage payment program that promised tens of thousands of dollars in interest savings from more frequent mortgage payments. Paymap and LoanCare advertised that consumers who enrolled in the Equity Accelerator Program would have a new, biweekly payoff schedule that would lead to significant interest savings because of the more frequent payments. In fact, the Equity Accelerator Program did not make more frequent payments on consumers' mortgages, and Paymap's claims of tens of thousands of dollars in interest savings were made without any supporting evidence.

The CFPB found that Paymap and LoanCare violated the Dodd-Frank Act's prohibition against deceptive acts and practices. Under the terms of the orders announced, Paymap will return $33.4 million in fees to consumers and pay a $5 million civil money penalty, and LoanCare will pay a $100,000 civil money penalty.

4.1.4 Residential Credit Solutions, Inc.

On July 30, 2015, the CFPB announced an enforcement action against Residential Credit Solutions, Inc. for blocking consumers' attempts to save their homes from foreclosure. The

mortgage servicer failed to honor modifications for loans transferred from other servicers, treated consumers as if they were in default when they weren't, sent consumers escrow statements falsely claiming they were due a refund, and forced consumers to waive their rights in order to get a repayment plan. Residential Credit Solutions has agreed to pay $1.5 million in restitution to victims and a $100,000 civil money penalty for its illegal actions.

4.1.5 Citizens Bank

On August 12, 2015, the CFPB announced a public enforcement action against Citizens Bank (formerly known as RBS Citizens), Citizens Financial Group, and Citizens Bank of Pennsylvania, which are related subsidiaries that operate retail branches and offer deposit accounts in about a dozen states. For almost six years, the banks committed unfair and deceptive practices in violation of the Dodd-Frank Act by failing to credit the full amounts on deposits made into consumers' checking and savings accounts. Citizens told consumers that deposits were subject to verification, implying that they would take steps to ensure consumers were credited with the correct deposit amount. But in cases where the bank scanner misread either the deposit slip or the checks, or if the total on the deposit slip did not equal the total of the actual checks, Citizens did not fix mistakes that fell below a certain dollar amount (initially $50, later reduced to $25).

Over the years, by ignoring the discrepancies, the banks denied their customers millions of dollars. The Bureau's order requires Citizens to pay approximately $11 million in restitution to consumers who did not receive all the money that should have been deposited into their accounts. Citizens must include any fees the consumers incurred related to the under-crediting (including but not limited to any overdraft fees, non-sufficient funds fees, and monthly maintenance fees) and a reasonable estimate of interest on these amounts. Citizens will also pay a $7.5 million civil money penalty.

4.1.6 Fifth Third Bank

On September 28, 2015, the CFPB announced an action against Fifth Third Bank for illegal credit card practices. The CFPB found that Fifth Third's telemarketers deceptively marketed the bank's "Debt Protection" credit card add-on product during calls and online from 2007 to 2013. For example, telemarketers did not tell some cardholders that by agreeing to receive information about the product, they were being enrolled and would be charged a fee. In addition, from December 2011 through September 2012, Fifth Third sent cardholders product "fulfillment kits" that contained incorrect descriptions of the product's cost, benefits, exclusions, terms, and conditions. Among other things, Fifth Third's illegal practices included:

misrepresenting costs and fees for coverage; misrepresenting or omitting information about eligibility for coverage; and illegal practices in the enrollment process.

The CFPB's action against Fifth Third's deceptive marketing of credit card add-on products requires the bank to provide an estimated $3 million in restitution to eligible harmed consumers and pay a $500,000 civil money penalty. This is the 11th credit card add-on enforcement action the Bureau has taken against companies for illegal practices in the marketing or administration of add-on products and services.

4.2 Non-public supervisory actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in at least $107 million in restitution to more than 238,000 consumers. These non-public supervisory actions generally have been the product of CFPB supervision and examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law during the course of an examination. Recent non-public resolutions were reached in the areas of credit cards, deposits, mortgage origination, and mortgage servicing.

5. Supervision program developments

Supervision continues to seek ways in which its operational efficiency can be increased with a renewed focus on recruiting highly qualified and talented examination staff. Further, training is provided on a regular basis to Bureau examiners to ensure their knowledge of regulatory changes. As of September 10, 2015, the Bureau has approximately 442 examination staff, with more than 180 of its examiners commissioned either through the CFPB's internal process or holding commissions from previous service with other regulators. All examiners are supported by regional management and headquarters staff.

5.1 Examination procedures

5.1.1 Fair Lending Potential Action and Request for Response (PARR-FL) letters and mandatory referrals to the U.S. Department of Justice

In the event that the Bureau is considering referring an institution to the DOJ, the Office of Fair Lending (FL) may send a Fair Lending Potential Action and Request for Response (PARR-FL) letter to the institution.[65] A PARR-FL letter may be sent when a potential ECOA violation is identified, either through the supervisory process or through an enforcement investigation.

[65] In the last issue of *Supervisory Highlights*, non-FL PARR letters and the ARC process were described; *see* http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf.

Generally, a PARR-FL letter will:

- Identify the laws that FL has preliminarily identified may have been violated and describe the possible illegal conduct;
- Generally describe the types of relief available to the Bureau;
- Inform the relevant institution of its opportunity to submit a written response presenting its positions regarding relevant legal and policy issues, as well as facts through affidavits or declarations;
- Describe the manner and form by which the institution should respond, if it chooses to do so, and provide a submission deadline, generally 14 calendar days, for timely consideration;
- Inform the relevant institution that FL is considering recommending that the Bureau refer the institution to the DOJ; and
- When appropriate, inform the relevant institution that FL is considering recommending corrective action, specifically noting when it is considering recommending enforcement action.

Typically, when a PARR-FL letter results from supervisory activity, FL will send the PARR-FL letter prior to finalizing the examination report or supervisory letter. FL carefully considers the institution's response before reaching a final decision about whether to cite an ECOA violation and/or refer the matter to the DOJ. Depending on the response, FL may determine that there is no violation of law, and that, therefore, a referral is not appropriate. If FL decides to cite a violation, the examination report or supervisory letter will convey the final findings to the institution, and the institution also will be informed of any decision to refer the matter to the DOJ.

Pursuant to Section 706(g) of the Equal Credit Opportunity Act,[66] and the CFPB-DOJ Memorandum of Understanding (MOU)[67] regarding fair lending coordination, executed on December 6, 2012, the Bureau must refer a matter to the Department of Justice, Civil Rights

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[66] 15 USC 1691e(g).

[67] *See* Memorandum of Understanding between the Consumer Financial Protection Bureau and the United States Department of Justice Regarding Fair Lending Coordination, *available at* http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.

Division, Housing and Civil Enforcement Section (DOJ), when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. A referral, however, does not deprive the Bureau of authority to take independent supervisory or enforcement action. Thus, the Bureau's referral of a matter to the DOJ is in addition to the Bureau's independent supervisory and enforcement authority. The Bureau will consult with the DOJ to coordinate our respective actions, as appropriate.

5.1.2 Automobile finance new examination procedures

On June 10, 2015, the CFPB announced the addition of new Automobile Finance examination procedures to the *CFPB Supervision and Examination Manual (Manual)*.[68] Examiners will be assessing potential risks to consumers and whether auto finance companies are complying with requirements of federal consumer financial law. The procedures have been organized into modules that follow the lifecycle of an automobile finance transaction, from advertising to servicing. Among other things, examiners will be evaluating whether auto finance companies are fairly marketing and disclosing auto financing terms, providing accurate information to credit bureaus, and treating consumers fairly when collecting debts.

5.1.3 Updated mortgage origination examination procedures

The CFPB has also updated the Mortgage Origination examination procedures in the Manual.[69] The procedures were updated to incorporate the TILA-RESPA "Know Before You Owe" Integrated Disclosure Rule and to make technical corrections. The procedures are consistent with updates made to the FFIEC-approved[70] Truth in Lending Act/Regulation Z and Real Estate Settlement Procedures Act/Regulation X procedures, and are organized by module.

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[68] *See* Supervision and Examination Manual, *available at* http://www.consumerfinance.gov/guidance/supervision/manual/.

[69] *Id.*

[70] The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB.

5.2 Recent CFPB guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public.[71]

5.2.1 Revised appeals process

On November 3, 2015, the CFPB released a revised appeals process that implements changes to the CFPB's Supervisory appeal process as originally published in CFPB Bulletin 2012-07.[72] The Bureau is implementing reforms to take into account structural changes within the agency and experience gained from the supervisory appeals process to date, with the goal of improving efficiency, consistency, transparency, and fairness to supervised institutions.

The revised policy, as amended:

- Expressly allows members of the Supervision, Enforcement, and Fair Lending (SEFL) Associate Director's staff to participate on the appeal committee, replacing the existing requirement that an Assistant Director serve on the committee;
- Permits an odd number of appeal committee members in order to facilitate resolution of appeals;
- Limits oral presentations to issues raised in the written appeal;
- Provides additional information regarding how appeals will be decided, including the standard the committee will use to evaluate the appeal;
- Prevents an institution from appealing adverse findings or an unsatisfactory rating related to a recommended or pending investigation or public enforcement action until the enforcement investigation or action has been resolved; and
- Changes the expected time to issue a written decision on appeals from 45 to 60 days.

The revised policy will apply to appeals of any report of exam emailed on or after September 21, 2015. Under the revised policy, institutions seeking to file an appeal should direct the appeal to the following mailbox devoted solely to appeals: CFPB_SupervisoryAppeals@CFPB.gov.

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[71] These guidance documents are published at http://www.consumerfinance.gov/guidance/.

[72] *See* http://files.consumerfinance.gov/f/201510_cfpb_appeals-of-supervisory-matters.pdf.

5.2.2 Bulletin on RESPA compliance and marketing services agreements

On October 8, 2015, the Bureau released Bulletin 2015-05,[73] which provides an overview of the prohibition on kickbacks and referral fees under RESPA,[74] describes the Bureau's enforcement experience investigating Marketing Services Agreements (MSAs), and notes the substantial legal and regulatory compliance risks posed by such agreements. The Bureau's experience in this area has exposed significant concerns about the use of MSAs in ways that evade the requirements of RESPA.

RESPA Section 8(a) prohibits the giving and accepting of "any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person."[75] Section 8(c)(2) provides that "[n]othing in this section shall be construed as prohibiting . . . the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or services actually performed."[76] The bulletin notes that, even in instances where MSAs appear to be legally compliant on their face, the legal and compliance risks of implementing and monitoring these types of agreements may be greater than mortgage industry participants have previously realized, and the Bureau's enforcement and supervisory activities have revealed situations in which payments made for "services rendered" or "goods actually provided" were in fact compensation for referrals. Any agreement that entails exchanging a thing of value for referrals of settlement service business involving a federally related mortgage loan likely violates RESPA, whether or not an MSA or some related arrangement is part of the transaction.

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[73] *See* CFPB Compliance Bulletin 2015-05, *available at* http://files.consumerfinance.gov/f/201510_cfpb_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements.pdf.

[74] 12 USC 2601 *et seq.*; *see also* 12 CFR Part 1024.

[75] 12 USC 2607(a); *see also* 12 CFR 1024.14(b).

[76] 12 USC 2602(c)(2); *see also* 12 CFR 1024.14(g).

5.2.3 Bulletin on interstate land sales full disclosure act amendment

On August 10, 2015, the Bureau released Bulletin 2015-04, which provides information to developers and other interested parties relating to a recent amendment to the Interstate Land Sales Full Disclosure Act (ILSA).[77] The amendment exempts from ILSA's registration and disclosure requirements the sale or lease of a condominium unit that is not exempt under 15 USC 1702(a). A "condominium unit" is defined for purposes of this new exemption as a unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance:

> (1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and
>
> (2) the unit will be an improved lot.[78]

Developers are not required to file notice with or obtain the approval of the Bureau in order to utilize the exemption.[79] The Bureau's ILSA regulations also provide that a developer is responsible for maintaining records to demonstrate that the requirements of an exemption have been met if a developer elects to take advantage of an exemption.[80] The Bureau will continue to process filings made by developers seeking to fulfill their obligations under ILSA and its implementing regulations.

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[77] *See* Amendment to the Interstate Land Sales Full Disclosure Act, *available at* http://files.consumerfinance.gov/f/201508_cfpb_bulletin-on-interstate-land-sales-full-disclosure-act-amendment.pdf; Public Law 113-167, 128 Stat. 1882 (2014).

[78] 15 USC 1702(d).

[79] 12 CFR 1010.4(d).

[80] *Id.*

5.2.4 Bulletin on private mortgage insurance cancellation and termination

On August 4, 2015, CFPB released Bulletin 2015-03. This bulletin describes private mortgage insurance (PMI) cancellation and termination rights that the Homeowners Protection Act of 1998 (HPA) provides to borrowers, and gives examples of instances in which servicers failed to properly cancel or terminate PMI.[81] The compliance bulletin also describes internal PMI cancellation guidelines that many investors (such as Fannie Mae and Freddie Mac) have created, which may include PMI cancellation provisions beyond those that the HPA provides. It describes CFPB's observations from examinations in which servicers improperly confused or replaced HPA requirements with elements of investor guidelines, and cautions servicers to remember that investor guidelines cannot restrict the PMI cancellation and termination rights that the HPA provides to borrowers.

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[81] *See* CFPB Compliance Bulletin 2015-03, *available at* http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin-private-mortgage-insurance-cancellation-and-termination.pdf.

6. Conclusion

The Bureau recognizes the value of communicating program findings to CFPB-supervised entities to aid them in their efforts to comply with Federal consumer financial law, and to other stakeholders to foster better understanding of the CFPB's work.

To this end, the Bureau remains committed to publishing its *Supervisory Highlights* report periodically in order to share information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), to communicate operational changes to the program, and to provide a convenient and easily accessible resource for information on the Bureau's guidance documents.