CONSUMER FINANCIAL PROTECTION BUREAU | JUNE 2021

# Supervisory Highlights

Issue 24, Summer 2021

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# 1. Introduction

The consumer financial marketplace saw significant impacts from the COVID-19 pandemic beginning around March 2020. The Consumer Financial Protection Bureau (CFPB or Bureau) adapted its work by, among other things, focusing approximately half of its supervisory activities on prioritized assessments (PAs) starting in May 2020. PAs were designed to obtain real-time information from a broad group of supervised entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues. The Bureau analyzed pandemic-related market developments to determine which markets were most likely to pose risk to consumers. Observations from the Bureau's PA work were detailed in a special edition of *Supervisory Highlights*, Issue 23.[1]

This issue of *Supervisory Highlights* covers findings from the other supervisory work the Bureau has engaged in since its last regular edition, Issue 22.[2] The findings included in this report cover examinations in the areas of auto servicing, consumer reporting, debt collection, deposits, fair lending, mortgage origination, mortgage servicing, private education loan origination, payday lending, and student loan servicing that were completed from January 1, 2020 to December 31, 2020. To maintain the anonymity of the supervised institutions discussed in this edition of *Supervisory Highlights*, references to institutions generally are in the plural and the related findings pertain to one or more institutions unless otherwise noted.

The information contained in *Supervisory Highlights* is disseminated to help institutions and the general public better understand how the Bureau examines institutions for compliance with Federal consumer financial law. Supervisory Highlights summarizes existing requirements under the law and summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority.[3]

We invite readers with questions or comments about the findings and legal analysis reported in *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

[1] A copy of Issue 23, Jan. 2021, is available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf.
[2] A copy of Issue 22, Sept. 2020, is available at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.
[3] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

# 2. Supervisory Observations

## 2.1 Auto Servicing

The Bureau continues to examine auto loan servicing activities, primarily to assess whether entities have engaged in any unfair, deceptive or abusive acts or practices prohibited by the Consumer Financial Protection Act (CFPA). Examiners identified two unfair acts or practices related to lender-placed collateral protection insurance. Examiners also found unfair or deceptive acts or practices related to payment application. And examiners identified an unfair act or practice related to payoff amounts where consumers had ancillary product rebates due.

### 2.1.1 Collateral protection insurance

Auto finance contracts generally require consumers to maintain comprehensive and collision insurance that covers physical damage to the vehicle in order to protect the value of the collateral. If the consumer fails to maintain appropriate coverage, some contracts provide that servicers can purchase insurance for the vehicle, often called collateral protection insurance (CPI). CPI policies only cover damage to the vehicle. Charges for CPI policies are added to consumers' accounts and paid on a monthly basis. Servicers generally use electronic databases to monitor whether consumers are maintaining adequate insurance coverage. If the database suggests that a consumer is not maintaining adequate coverage, the servicer will send a notice requesting proof of insurance and stating that if the borrower does not provide proof of insurance, then a CPI policy will be purchased at the consumer's expense. When the CPI policy is purchased, the servicer sends the consumer another notice with information about the policy. If the consumer later proves that they had adequate insurance during any portion of the CPI policy period, the servicer will generally remove any CPI charges for that period. Examiners identified unfair and deceptive acts or practices related to placement and removal of CPI policies and charges.

### 2.1.2 Charging for unnecessary CPI

Under the prohibition on unfair acts or practices in Sections 1031 and 1036 of the CFPA, an act or practice is unfair when: (1) it causes or is likely to cause substantial injury; (2) the injury is not reasonably avoidable by consumers; and (3) the substantial injury is not outweighed by countervailing benefits to consumers or to competition.

Examiners found that servicers engaged in an unfair act or practice by charging consumers for unnecessary CPI.

Servicers caused consumers substantial injury by adding and maintaining charges for CPI premiums as a result of deficient processes when consumers had adequate insurance in place under their contracts. If a consumer has an adequate insurance policy that covers the vehicle, the CPI policy provides no benefit to the servicer or consumer. Placing or maintaining charges for CPI when consumers have adequate insurance causes consumers injury because consumers must either pay for the duplicative insurance or incur late fees or other consequences of delinquency. Additionally, some servicers caused additional injury because they applied any refunds of paid CPI charges to principal instead of returning those amounts directly to the consumer. Consumers could not reasonably avoid the injury for at least three reasons. First, in many instances, servicers sent notices regarding CPI charges to inaccurate addresses, so consumers had no notice that servicers planned to place CPI. Second, servicers did not have adequate procedures for processing insurance cards submitted by consumers as proof of insurance. Third, in many instances, servicers failed to process insurance documentation from consumers. The substantial injury to consumers was not outweighed by any countervailing benefits to consumers or competition, such as the cost of improving notices and improving document processing. Servicers have ceased issuing CPI policies.

### 2.1.3 Charging for CPI after repossession

Examiners found that servicers engaged in unfair acts or practices by collecting or attempting to collect CPI premiums after repossession even though no actual insurance protection was provided for those periods.

CPI automatically terminates on the date of repossession, per the terms of the contract, and consumers should not be charged after this date. Despite this, servicers charged consumers for CPI after repossession in four different circumstances. First, servicers failed to communicate the date of repossession to the CPI service provider due to system errors. Second, servicers used an incorrect formula to calculate the CPI charges that needed to be removed due to the repossession. Third, servicers' employees entered the wrong repossession date into their system of record, resulting in improper termination dates. Fourth, servicers charged consumers—who had a vehicle repossessed and subsequently reinstated the loan—for the days the vehicle was in the servicer's possession, despite the automatic termination of the policy on the date of repossession.

These errors caused consumers substantial injury because they paid amounts they did not owe or were subject to collection attempts for amounts they did not owe. This injury was not reasonably avoidable because consumers did not control the servicers' cancellation processes

and did not have a reasonable way to determine that the charges were inaccurate. The substantial injury to consumers was not outweighed by any countervailing benefits to consumers or competition. Servicers have ceased issuing CPI policies.

### 2.1.4 Inaccurate payment posting

Examiners found that servicers engaged in unfair acts or practices by posting payments to the wrong account or by posting certain payments as principal-only payments instead of periodic installment payments, resulting in late fees and additional interest charges. Servicers engaged in two types of errors.[4] First, some payments were applied to the wrong loan account, despite the consumer providing their account information. Second, for some payment types, servicer employees applied the payment as a principal-only payment instead of a periodic payment. In both instances, consumers' accounts were marked as delinquent for the month they made the payment, resulting in late fees and additional interest. Servicers did not have a reliable method to detect the errors, and primarily relied on consumer complaints to identify misapplied payments. In some instances, even when consumers complained, the servicers did not provide refunds.

This conduct caused or was likely to cause substantial injury to consumers because the servicers misapplied payments, resulting in late fees and additional interest. Consumers could not reasonably avoid the injury because they had no control over the servicers' misapplication of their payments. Even if consumers contacted the servicers regarding the errors, late fees and interest had accrued. The injury was not outweighed by countervailing benefits to consumers or competition. For example, servicers could improve their procedures to reduce the error rate. In response to examiner findings, servicers remediated affected consumers and implemented new automated systems.

### 2.1.5 Failure to follow disclosed payment application order

Under the prohibition against deceptive acts or practices in Sections 1031 and 1036 of the CFPA, an act or practice is deceptive when: (1) it misleads or is likely to mislead the consumer; (2) the consumer's interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material.

Examiners found that servicers engaged in deceptive acts or practices by representing on their websites a specific payment application order, and subsequently applying payments in a different order. Specifically, servicers represented on their websites that payments would be

[4] 12 U.S.C. §§ 5531, 5536.

applied to interest, then principal, then past due payments, before being applied to other charges, such as late fees. Instead, the servicers applied partial payments to late fees first, in contravention of the methodology disclosed on the website. As the result of applying payments to late fees first, servicers repossessed some consumers' vehicles.

The representation that payments would be applied to interest, then principal, then past due payments, and then other charges was likely to mislead consumers because the servicers actually applied payments to late fees first. It was reasonable for consumers under the circumstances to believe that the servicers' websites provided accurate information about payment allocation order. In some instances, the underlying contract provides the servicer the right to apply payments in any order. But consumers reasonably relied on the representations on servicers' websites regarding payment application. And the representation was material because it was likely to affect consumers' decisions about how much to pay. Servicers remediated impacted consumers and now use the disclosed payment application hierarchy.

## 2.1.6 Inaccurate payoff amounts

Examiners found that servicers engaged in unfair acts or practices by accepting loan payoff amounts that included overcharges for optional products after incorrectly telling consumers that they owed this larger amount.[5]

Consumers financed the purchase of the optional product by adding it to the loan amount of a vehicle purchase. The contracts provided that consumers or servicers could cancel the product at any time and receive a "pro-rata" refund less a cancellation fee. Servicers prepared payoff statements in response to consumers' requests that included a line listing credits for refunds from optional products and a total "payoff amount." Servicers calculated this refund based on the actuarial value of the policies, instead of using the pro-rata calculation specified in the contract. In some instances, this resulted in payoff statements that listed a total amount due that was larger than the amount the consumer owed.

The conduct caused or was likely to cause substantial injury to consumers because servicers accepted money from consumers that the consumers did not actually owe. Consumers could not reasonably avoid the injury because they paid the servicers the amount they told them they owed. Consumers are not required to independently verify that servicers correctly calculated optional product refund amounts and therefore the injury could not be reasonably avoided. The injury is not outweighed by countervailing benefits to consumers or competition. Servicers can update their systems to perform appropriate calculations without significant cost. Servicers

[5] *Id.*

have refunded overpayments to consumers and updated their systems to perform calculations that are consistent with the contract terms.

# 2.2 Consumer Reporting

Entities that obtain or use consumer reports from consumer reporting companies (CRCs),[6] or that furnish information relating to consumers for inclusion in consumer reports, play a vital role in the consumer reporting process. They are subject to several requirements under the Fair Credit Reporting Act (FCRA)[7] and its implementing regulation, Regulation V.[8] These include the requirement to furnish data subject to the relevant accuracy and dispute handling requirements. In recent reviews, examiners found deficiencies in, among other things, CRCs' compliance with FCRA: (i) accuracy requirements, (ii) security freeze requirements applicable only for nationwide CRCs as defined in FCRA Section 603(p)[9], and (iii) requirements regarding ID theft block requests. Examiners also found deficiencies in furnisher compliance with FCRA and Regulation V accuracy and dispute investigation requirements.

## 2.2.1 CRC duty to follow reasonable procedures to assure maximum possible accuracy

The FCRA requires that, whenever a CRC "prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."[10] In reviews of CRCs, examiners found that CRCs' accuracy procedures failed to comply with this obligation because the CRC continued to include information in consumer reports that was provided by unreliable furnishers. Specifically, the furnishers had responded to disputes in ways that suggested that the furnishers were no longer sources of reliable, verifiable information about consumers. For example, CRCs received furnisher dispute responses indicating that, for several months, furnishers failed to respond to all or nearly all disputes, deleted all or nearly all tradelines disputed by consumers, or verified as accurate all or nearly all tradelines disputed by consumers. Despite observing this dispute response behavior by these furnishers, CRCs continued to include information from these furnishers. After identification of these issues, CRCs were directed to revise their accuracy

[6] The term "consumer reporting company" means the same as "consumer reporting agency," as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), including nationwide consumer reporting agencies as defined in 15 U.S.C § 1681a(p) and nationwide specialty consumer reporting agencies as defined in 15 U.S.C § 1681a(x).
[7] 15 U.S.C. § 1681 et seq.
[8] 12 C.F.R. Part 1022.
[9] 15 U.S.C. § 1681a(p).
[10] 15 U.S.C. § 1681e(b).

procedures to identify and take corrective action regarding data from furnishers whose dispute response behavior indicates the furnisher is not a source of reliable, verifiable information about consumers.

### 2.2.2 CRC duty to timely place security freezes on consumer reports upon consumer request

The FCRA requires that nationwide CRCs must, free of charge, place a security freeze on a consumer's report "upon receiving a direct request from a consumer" and upon "receiving proper identification from the consumer…."[11] The security freeze must be placed not later than "(ii) in the case of a request that is by mail, 3 business days after receiving the request directly from the consumer."[12] In reviews of nationwide CRCs, examiners found that CRCs failed to place security freezes within three business days after receiving the request by mail. One root cause was determined to be inadequate training, and to address that root cause, targeted training to appropriate staff regarding the requirements and timing of placing security freezes was provided.

### 2.2.3 CRC duty to block reporting of information identified as resulting from identity theft

The FCRA requires that CRCs must "block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft…"[13] The block must be made "not later than 4 business days after the date of receipt" of a qualifying block request.[14] In reviews of CRCs, examiners found that CRCs failed to place ID theft blocks within four business days of receipt of qualifying block requests. The block requests were delayed due to a backlog that the CRCs subsequently resolved. In response to these issues, the CRCs updated policies and procedures to ensure the timely processing and blocking of information identified in ID theft block requests.

### 2.2.4 Furnisher duty to update and correct information

The FCRA requires that persons who regularly and in the ordinary course of business furnish information to CRCs about that person's transactions or experiences with consumers must, upon determining that information furnished to CRCs is not complete or accurate, "promptly

[11] 15 U.S.C. § 1681c-1(i)(2)(A).
[12] 15 U.S.C. § 1681c-1(i)(2)(A)(ii).
[13] 15 U.S.C. § 1681c-2(a).
[14] *Id.*

notify the consumer reporting agency of that determination." The furnisher must then provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate."[15]

In a review of auto loan furnishers, examiners found that furnishers failed to send updating or correcting information to CRCs after making a determination that information furnishers had reported was no longer accurate. For example, examiners found that after consumers had applied for an auto loan but later communicated they no longer wanted to proceed with the loan, and the furnisher had removed the loan from its system of record, the furnisher continued to furnish information to CRCs as though the loans had been issued rather than cancelled. Furnishers attributed the errors to failures by a service provider to follow furnisher's procedures. Following identification of these issues furnishers implemented a new process that reconciles loan cancellations and removals of loans from the system of record with responsive corrections to CRCs.

## 2.2.5 Furnisher duty to conduct reasonable investigation of direct disputes

Regulation V requires that, after receiving a direct dispute notice from a consumer, a furnisher must "[c]onduct a reasonable investigation with respect to the disputed information…[16] Further, Regulation V provides that a "furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant."[17] However, if a furnisher determines that a dispute is frivolous or irrelevant, the furnisher must "notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher."[18] The notice must "include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information."[19]

In reviews of mortgage furnishers, examiners found that furnishers failed to conduct reasonable investigations of direct disputes. Furnishers' dispute procedures instructed their direct dispute investigating agents to verify that consumers' signatures matched the signature on file and, if

[15] 15 U.S.C. § 1681s-2(a)(2)(B).
[16] 12 C.F.R. § 1022.43(e)(1).
[17] 12 C.F.R. § 1022.43(f)(1).
[18] 12 C.F.R. § 1022.43(f)(2).
[19] 12 C.F.R. § 1022.43(f)(3).

they did not match, send a letter to the borrower stating that the information provided in the dispute did not match the furnishers' records. Examiners found that furnishers' agents had sent such letters to consumers whose dispute letters included only a typed name or electronic image of a signature. Furnishers' agents did so without: conducting an investigation of such disputes, otherwise reasonably determining that such disputes were frivolous or irrelevant, or providing any qualifying frivolous or irrelevant notices to consumers. After identification of these issues, furnishers updated their policies and procedures to define circumstances when disputes should reasonably be deemed frivolous because they appear to have originated from credit repair organizations; furnishers also created templates to send to consumers whose disputes they deemed frivolous. Further, furnishers provided training to agents on the new policies and procedures and the new letter templates.

# 2.3 Debt Collection

The Bureau has the supervisory authority to examine certain entities that engage in consumer debt collection activities, including nonbanks that are larger participants in the consumer debt collection market and nonbanks that are service providers to certain covered persons. Recent examinations of larger participant debt collectors identified violations of the Fair Debt Collection Practices Act (FDCPA).

## 2.3.1 Prohibited calls to consumer's workplace

Section 805(a)(3) of the FDCPA prohibits a debt collector from communicating with a consumer in connection with the collection of a debt at the consumer's workplace if the debt collector knows or has reason to know that the consumer's employer prohibits such communications.[20] Examiners determined that debt collectors communicated with consumers at their workplaces after they knew or should have known that the consumers' employers prohibit such communications, in violation of Section 805(a)(3). In response to these findings, the collectors are improving their training and monitoring.

In addition, Section 805(a) of the FDCPA restricts the circumstances under which a debt collector may contact a consumer.[21] Specifically, Section 805(a)(1) prohibits a debt collector from communicating with a consumer in connection with the collection of any debt at a time or place that the collector knows or should know is inconvenient to the consumer.[22] Examiners

[20] 15 U.S.C. § 1692c(a)(3).
[21] 15 U.S.C. § 1692c(a).
[22] 15 U.S.C. § 1692c(a)(1).

found that debt collectors communicated with consumers at their places of employment during work hours when the debt collectors knew or should have known that calls during work hours were inconvenient to the consumers, in violation of Section 805(a)(1). For example, one debt collector called a consumer during work hours at a time the consumer had previously specified as inconvenient. Another debt collector called a consumer on a workplace phone number after being informed by the consumer that calls to the workplace number were inconvenient. In response to these findings, the collectors are improving their training and monitoring.

### 2.3.2 Communication with third parties

Section 805(b) of the FDCPA prohibits a debt collector from communicating in connection with the collection of a debt with any person other than the consumer and certain other parties.[23] Exceptions to this prohibition are set out in Sections 804 and 805(b).[24]

Examiners found that debt collectors communicated with third parties in violation of Section 805(b). The communications were not within an exception listed in Sections 804 or 805(b). This violation of the FDCPA resulted from inadequate compliance controls to verify right-party contact during efforts to locate the consumer. In several instances, the third party had a name similar to the consumer's name. In response to this finding, the collectors are improving various aspects of their compliance management systems (CMS).

In addition, Section 804(1) of the FDCPA states that, when communicating with third parties for the purpose of acquiring location information for the consumer, a debt collector may only disclose the name of their employer if expressly requested.[25] Examiners observed that debt collectors identified their employers when communicating with third parties who had not expressly requested it, in violation of Section 804(1). In response to these findings, the collectors are improving their training and monitoring.

### 2.3.3 Failure to cease communication upon written request or refusal to pay

Section 805(c) of the FDCPA provides that if a consumer notifies a debt collector in writing that the consumer wishes the collector to cease further communication or that the consumer refuses to pay the debt, the collector must cease further communication with the consumer, with certain

[23] 15 U.S.C. § 1692c(b).
[24] 15 U.S.C. §§ 1692b, c(b).
[25] 15 U.S.C. § 1692b(1).

exceptions.[26] Examiners found that a consumer used a model form to mail a written statement to a debt collector stating that the debt was the result of identity theft, requesting that the collector cease further communication, and requesting that the collector provide confirmation along with information concerning the disputed account. After receiving this form, the collector continued attempts to collect the debt from the consumer in violation of FDCPA Section 805(c). These attempts were not efforts to respond to the consumer's request for information about the identity theft claim. In response to these findings, the collector is improving board and management oversight and monitoring.

### 2.3.4 Harassment regarding inability to pay

Section 806 of the FDCPA prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.[27] Examiners found when consumers stated they were unable to make or complete payment arrangements, debt collectors emphasized two or more times to each of the consumers that the collector would place a note in the account system stating that the consumer was refusing to make a payment. The natural consequence of these inaccurate statements was to harass or oppress the consumers, in violation of Section 806. In response to these finding, the collectors are improving their training and monitoring.

### 2.3.5 Communicating, and threatening to communicate, false credit information

Section 807 of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.[28] Section 807(8) specifically prohibits communicating or threatening to communicate credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.[29] Examiners found that debt collectors knew or should have known that debts were disputed, resulted from identity theft, and were not owed by the relevant consumers. Nonetheless, in these circumstances, the collectors threatened to report to CRCs that the consumer owed the debt if it was not paid. The collectors then reported the debt to CRCs and failed to report that the consumer disputed the debt. This course of action violated

[26] 15 U.S.C. § 1692c(c).
[27] 15 U.S.C. § 1692d.
[28] 15 U.S.C. § 1692e.
[29] 15 U.S.C. § 1692e(8).

Section 807(8) of the FDCPA. In response to these finding, the collectors are improving their training.

## 2.3.6 False representations or deceptive means of collection

Section 807(10) of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt or obtain information concerning a consumer.[30]

Examiners found that several debt collectors falsely represented to consumers the impact that paying off their debts would have on their credit profiles, in violation of Section 807(10).[31] For example, one debt collector told a consumer the debt would no longer "impact" her credit profile once paid, which was false. Another debt collector told a consumer that making a payment would help to "fix" the consumer's credit. In response to this finding, the collectors are improving various aspects of their CMS.

## 2.3.7 Incorrect systemic implementation of state interest rate cap

Section 808 of the FDCPA states that a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.[32] Section 808(1) specifically designates "the collection of any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law" as an unfair practice.[33] Examiners found that debt collectors entered inaccurate information regarding state interest rate caps into an automated system, resulting in some consumers being overcharged, in violation of Section 808(1). In response to these findings, the collectors remediated impacted consumers and are improving their training and monitoring.

[30] 15 U.S.C. § 1692e.

[31] *See* CFPB Bulletin 2013-08, "Representations Regarding Effect of Debt Payments on Credit Reports and Scores" (July 10, 2013).

[32] 15 U.S.C. § 1692f.

[33] 15 U.S.C. § 1692f(1).

### 2.3.8 Unlawful initiation of administrative wage garnishment during consolidation process

Section 808 of the FDCPA states that a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.[34] Examiners found that debt collectors sent administrative wage garnishment orders to consumers' employers by mistake despite having received completed applications from the consumers to consolidate the debt, which should have stopped the wage garnishment process based on standard procedures, in violation of Section 808. In response to these findings, the collectors are improving their training and monitoring.

### 2.3.9 Failure to send complete validation notices

Section 809(a) of the FDCPA requires a debt collector to send a notice containing certain information (commonly called a "validation notice") to the consumer within five days after the initial communication with the consumer, with certain exceptions.[35] Examiners found that debt collectors violated Section 809(a) by sending validation notices that lacked some of the required information. Examiners found that the issue resulted from template changes that had not been reviewed by compliance personnel. In response to these findings, the collectors are improving their board and management oversight of new letter templates.

## 2.4 Deposits

The CFPB continues its examinations of financial institutions for compliance with Regulation E,[36] which implements the Electronic Fund Transfer Act (EFTA).[37] The CFPB also examines for compliance with other relevant statutes and regulations, including Regulation DD,[38] which implements the Truth in Savings Act,[39] and the Dodd-Frank Act's prohibition on unfair, deceptive, or abusive acts or practices (UDAAPs).[40]

[34] 15 U.S.C. § 1692f.
[35] 15 U.S.C. § 1692g(a).
[36] 12 C.F.R. Part 1005 *et seq.*
[37] 15 U.S.C. § 1693 *et seq.*
[38] 12 C.F.R. Part 1030 *et seq.*
[39] 12 U.S.C. § 4301 *et seq.*
[40] 12 U.S.C. §§ 5531, 5536.

## 2.4.1 Regulation E error resolution violations

EFTA establishes a legal framework for the offering and use of electronic fund transfer (EFT) services. One of the primary objectives of the EFTA and its implementing regulation, Regulation E, is to protect consumers engaging in EFTs.

Supervision continues to find violations of EFTA and Regulation E that it previously discussed in the Fall 2014, Summer 2017, and Summer 2020 editions of *Supervisory Highlights,* respectively. These violations include:

- Requiring written confirmation of an oral notice of error before investigating;
- Requiring consumers to contact merchants about alleged unauthorized transactions before investigating;
- Relying on incorrect dates to assess the timeliness of an EFT error notice;
- Failing to provide an explanation or an accurate explanation of investigation results when determining no error or a different error occurred; and
- Failing to include in the error investigation report a statement regarding a consumer's right to obtain the documentation that an institution relied on in its error investigation.

An effective compliance strategy for institutions includes evaluation of their practices, including through transaction testing, monitoring, and review of their policies and procedures. This will help ensure compliance with applicable Federal consumer financial laws and stop any practices that were previously identified as violations. Examples of other violations found by examiners are described below.

## 2.4.2 Issues with provisional credits

Under Regulation E, a financial institution generally must complete its investigation and determine whether an error occurred within 10 business days of receiving a notice of error.[41] But an institution may take up to 45 days[42] to complete its investigation if it, among other things, provisionally credits the alleged error amount (including interest where applicable) to

[41] 12 C.F.R. § 1005.11(c)(1). Note that this 10-day period may be extended to 20 days for certain new accounts. 12 C.F.R. § 1005.11(c)(3)(i).

[42] This time period may be extended to 90 days for certain transactions, such as transactions outside the U.S., point of sale transactions, or transactions that occurred within 30 days of the first deposit to the account. 12 C.F.R. § 1005.11(c)(3)(ii).

the consumer's account within 10 business days of receiving the error notice.[43] The institution need not issue a provisional credit if it requires, but does not receive, written confirmation of an oral notice of error within 10 business days.[44] When institutions issue provisional credits, they must inform the consumer of the amount and date the credit was applied to the account within two business days after provisionally crediting the account.[45] Within three business days of completing an error investigation, the financial institution must report the results to the consumer, including, if applicable, notice that a provisional credit has been made final.[46]

If an institution debits a provisional credit from a consumer's account because it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer, it must, among other things, notify consumers of the debiting.[47] The notice must state the date and amount of the debit and that the financial institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized EFTs from the consumer's account for five business days after the notification.[48] As an alternative to this notice, which is specified in the text of Regulation E, the associated Staff Commentary provides that a financial institution may notify the consumer that the consumer's account will be debited five business days from the transmittal of the notification and specify the calendar date on which the debiting will occur.[49]

Examiners found that numerous institutions violated Regulation E's provisional credit requirements, including as follows:

- Failing to provide provisional credits, despite not completing error investigations within 10 business days of notice of an error;
- Failing to provide provisional credits to consumers who timely provided required written confirmation of oral error notices;
- Posting the provisional credit to the wrong account, by failing to ensure that the ownership of the credited account matched the account that should have received the credit;
- Excluding interest from the provisional credit;

[43] 12 C.F.R. § 1005.11(c)(2)(i).
[44] 12 C.F.R. § 1005.11(c)(2)(i)(A). Note that even though a financial institution may request written confirmation within 10 days of receipt of an oral notice, it must begin its investigation promptly upon receipt of an oral notice. 12 C.F.R. § 1005, Supp. I, Comment 11(b)(1).
[45] 12 C.F.R. § 1005.11(c)(2)(ii).
[46] 12 C.F.R. § 1005.11(c)(2)(iv).
[47] 12 C.F.R. § 1005.11(d)(2)(i).
[48] 12 C.F.R. § 1005.11(d)(2)(ii).
[49] 12 C.F.R. Part 1005, Supp. I, Comment 11(d)(2)–1.

- Using notification templates that either had a timeframe to disclose when a provisional credit would be applied instead of a specific date or lacked any date information;

- Failing to provide notice that a provisional credit had been made final due to process weakness, including: (i) an unsuccessful attempt to combine the letter informing consumers of a provisional credit with the letter notifying them the credit would be final, and (ii) a process deficiency in which both the financial institution and the merchant of the disputed charge issued a simultaneous credit; and

- Sending consumers notices that provisional credits would be reversed, but excluding either the exact date a credit was or would be debited or notice that it would honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the customer's account for five business days after the notification, or excluding both.

The institutions took a variety of corrective actions to remedy these violations, including making improvements to compliance management systems and providing remediation to consumers.

## 2.4.3 Failure to timely investigate errors

If a financial institution is unable to complete its investigation within 10 business days, 12 C.F.R. § 1005.11(c)(2) provides that an institution may take up to 45 days from receipt of the notice of error to investigate and determine whether an error occurred provided it, among other things, provisionally credits the consumer's account as discussed above. If the alleged error involves an EFT that was not initiated within a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made, the institution may take up to 90 days to investigate and determine whether an error occurred, provided it otherwise complied with the requirements of 12 C.F.R. § 1005.11(c)(2).[50]

Examiners found that financial institutions violated Regulation E by failing to complete investigations and make a determination within 45 days from receipt of the notice of error and within 90 days from receipt of the notice of error for point-of-sale debit transactions, respectively, after providing provisional credit within 10 business days of the error notice. In each instance, the financial institutions exceeded the applicable timelines.

[50] *See also* 12 C.F.R. § 1005.2(l) (defining "state").

In response to examiners' findings, the financial institutions updated their training to ensure that employees were properly trained on the applicable Regulation E timelines and modified certain policies and procedures.[51]

## 2.4.4 Failure to conduct reasonable investigations

All error investigations "must be reasonable."[52] When it applies, Regulation E, 12 C.F.R. § 1005.11(c)(4), requires that a financial institution in investigating an error must conduct, at a minimum, a "review of its own records regarding [the] alleged error."[53] This review must include at least "any relevant information within the institution's own records."[54]

Examiners found that some financial institutions violated Regulation E by failing to conduct a reasonable investigation and instead denied claims solely because the consumers had previously conducted business with a merchant. One institution, upon seeing that a consumer was challenging a charge from a merchant with whom the consumer had prior transactions, closed error investigations without completing them, and instead instructed consumers to first direct the claim to the merchant that made the charge.

In response to examiners' findings, the financial institutions updated their training to ensure that employees were properly trained on the applicable Regulation E investigation requirements and enhanced certain policies and procedures and monitoring to ensure investigations are completed properly. In addition, the financial institutions identified and remediated all consumers whose Regulation E error claims were wrongly denied based upon pre-existing relationships with the merchant and whose error resolution claims were not investigated as required.

## 2.4.5 Failure to properly remediate errors

When a financial institution determines an alleged error did occur, commentary to Regulation E highlights "it must correct the error…including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution."[55]

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[51] While certain payment network rules may impose alternative timing requirements or limitations, network rules do not excuse institutions from complying with the applicable Regulation E timelines to complete the error investigation and make a determination. 12 C.F.R. § § 1005.11(c)(2) and (3).

[52] 71 Fed. Reg. 1638, 1654 (Jan. 10, 2006). *See also* USAA Federal Savings Bank Consent Order, File No. 2019-BCFP-0001.

[53] 12 C.F.R. § 1005.11(c)(4). Section 1005.11(c)(4) applies when the conditions in § 1005.11(c)(4)(i) and (ii) are satisfied.

[54] 12 C.F.R. Part 1005, Supp. I, Comment 11(c)(4)-5.

[55] 12 C.F.R. Part 1005, Supp. I, Comment 11(c)-6.

Examiners determined that some financial institutions failed to refund associated fees and credit interest when correcting an error. One such institution implemented automated processes, as well as policy updates and enhanced training to address the issue. At another institution, employees failed to provide proper credits and refunds although it was required by the institution's procedures. This failure indicated a lack of proper training, which the institution was asked to enhance. Both institutions stated that they would or had remediated impacted consumers.

For another institution, this violation occurred because the institution's ACH teams reviewed issues on a transaction-by-transaction basis, which did not allow it to evaluate the impact of the issue at the account or claim level. This institution reorganized its staff to evaluate consumer accounts on an individual or account level, conducted a lookback to remediate impacted consumers, and updated policies to ensure that fees were credited to the accounts.

Similarly, an organizational issue caused the problem at another institution. This institution used multiple divisions to investigate and correct errors, depending on the type of error alleged. Differing policies and procedures between divisions created various levels of authority for error resolution. Because of these differences, the institution failed to refund the fees as is required by the Regulation E commentary, despite determining the alleged error occurred. The institution rectified this situation by reviewing and consolidating the role of error investigation into one division to ensure all Regulation E errors were consistently processed and committed to remediate harmed consumers.

## 2.4.6 Overdraft opt-in and disclosure violations

The CFPB continues to examine financial institutions' overdraft opt-in and disclosure practices for compliance with relevant statutes and regulations, including Regulation E,[56] Regulation DD,[57] which implements the Truth in Savings Act,[58] and the Dodd Frank Act's prohibition on unfair, deceptive, or abusive acts or practices.[59]

Many institutions provide various overdraft products that charge fees for transactions that overdraw accounts. Regulation E prohibits financial institutions from charging overdraft fees on ATM and one-time debit card transactions unless consumers affirmatively opt in to overdraft service.[60] Among other things, Regulation E requires that institutions provide consumers "a

[56] 12 C.F.R. § 1005, *et seq.*
[57] 12 C.F.R. § 1030, *et seq.*
[58] 12 U.S.C. § 4301, *et seq.*
[59] 12 U.S.C. §§ 5531 & 5536.
[60] 12 C.F.R. § 1005.17.

reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions."[61] Moreover, institutions must provide consumers "with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent."[62] Regulation E requires institutions to maintain evidence of compliance for a period of not less than two years from the date action is required to be taken or disclosures are required to be given.[63]

Examiners identified a number of violations in connection with these overdraft opt-in requirements, including the following:

- Failing to obtain affirmative consent from consumers before charging them overdraft fees for ATM and one-time debit card transactions, due to coding errors, systems mergers, or inadequate phone-based opt-in procedures. These institutions provided remediation to consumers assessed these overdraft fees without their authorization and ceased charging overdraft fees to consumers who did not opt in.

- Failing to advise consumers who opted-in to overdraft online of their right to revoke their opt-in to ATM and one-time debit overdraft services as part of the opt-in confirmation notice. Supervision issued a Matter Requiring Attention (MRA) regarding the need for a notice that included the right to revoke and also remediation for consumers impacted by the previous deficient notice.

- Failing to retain evidence of having obtained affirmative consent from consumers to opt into overdraft services for ATM and one-time debit card transactions, including due to process deficiencies for in-branch opt-in and general document retention failures. The institutions were directed to rectify their procedures.

- Failing to provide consumers overdraft opt-in notices that were substantially similar to the Model Form A-9 disclosure, in violation of Regulation E.[64] Institutions corrected their notices.

Supervision identified violations of Regulation DD requirements related to overdraft services as well, including:

[61] 12 C.F.R. § 1005.17(b)(1)(ii).
[62] 12 C.F.R. § 1005.17(b)(iv).
[63] 12 C.F.R. § 1005.13(b)(1).
[64] 12 C.F.R. § 1005.17(d).

- Disclosing to consumers, through automated systems, available account balance amounts that included discretionary overdraft credit that the bank potentially could provide;[65] and
- Failing to correctly disclose on periodic statements the amount of overdraft fees incurred by consumers during a statement cycle.[66]

The institutions implemented or proposed policy and procedure changes to address the violations.

# 2.5 Fair Lending

The Bureau's fair lending supervision program assesses compliance with the Equal Credit Opportunity Act (ECOA)[67] and its implementing regulation, Regulation B,[68] as well as the Home Mortgage Disclosure Act (HMDA)[69] and its implementing regulation, Regulation C,[70] at banks and nonbanks over which the Bureau has supervisory authority. Examiners found that supervised institutions engaged in violations of HMDA and Regulation C, and ECOA and Regulation B.

## 2.5.1 HMDA examination findings - 2018 & 2019 data

The Bureau continues to examine mortgage originators, including bank and nonbank financial institutions, for compliance with HMDA and its implementing regulation, Regulation C. Regulation C requires financial institutions to collect and report data regarding applications for covered loans that they receive, covered loans that they originate, and covered loans that they purchase each calendar year.[71] Recent examinations identified HMDA violations due to inaccuracy of HMDA data submitted by financial institutions, including fields newly added to the HMDA loan application register (LAR) beginning in 2018. In October 2015, the CFPB issued a final rule (2015 HMDA Rule) that included changes to the types of institutions that are subject to Regulation C; the types of transactions subject to Regulation C; the specific information that covered institutions are required to collect, record, and report; and processes for reporting and disclosing data.[72] For HMDA data collected on or after January 1, 2018,

[65] 12 C.F.R. § 1030.11(c).
[66] *See* 12 C.F.R. Part 1030(6)(a)(3).
[67] 15 U.S.C. §§ 1691-1691*f*.
[68] 12 C.F.R. Part 1002.
[69] 12 U.S.C. §§ 2801-2810.
[70] 12 C.F.R. Part 1003.
[71] 12 C.F.R. § 1003.4(a).
[72] 80 Fed. Reg. 66128 (Oct. 28, 2015).

certain covered institutions were required to collect, record, and report data points newly added or modified by the 2015 HMDA Rule.

Specifically, the 2015 HMDA Rule added new data points for Applicant or Borrower Age, Credit Score, Automated Underwriting System information, Unique Loan Identifier, Property Value, Application Channel, Points and Fees, Borrower-paid Origination Charges, Discount Points, Lender Credits, Loan Term, Prepayment Penalty, Non-amortizing Loan Features, Interest Rate, and Loan Originator Identifier as well as other data points. The 2015 HMDA Rule also modified several existing data points.[73] Most of the additions and modifications to the HMDA LAR fields within the 2015 HMDA rule became effective January 1, 2018. Examinations evaluating data reported in 2018 and 2019 were the first examinations in which the Bureau reviewed the accuracy of the data in HMDA LAR fields added by the 2015 HMDA Rule.

The CFPB's HMDA examinations include transaction testing of a sample of the institution's HMDA LAR and review of its CMS as it relates to HMDA. Transaction testing consists of comparing a sample of the institution's HMDA LAR to source documents from the loan files corresponding to each LAR entry (LAR line or row of the data) and assessing whether or not the LAR entry is accurate. When errors are identified, examiners evaluate the number of errors relative to the resubmission threshold, which is the data accuracy standard used in the CFPB's examinations. Specifically, the HMDA interagency resubmission thresholds provide that in a LAR of more than 500 entries, when the total number of errors in any data field exceeds four, examiners should direct the institution to correct any such data field in the full HMDA LAR and resubmit its HMDA LARs with the corrected field(s).[74] These resubmission thresholds are included in the CFPB's HMDA examination procedures.[75]

## 2.5.2 2018 & 2019 HMDA LAR errors

Examiners identified widespread errors within 2018 HMDA LARs of several covered financial institutions. To date, examiners have not identified widespread LAR errors within institutions' 2019 LARs. In several examinations, examiners identified errors that exceed the HMDA resubmission thresholds. In general, examiners identified more errors in data fields collected

[73] See the CFPB HMDA Summary of Reportable Data chart (2015). https://files.consumerfinance.gov/f/201510_cfpb_hmda-summary-of-reportable-data.pdf

[74] LARs of 500 entries or fewer have a resubmission threshold of three errors. CFPB Examination Procedures, updated April 1, 2019, available at https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_hmda-exam-procedures_2019-04.pdf

[75] For more information about CFPB HMDA LAR transaction testing and samples, refer to the CFPB HMDA Examination Procedures, updated April 1, 2019 are available at: https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_hmda-exam-procedures_2019-04.pdf

beginning in 2018 pursuant to the 2015 HMDA rule than for other fields. For example, the fields with the highest number of identified errors across several institutions were the newly required "Initially Payable to Your Institution" field and the "Debt-to-Income Ratio" field.

## 2.5.3 Root causes of HMDA data errors

In several examinations in which examiners identified numerous errors, the root causes of the HMDA violations were deficiencies in the institutions' CMS. The CMS deficiencies included the institutions' board and management oversight, policies and procedures, training, monitoring and audit, and the institutions' service provider oversight.

Many of the widespread or systemic errors related to problems within the institutions' data mapping—the data transfers from operations-based systems, such as loan origination systems, to data storage systems that populate the HMDA LARs. For example:

- Examiners determined that numerous errors within the Credit Scoring model fields were caused by data transfer deficiencies in which institutions extracted data from credit scoring models then transferred them to systems that reported inaccurate codes and descriptions of the credit scores.

- Examiners identified errors within the Rate Spread field and observed that these errors occurred due to data mapping or data transfer deficiencies. Institutions allowed erroneous software updates within their loan processing systems to result in inaccurate Rate Spread values reported on their HMDA LARs. Examiners determined that service provider oversight deficiencies resulted in institutions' failure to correct the erroneous data transfers.

- Examiners identified inaccurate values for the debt-to-income ratio. The institutions acknowledged the errors and stated the fields reported incorrectly were the result of a change made to the programming of their loan origination system.

Many of the widespread or systemic errors were caused by misinterpretation of Regulation C requirements or the institution's specific policy. For example:

- Examiners determined that employees at one institution misinterpreted the institution's policies and procedures for calculating the ages of applicants and co-applicants. Examiners determined that these errors were caused by deficiencies in the institution's monitoring and audit function.

- Examiners determined that an institution's senior management misinterpreted HMDA and Regulation C, concluding erroneously that the Origination Charges, Discount Points, and/or Lender Credits fields should be reported as "Not applicable." For example, examiners observed Origination Charges, displayed as "zero" within source documentation, inaccurately reported as "Not applicable". The Origination Charges field should be entered, in dollars for the total of all itemized amounts that are designated borrower-paid at or before closing. If the total is zero, enter 0. Enter "NA" if the requirement to report origination charges does not apply to the covered loan or application that the institution is reporting.

### 2.5.4 HMDA Supervisory Actions

In response to widespread HMDA LAR inaccuracies identified during examinations, institutions will review, correct, and resubmit their HMDA LAR.[76] Some institutions have already resubmitted their HMDA LARs.

In addition, institutions will enhance monitoring practices to ensure they are completed timely and appropriately identify and measure HMDA risk. Some institutions will develop and implement an effective HMDA monitoring program that prevents, detects, and corrects violations of HMDA and Regulation C, and ensures appropriate corrective actions are taken.

Some institutions will make improvements to CMS components that were the cause of errors, including through (1) implementation of policies, procedures and/or a plan that ensures that fields that had errors are reported accurately; (2) improvements to board and management oversight to ensure that the board and management promptly responds to CMS deficiencies and violations of Regulation C; and (3) improvements to their HMDA training program regarding collecting and recording data for the HMDA LAR, including ensuring it is specifically tailored to staff with responsibilities relating to HMDA.

[76] On December 21, 2017, the Bureau issued a Statement with respect to HMDA compliance announcing among other things that the Bureau does not intend to assess penalties for errors in data collected in 2018 and that the Bureau does not intend to require data resubmission unless errors are material. *See* Consumer Fin. Prot. Bureau, CFPB Issues Public Statement On Home Mortgage Disclosure Act Compliance (Dec. 21, 2017), available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/. During examinations of 2018 data in which CFPB Supervision required financial institutions to resubmit data, Supervision concluded that the errors identified were material.

## 2.5.5 Redlining

Regulation B prohibits discouragement of "applicants or prospective applicants". Specifically, it states: "A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application."[77] The Official Interpretations of Regulation B also explain that this prohibition "covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit."[78]

In the course of conducting supervisory activity, examiners observed that a lender violated ECOA and Regulation B by engaging in acts or practices directed at prospective applicants that would have discouraged reasonable people in minority neighborhoods in Metropolitan Statistical Areas (MSAs) from applying for credit.

Initial statistical analysis of the HMDA data and U.S. census data showed that the lender received significantly fewer applications from majority-minority and high-minority neighborhoods relative to other peer lenders in the MSA, which resulted in the prioritization of the institution for a redlining examination. The examination teams' subsequent, in-depth analyses, including general and refined peer analyses, confirmed these differences relative to its peer lenders in the MSA.[79] Examiners identified evidence of communications directed at prospective applicants that would discourage reasonable persons on a prohibited basis from applying to the lender for a mortgage loan. First, the lender conducted a number of direct mail marketing campaigns that featured models, all of whom appeared to be non-Hispanic white. Second, the lender included headshots of its mortgage professionals in its open house marketing materials, and in almost all of these materials, the headshots showed only professionals who appeared to be non-Hispanic white. Third, the lender's office locations were nearly all concentrated in majority non-Hispanic white areas, as confirmed by the lender's website communicating where the offices are located. Each of these acts or practices is a form of communication directed at prospective applicants.

Also, the lender's direct marketing campaign and Multiple Listing Service (MLS) advertising was focused on majority-white areas in the MSA, which provided additional evidence of its intent to discourage on a prohibited basis. In addition, the examination team determined that the lender employed mostly non-Hispanic white mortgage loan officers and identified emails among mortgage loan officers containing racist and derogatory content.

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[77] 12 C.F.R. § 1002.4(b).
[78] 12 C.F.R. Part 1002, Supp. I, para. 4(b)-1.
[79] Examination teams defined majority-minority areas as >50% minority and high-minority areas as >80% minority.

The lender plans to undertake remedial and corrective actions regarding this violation, which are under review by the Bureau.

# 2.6 Mortgage Origination

Supervision assessed the mortgage origination operations of several supervised entities for compliance with applicable Federal consumer financial laws. Examinations of these entities identified violations of Regulation Z and deceptive acts or practices prohibited by the CFPA.

## 2.6.1 Compensating loan originators differently based on product type

Regulation Z generally prohibits compensating mortgage loan originators in an amount that is based on the terms of a transaction.[80] Compensation is based on the term of a transaction if the objective facts and circumstances indicate that the compensation would have been different if a transaction term had been different.[81] In the preamble to the Bureau's 2013 Loan Originator Final Rule, the Bureau responded to questions from commenters about whether it was permissible to compensate differently based on product types, such as credit extended pursuant to government programs for low-to moderate-income borrowers.[82] As part of its response to these questions, the Bureau explained that it is not permissible to differentiate compensation based on credit product type, since products are simply a bundle of particular terms.[83]

Examiners found that lenders' compensation policies specified lower compensation for originating a bond loan subject to requirements set forth by a state Housing Finance Agency (HFA), and that the lenders followed these policies. Examiners also found that lenders compensated loan originators by paying them more for originating construction loans than for other types of loans. Examiners determined that by compensating loan originators differently based on whether the loan was an HFA loan or construction loan, the lenders compensated loan originators based on the terms of the transaction because the compensation would have been

[80] 12 C.F.R. § 1026.36(d)(1)(i).
[81] 12 C.F.R. Part 1026, Supp. I, Comment 36(d)(1)-1.i.
[82] 2013 Loan Originator Compensation Rule, 78 Fed. Reg. 11279, 11326. The Bureau noted that the meaning of loan "product" is "not firmly established and varies with the person using the term, but it generally refers to various combinations of features such as the type of interest rate and the form of amortization." *Id.* at 11284.
[83] *Id.* at 11326-27, note 82. The Bureau further noted in the preamble that permitting different compensation based on different product types would create "precisely the type of risk of steering" that the statutory provisions implemented through the 2013 Loan Originator Final Rule sought to avoid. *Id.* at 11328. The Bureau also declined to exclude state housing finance authority loans from the scope of the rule. *Id.* at 11332-33.

different if the terms of the transaction had been different. As a result, each lender involved agreed to no longer compensate loan originators differently based on product type.

### 2.6.2 Disclosure of simultaneously purchased lender and owner title insurance

Where there is simultaneous purchase of lender and owner title insurance policies, Regulation Z requires creditors to disclose the lender's title insurance based on the amount of the premium, without any discount that might be available for the simultaneous purchase of an owner's title insurance policy.[84] Creditors are required to disclose the premium for the owner's policy showing the impact of the simultaneous purchase discount.[85] The intent of this rule is to provide consumers with information on the incremental additional cost associated with obtaining an owner's title insurance policy, and the cost they would be required to pay for the lender's policy if they did not purchase an owner's policy. Examiners found that some creditors violated Regulation Z by disclosing the lender's title insurance premium at the discounted rate and the owner's title insurance at the full premium on the Loan Estimate. Supervision requested that the creditors revise their policies and procedures to ensure correct disclosure of title insurance premiums where there is a simultaneous issuance rate for lender's and owner's title policies.

### 2.6.3 Deceptive waivers of borrowers' rights in security deed riders and loan security agreements

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 Federal law."[86] In light of this provision, examiners previously concluded that certain waiver provisions are deceptive where reasonable consumers could construe the waivers to bar them from bringing Federal claims in court related to their mortgages. For example, examiners previously identified waiver provisions in home equity installment loan agreements that provided that consumers who signed the agreements waived all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the agreement and concluded that those provisions violated the CFPA's prohibition on deceptive acts or practices.[87] Similarly, in the mortgage servicing context,

[84] 12 C.F.R. § 1026.37(f)(2); 12 C.F.R. Part 1026, Supp. I, Comment 37(f)(2)-4.
[85] 12 C.F.R. § 1026.37(g)(4); 12 C.F.R. Part 1026, Supp. I, Comment 37(g)(4)-2.
[86] 12 C.F.R. § 1026.36(h)(2).
[87] *Supervisory Highlights*: Summer 2015, at 15.

examiners previously identified broad waiver of rights clauses in forbearance, loan modification, and other loss mitigation options and concluded that they violated the CFPA's prohibition against unfair or deceptive acts or practices.[88]

Examiners identified a waiver provision in a rider to a security deed that is in use in one state.[89] The waiver provided that borrowers who signed the agreement waived all of their rights to notice or to judicial hearing before the lender exercises its right to nonjudicially foreclose on the property. Examiners concluded that the use of this provision by mortgage lenders violated the CFPA's prohibition on deceptive acts or practices. Regulation X, 12 C.F.R. § 1024.41, implementing the Real Estate Settlement Procedures Act (RESPA), requires mortgage servicers to provide borrowers with certain notices in the loss mitigation context and borrowers may bring suit to enforce those provisions. A reasonable consumer could understand the provision to waive the consumer's right to sue over a loss mitigation notice violation in the nonjudicial foreclosure context. This misrepresentation is material because it could dissuade consumers from consulting a lawyer or otherwise bringing Federal claims in court related to the transaction. Thus, examiners concluded that the waiver provision was deceptive. In response to the examination findings, the entities committed to discontinuing use of the form containing the waiver.

Examiners also found that entities required borrowers in another state to agree to a waiver, in the event of default, of any equity or right of redemption in the loan security agreement for cooperative units. Specifically, the waiver stated that in the event of default, lenders may sell the security at public or private sale and thereafter hold the security free from any claim or right whatsoever of the borrower, who waives all rights of redemption, stay or appraisal which the borrower has or may have under any rule or statute. Examiners determined that the waiver language would likely mislead a consumer into believing that by signing the agreement they waived their right to bring any claim in court, including Federal claims.[90] This interpretation could appear reasonable to a consumer. The misrepresentation was material because it was likely to affect whether a consumer would choose to retain counsel or pursue claims against the entity in the future. As a result, the entities implemented an agreement resolving the issue and committed to providing clarification to all affected borrowers.

[88] *Supervisory Highlights*: Summer 2017, at 22.
[89] This examination work was completed after the review period for this report.
[90] 15 U.S.C. § 1602(dd)(5), (w).

# 2.7 Mortgage Servicing

Bureau examinations continue to review for violations of mortgage servicing requirements. Examiners determined that servicers violated Regulation X by making the first notice or filing for foreclosure when it was prohibited.[91] Examiners also determined that servicers engaged in a deceptive act or practice when they represented to borrowers that they would not initiate a foreclosure action until a specified date, but nevertheless initiated foreclosures prior to that date. Examiners also found that servicers failed to maintain policies and procedures, as required by Regulation X, reasonably designed to achieve specific objectives described in Regulation X.[92]

Additionally, examiners found that servicers violated Regulation X by conducting an annual escrow analysis that assumed that private mortgage insurance (PMI) payments would continue for the entire escrow analysis period, despite the servicers' knowledge that PMI would be automatically terminated before the end of the escrow analysis period.[93]

## 2.7.1 Dual tracking violations

Regulation X generally prohibits a servicer from making the first notice or filing required for foreclosure if the consumer submits a complete loss mitigation application unless the servicer has completed the review of the application, considered any appeals, the borrower rejects all loss mitigation options offered by the servicer, or the borrower fails to perform under an agreement on a loss mitigation option. If a consumer submits all of the documents requested by the servicer in response to the notice in 12 C.F.R. § 1024.41(b)(2)(i)(B), then the application is "facially complete" and the servicer must treat the application as complete for the purposes of the foreclosure referral protections of 12 C.F.R. § 1024.41(f)(2) until the borrower is given a reasonable opportunity to complete the application.

Examiners found that servicers violated Regulation X by making the first filing for foreclosure after the loan application was facially complete but before meeting the requirements of 12 CFR § 1024.41(f)(2). The servicers received all the information requested in the 12 C.F.R. § 1024.41(b)(2)(i)(B) notice and therefore the application was facially complete. However, the servicers did not place a foreclosure hold on the account when the documents were received. Instead, the servicers waited until they had completed internal analysis that the application was

[91] 12 C.F.R. § 1024.41(f)(2)(i).
[92] 12 C.F.R. § 1024.38(a), (b).
[93] 12 C.F.R. § 1024.17(c)(7).

facially complete, which took more than a day, during which time a foreclosure filing occurred in spite of the facially complete application having been received.

As a result of this finding, servicers remediated foreclosure fees that were charged to consumers who had submitted facially complete applications prior to the first foreclosure filing. They also enhanced their procedures, employee training, and monitoring controls.

Regulation X also prohibits a servicer from making the first notice or filing for foreclosure before making a decision on a borrower's timely appeal of a denied loss mitigation application.[94]

Institutions violated Regulation X by making the first notice or filing for foreclosure before they had evaluated borrowers' appeals. The servicers denied the borrowers' loss mitigation applications and provided the borrowers with information about appealing the determination as required under Regulation X. The borrowers submitted the appeal within the 14-day period under 12 C.F.R. § 1024.41(h)(2). Prior to making a determination regarding the appeal, the servicers made a first notice or filing for foreclosure, violating Regulation X.[95] In response to this finding, servicers enhanced policies and procedures, training, and monitoring controls.

Regulation X requires servicers to maintain policies and procedures reasonably designed to achieve specific objectives described in the regulation.[96] It provides that servicers' policies and procedures shall be reasonably designed to facilitate 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 responsible for handling foreclosure proceedings.[97]

Some servicers had policies and procedures to notify foreclosure counsel to stop all legal fillings only after the servicer had sent borrowers the notice acknowledging receipt of a complete loss mitigation application, which may be sent to a consumer up to five days after receipt of their application. This represents a failure to facilitate the sharing with its service providers of accurate and current information regarding the status of borrowers' loss mitigation applications. Because the servicers did not inform foreclosure counsel that a complete loss mitigation application had been submitted until it sent the loss mitigation acknowledgement notice, they failed to maintain policies and procedures reasonably designed to achieve the objective of 12 C.F.R. § 1024.38(b)(3)(iii). In response to these findings, servicers updated their policies and procedures.

94 12 C.F.R. § 1024.41(f)(2)(i).
95 12 C.F.R. § 1024.41(f)(2)(i).
96 12 C.F.R. §1024.38(a), (b).
97 12 C.F.R. 1024.38(b)(3)(iii).

## 2.7.2 Misrepresentations regarding foreclosure timelines

Regulation X's requirements related to loss mitigation applications do not apply to consumers submitting additional loss mitigation applications under certain circumstances. Specifically, they do not apply where a servicer has previously complied with the regulation's loss mitigation requirements for a complete loss mitigation application and the borrower has been delinquent at all times since submitting the prior complete application.[98]

Some servicers failed to adopt appropriate policies and procedures for responding accurately to such repeat loss mitigation applications. Examiners identified a deceptive practice when servicers represented to borrowers that they would not initiate a foreclosure action until a specified date, but nevertheless initiated a foreclosure prior to that date. These servicers maintained a policy of using model communications for all borrowers that included language reflecting Regulation X protections for borrowers submitting loss mitigation applications regardless of whether Regulation X protections actually applied to those borrowers. Examiners identified loss mitigation files where the servicers specifically indicated in letters that they would not initiate a foreclosure action until a specific date. Examiners noted that the date was consistent with the timeline that Regulation X would require if the application were protected by those provisions. Nevertheless, the servicers did initiate foreclosure actions prior to that date.

The inaccurate representations regarding the day foreclosure action would be initiated were likely to mislead borrowers into believing that they had more time until foreclosure than they actually did. It was reasonable for consumers to believe these representations since the information was provided on multiple loss mitigation related disclosures sent in response to the application. The representations were material because borrowers plan how they will obtain and when they will send necessary documents, and what actions they will take regarding their delinquent mortgages, based on the information provided – including the timeline for foreclosure. In response to these findings, servicers updated the information contained in letters sent to consumers.

## 2.7.3 Failure to consider PMI termination date during annual escrow analysis

Regulation X requires servicers to conduct an annual escrow analysis, in which they estimate the disbursement amounts of escrow account items.[99] If the servicer "knows the charge" for an item "in the next computation year," then it "shall use that amount" in its estimate.[100] Servicers

[98] 12 C.F.R. § 1024.41(i).
[99] 12 C.F.R. § 1024.17(c)(3).
[100] 12 C.F.R. § 1024.17(c)(7).

violated the requirements of 12 C.F.R. § 1024.17(c)(7) by including in the annual escrow analysis a full year of PMI disbursements, despite knowing that PMI would be charged for only part of the year.

PMI, when required, is automatically terminated when the principal balance of the mortgage loan reaches 78 percent of the original value of the property based on the amortization schedule, as long as the borrower is current. Examiners found that one or more servicers' systems maintain all relevant information to determine the termination date. Therefore, these servicers "know" that the charges for PMI will not last a full twelve months and will terminate before the end of the escrow year. Because the servicers know the charges for PMI will terminate for certain mortgages, including PMI charges after the termination date in the annual escrow analysis violates 12 C.F.R. § 1024.17(c)(7). In response to these findings, the servicers began considering the PMI termination information in their systems while conducting the annual escrow analysis.

# 2.8 Payday Lending

The Bureau's Supervision program covers entities that offer or provide payday loans. Examinations of these lenders identified deceptive acts or practices.

## 2.8.1 Misrepresentations regarding an intent to sue

Examiners found that lenders engaged in deceptive acts or practices in violation of the CFPA when they sent delinquent borrowers collection letters stating an "intent to sue" if the consumer did not pay the loan.[101] Examiners found the representations misled or were likely to mislead consumers, and that consumers' interpretations were reasonable. A reasonable borrower could understand the letters to mean that the lender had decided it would sue if a borrower did not make payments as required by the letter. In fact, the lenders had not decided prior to sending the letters that they would sue if borrowers did not pay, and in most cases did not sue borrowers who did not pay. The representations were material because they could induce delinquent borrowers to change their conduct regarding their loans. For example, consumers may have made payments they otherwise would not have, in order to avoid the possibility of suit. In response to examination findings, the entities ceased issuing letters stating an intent to sue where such a determination had not already been made, and enhanced collections communication-related policies and procedures, training, and monitoring.

[101] 12 U.S.C. §§ 5531, 5536(a)(1)(B).

### 2.8.2 Misrepresentations that no credit check will be conducted

Examiners observed that lenders engaged in a deceptive act or practice in violation of the CFPA when they falsely represented on storefronts and in photos on proprietary websites that they would not check a consumer's credit history. In fact, the lenders used consumer reports from at least one consumer reporting agency in determining whether to extend credit. It was reasonable for a consumer to interpret the representations as meaning that the lenders would not check a consumer's credit history when deciding whether to extend credit, and the representations were material because they were likely to affect consumers' conduct with respect to applying for loans. Prospective customers may have had concerns about their credit histories and ability to obtain credit, and consequently made a different choice. Moreover, storefront advertising claims were express and presumed material. In response to these findings, the lenders ceased making misleading representations on signage at branch locations and websites, and implemented enhanced advertising oversight.

### 2.8.3 Deceptive presentation of repayment options to borrowers contractually eligible for no-cost repayment plans

When consumers indicated an inability to repay their payday loans, lenders engaged in a deceptive act or practice by presenting payment options to consumers in a manner that misled or was likely to mislead them. Examiners found that, as a result of the institutions' process of presenting fee-based refinance options to struggling borrowers while withholding information about contractually available no-cost repayment plan options, many consumers entered into fee-based refinances despite being eligible for a no-cost repayment option.

The presentation of payment options misled, or was likely to mislead, consumers into believing that there was not a no-cost installment repayment option despite the loan agreements providing for one. Consumers may have also been misled into believing that a no-cost option was only available if the consumers first rejected or were found ineligible for other options, such as a fee-based refinance. A consumer's misunderstanding of their repayment options would be reasonable in light of the fact that the consumers who elected these other options were not told about the no-cost repayment plan option by the institution at the time that the consumers expressed difficulty repaying their loans. The institutions' misleading practice was material because it caused consumers to incur fees, such as for refinances, that could have been avoided had they been aware of their contractual right to a no-cost repayment option.

# 2.9 Private education loan origination

The Bureau has supervisory authority over entities that offer or provide private education loans.[102] The Bureau examines private education loan origination activities for compliance with applicable Federal consumer financial laws, including assessing whether entities have engaged in any unfair, deceptive, or abusive acts or practices prohibited by the CFPA. Examinations of these entities identified at least one deceptive act or practice.

## 2.9.1 Deceptive marketing regarding private education loan rates

Examiners found that entities engaged in a deceptive act or practice[103] by (1) advertising rates "as low as" X%, (2) disclosing certain conditions to obtain that rate (e.g., the borrower must make automatic payments and the rate was available only for applications filed by a date certain), and (3) omitting that a borrower's rate would depend on their creditworthiness. Examiners determined that the net impression of the marketing materials misled or was likely to mislead consumers to believe the "as low as" rate was available regardless of creditworthiness. The consumers' interpretation of such representations was reasonable under the circumstances and the entities' misleading representations were material to consumers' decisions to apply for a private education loan because it could impact the consumer's decision to apply for or take the loan. As a result, the entities have removed the phrase "as low as" from its marketing materials and, rather, advertises the entire range of rates (e.g., "X.XX% - YY.YY%"). Also, each entity involved now discloses that the lowest rates are only available for the most creditworthy applicants, in addition to other disclosures.

# 2.10 Student Loan Servicing

The Bureau continues to examine student loan servicing activities, primarily to assess whether entities have engaged in any unfair, deceptive or abusive acts or practices prohibited by the CFPA. Examiners identified three types of misrepresentations servicers made regarding consumer eligibility for the Public Service Loan Forgiveness (PSLF) program. Examiners also identified two unfair acts or practices related to failure to reverse negative consequences of automatic natural disaster forbearances and an unfair act or practice related to failing to honor consumer payment allocation instructions. Additionally, examiners continued to find that

[102] 12 U.S.C. § 5514(a)(1)(D).

[103] 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

servicers engaged in unfair acts or practices related to providing inaccurate monthly payment amounts to consumers after a loan transfer, as previously discussed in *Supervisory Highlights*.[104]

## 2.10.1 Public service loan forgiveness

PSLF may provide significant relief for consumers that work at 501(c)(3) nonprofits; government organizations; or other types of non-profit organizations that provide certain types of qualifying public services. Under the program, consumers that make 120 qualifying payments on their Direct Loans while working for an eligible employer and repaying under an eligible repayment plan may have the balance of their loans forgiven. There is significant confusion about eligibility for PSLF, which is further complicated by the relative complexity of student loan types and terms. Consequently, examiners observed borrowers with Federal Family Education Loan Program (FFELP) loans requesting information from servicers about their eligibility for PSLF or inquiring about terms of the program.

While FFELP loans are not initially eligible for PSLF, FFELP borrowers can consolidate into a Direct Consolidation Loan, which is eligible. Once consolidated, the consumer can start making eligible payments toward the 120 needed for forgiveness. Direct Consolidation Loan borrowers are also eligible for other benefits like improved income-driven repayment options, while their FFELP loan counterparts are not.

Examiners observed that servicers regularly provide FFELP borrowers information about PSLF. Examiners found that servicers regularly provided inaccurate information about eligibility for PSLF or Direct Consolidation Loans, resulting in deceptive acts or practices described below.

## 2.10.2 Misrepresenting the effect of employer certification forms

In examinations of student loan servicers, examiners identified a deceptive act or practice where servicer employees represented to FFELP loan borrowers that they could submit their employer certification forms (ECF) to receive a determination on whether their employers are eligible employers for PSLF. Yet under PSLF program guidelines, FFELP borrowers who submit an ECF prior to consolidation into a Direct Loan will be rejected, without any determination about employer eligibility.

[104] *Supervisory Highlights*, Issue 21, Winter 2020.

The servicers' representations are likely to mislead borrowers into believing that they should submit an ECF prior to consolidation to receive confirmation that their employers are eligible. Consumers' interpretation was reasonable under the circumstances and they were likely to be misled by the servicers' representations, given the specificity of agents' statements and the fact that agents routinely provided information about the PSLF program. FFELP borrowers were likely interested in entering the PSLF program as soon as possible, so that they could begin making the 120 payments required for forgiveness. The agents' information was material because it was likely to affect FFELP borrowers' conduct in taking the steps necessary to enter PSLF—most notably, consolidating their loans—and could delay these borrowers' entry into the program by the time it takes to go through the ECF process.

## 2.10.3 Misrepresenting eligibility of FFELP loans for PSLF

Examiners found that servicers engaged in a deceptive act or practice by advising borrowers with FFELP loans that the loans could not become eligible for PSLF.

Consumers with FFELP loans can consolidate their loans into a Direct Consolidation Loan and become eligible for PSLF. Examiners found that during calls servicers represented to consumers with FFELP loans that they had no potential course of action to become eligible for PSLF. This representation was likely to mislead consumers because, in fact, their loans could become eligible through consolidation. Consumers' interpretation was reasonable under the circumstances because they reasonably believed that they had made their interest in eligibility for PSLF clear, and reasonably interpreted the servicers' representations to mean that they could not take steps to qualify for PSLF. The representations were material because consumers called to inquire about loan forgiveness and if they had received accurate information may have taken steps to convert their FFELP loans to Direct Loans.

## 2.10.4 Misrepresenting employer types eligible for PSLF

Examiners found that servicers risked engaging in a deceptive act or practice by informing borrowers interested in the PSLF program that they are only eligible if their employer is a nonprofit. The PSLF program provides loan forgiveness for eligible federal student loans after ten years of payments by consumers who meet certain requirements, including that they work for a qualifying employer. Qualifying employers include local, state, federal or tribal government entities; 501(c)(3) nonprofits; and or other types of non-profit organizations that provide certain types of qualifying public services. Servicers stated in calls that consumers could be eligible for PSLF if they worked for nonprofits but did not mention that government employees and other types of employees are also eligible. This statement created the net impression that only employees of nonprofits were eligible. This was likely to mislead

consumers, because other employment types are also eligible. This was a reasonable interpretation under the circumstances because servicers routinely provide consumers with information about eligibility for various programs. Finally, the representation was material to eligible consumers' decision regarding whether to pursue PSLF. As a result of examiner findings, the servicers implemented a new training program for agents.

### 2.10.5 Failure to reverse the consequences of automatic natural disaster forbearances

Examiners identified unfair practices related to enrollment in natural disaster forbearances at entities servicing private student loans. Generally, student loan borrowers become eligible for a natural disaster forbearance when they, or their cosigners, reside in a zip code impacted by a declared natural disaster. In most situations this forbearance is opt-in, allowing consumers to contact their servicer and request the payment relief. However, at some servicers, examiners identified that certain populations of loans were automatically enrolled in the forbearance without a specific request from the consumer – even if they were otherwise current on their loans. Within this subset of consumers whose accounts were automatically placed into a natural disaster forbearance, examiners identified two unfair practices.

First, examiners noted that despite the natural disaster declaration, some consumers did not want to be enrolled in the forbearance and requested to return to repayment. Often consumers identified negative consequences of forbearance and complained to their servicer about enrollment. For example, forbearance resulted in certain consumers losing payment incentives such as interest rate reductions for making on-time payments. It also resulted in consumers accruing unpaid interest during the period. And following a consumer complaint, one servicer failed to reverse the consequences of these unwanted automatic forbearances.

Second, at one servicer, enrollment in the automatic forbearance resulted in unenrollment of borrowers in the auto-debit program completely. In other words, auto-debit did not resume when these forbearances ended following cancelation of the forbearance or the regular termination of the forbearance period. This resulted in consumers becoming past due on the loan when they believed that their payments had been automatically debited.

Consumers could not reasonably avoid the injury from either practice because the natural disaster forbearance was placed on their accounts automatically. Even where consumers recognized the forbearance was placed and contacted their servicer to opt-out, the servicers failed to fully reverse the consequences of the action. For consumers who explicitly do not want a natural disaster forbearance, the injuries were not outweighed by countervailing benefits to

consumers or competition. The servicers have ceased automatically enrolling consumers in natural disaster forbearances.

### 2.10.6 Inaccurate monthly payment amounts after servicing transfer

Examiners found that servicers engaged in an unfair act or practice by failing to waive or refund overcharges they assessed after loan transfers. In previous editions of *Supervisory Highlights,* the Bureau has discussed other findings related to inaccurately billed amounts after loan transfers.

More specifically, consumers had enrolled in Income-Based Repayment (IBR) plans that lowered their student loan payment to a percentage of their discretionary income. When the loans were transferred to new servicers, they did not honor the terms of the IBR plan and sent consumers periodic statements listing inaccurate payment amounts, and in some instances, initiated automatic electronic debits in the incorrect amount. The servicers notified consumers of the error but did not refund or offer to refund any overpayments.

The conduct caused or was likely to cause substantial injury to consumers because the servicers required payments in excess of the amount required under the terms of the consumers' IBR plans. Consumers could not reasonably avoid the injury because they relied on the servicers' calculations and representations in the periodic statements. Further, the servicers did not provide refunds to consumers if they requested refunds of the overpayments. The injury from this activity is not outweighed by the countervailing benefits to consumers or competition. For example, the benefits to consumers or competition from avoiding the cost of better monitoring of servicing transfers between entities would not outweigh the substantial injury to consumers. In response to the examination findings, these servicers added additional controls to their loan onboarding process.

### 2.10.7 Failure to honor payment allocation instructions

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.

Examiners found that servicers engaged in an unfair practice by failing to follow borrowers' explicit standing instructions regarding payment allocation.[105]

Examiners found that certain accounts contained at least one incorrectly applied payment. The failure to follow payment instructions resulted in borrowers paying more over the life of their loans or experiencing lost or delayed borrower benefits, such as co-signer release. Consumers were unable to reasonably avoid the injury because they relied on the servicers' representation that they would allocate payments in accordance with the instructions provided. Finally, the injury from these errors is not outweighed by the countervailing benefits to consumers or competition. In response to these findings, services implemented new training and additional monitoring of payment allocation instructions.

[105] The Bureau has previously discussed payment allocation practices in *Supervisory Highlights*, Issue 9, Fall 2015 and Issue 10, Winter 2016.

# 3. Supervisory program developments

## 3.1.1 CFPB and NCUA enter into a MOU

The CFPB and the National Credit Union Administration (NCUA) announced a Memorandum of Understanding (MOU) agreement to improve coordination between the agencies related to the consumer protection supervision of credit unions with over $10 billion in assets.[106]

The MOU better facilitates coordinated examinations to reduce redundancy and unnecessary overlap. CFPB and NCUA will also share information on training activities and content. Finally, the MOU will permit both agencies to share information related to supervisory activities and potential enforcement actions.

## 3.1.2 CFPB issues final rule on the role of supervisory guidance

On January 19, 2021, the CFPB issued a final rule regarding the Bureau's use of supervisory guidance for its supervised institutions.[107] The rule codifies the statement, with amendments, that the Bureau and other federal financial regulatory agencies issued in September 2018, which clarified the differences between regulations and supervisory guidance.

The final rule states that unlike a law or regulation, supervisory guidance does not have the force and effect of law and the Bureau does not take enforcement actions or issue supervisory criticisms based on non-compliance with supervisory guidance. Rather, supervisory guidance outlines supervisory expectations and priorities, or articulates views regarding appropriate practices for a given subject area.

[106] The MOU is available at: https://files.consumerfinance.gov/f/documents/cfpb_ncua-memorandum-of-understanding_2021-01.pdf

[107] The final rule is available at: https://files.consumerfinance.gov/f/documents/cfpb_role-of-supervisory-guidance_final-rule_2021-01.pdf

The Bureau collaborated closely with other federal financial regulatory agencies in this rulemaking, including by issuing a joint proposal for public comment.

### 3.1.3 CFPB issues interpretive rule

On March 9, 2021, the Bureau issued an interpretive rule clarifying that the prohibition against sex discrimination under ECOA and Regulation B includes sexual orientation discrimination and gender identity discrimination.[108] This prohibition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations.

### 3.1.4 CFPB rescinds its statement of policy on abusive acts or practices

On March 11, 2021, the Bureau announced that it has rescinded its January 24, 2020 policy statement, "Statement of Policy Regarding Prohibition on Abusive Acts or Practices."[109]

The Bureau intends to exercise its supervisory and enforcement authority consistent with the full scope of its statutory authority under the Dodd-Frank Act as established by Congress.

### 3.1.5 CFPB rescinds series of policy statements

On March 31, 2021, the Bureau announced it is rescinding seven policy statements issued last year that provided temporary flexibilities to financial institutions in consumer financial markets, including mortgages, credit reporting, credit cards and prepaid cards.[110] The seven rescissions, effective April 1, provide guidance to financial institutions on complying with their legal and regulatory obligations. With the rescissions, the CFPB provided notice that it intends to exercise

[108] The interpretive rule is available at: https://files.consumerfinance.gov/f/documents/cfpb_ecoa-interpretive-rule_2021-03.pdf

[109] The Rescission of the Policy Statement is available at: https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-policy-statement-consolidated_2021-03.pdf

[110] The rescinded policies include: Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic (March 26, 2020); Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (March 26, 2020); Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers (March 26, 2020); Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act (April 1, 2020); Statement on Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J (April 27, 2020); Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic (May 13, 2020); Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (June 3, 2020).

the full scope of the supervisory and enforcement authority provided under the Dodd-Frank Act.[111]

### 3.1.6 Bureau issues bulletin regarding changes to supervisory communications

On March 31, 2021, the Bureau issued a bulletin to announce changes to how its examiners articulate supervisory expectations to supervised entities in connection with supervisory events.[112] The bulletin states that the CFPB will continue to issue Matters Requiring Attention (MRAs), explains the circumstances under which it will do so, and announces that the CFPB will discontinue use of Supervisory Recommendations. This new bulletin rescinds and replaces CFPB Bulletin 2018-01 (September 25, 2018).

### 3.1.7 CFPB compliance bulletin warns mortgage servicers: unprepared is unacceptable

On April 1, 2021, the Bureau warned mortgage servicers to take all necessary steps to prevent a wave of avoidable foreclosures this fall.[113] Millions of homeowners currently in forbearance will need help from their servicers when the pandemic-related federal emergency mortgage protections expire this summer and fall. Servicers should dedicate sufficient resources and staff to ensure they are prepared for a surge in borrowers needing help. The CFPB will closely monitor how servicers engage with borrowers, respond to borrower requests, and process applications for loss mitigation. The CFPB will consider a servicer's overall effectiveness in helping consumers when using its discretion to address compliance issues that arise.

[111] The rescission also announces that the Bureau does not intend to continue to provide any flexibilities afforded entities in specific sections of certain interagency statements. More information is available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-series-of-policy-statements-to-ensure-industry-complies-with-consumer-protection-laws/

[112] CFPB Bulletin 2021-01 is available at: https://files.consumerfinance.gov/f/documents/cfpb_bulletin_2021-01_changes-to-types-of-supervisory-communications_2021-03.pdf

[113] The Compliance Bulletin is available at: https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf

## 3.1.8 Bureau issues interim final rule on FDCPA

On April 19, 2021, the Bureau issued an interim final rule in support of the Centers for Disease Control and Prevention (CDC)'s eviction moratorium.[114] The CFPB's rule requires debt collectors to provide written notice to tenants of their rights under the eviction moratorium and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium. The CDC established the eviction moratorium to protect the public health and reduce the spread of the Coronavirus. Debt collectors who evict tenants who may have rights under the moratorium without providing notice of the moratorium, or who misrepresent tenants' rights under the moratorium, can be prosecuted by federal agencies and state attorneys general for violations of the FDCPA and are also subject to private lawsuits by tenants.

[114] The interim final rule is available at: https://files.consumerfinance.gov/f/documents/cfpb_debt_collection-practices-global-covid-19-pandemic_interim-final-rule_2021-04.pdf
Information about the CDC's eviction moratorium is available at: https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf

# 4. Remedial Actions

## 4.1 Public enforcement actions

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

### 4.1.1 TD Bank, N.A.

On August 20, 2020, the Bureau announced a settlement with TD Bank, N.A. (TD Bank) regarding its marketing and sale of its optional overdraft service: Debit Card Advance (DCA).[115] TD Bank is headquartered in Cherry Hill, New Jersey, and operates about 1,250 locations throughout much of the eastern part of the country. The Bureau found that TD Bank's overdraft enrollment practices violated EFTA and Regulation E by charging consumers overdraft fees for ATM and one-time debit card transactions without obtaining their affirmative consent, and that TD Bank engaged in deceptive and abusive acts or practices in violation of the CFPA.

The Bureau specifically found that TD Bank charged consumers overdraft fees for ATM and one-time debit card transactions without obtaining their affirmative consent in violation of EFTA and Regulation E, both after new customers opened checking accounts at TD Bank branches and after new customers opened checking accounts at events held outside of bank branches.

The Bureau further found that when describing DCA to new customers, TD Bank deceptively claimed DCA was a "free" service or benefit or that it was a "feature" or "package" that "comes with" new consumer-checking accounts. In fact, TD Bank charges customers $35 for each overdraft transaction paid through DCA and DCA is an optional service that does not come with a consumer-checking account. When TD Bank enrolled some consumers in DCA over the phone, TD Bank deceptively described DCA as covering transactions unlikely to be covered by DCA. In some instances, TD Bank engaged in abusive acts or practices by materially interfering with consumers' ability to understand DCA's terms and conditions. In some cases, TD Bank required new customers to sign its overdraft notice with the "enrolled" option pre-checked, without mentioning the DCA service to the consumer at all; enrolled new customers in DCA without requesting the customer's oral enrollment decision; and deliberately obscured, or

[115] The consent order can be found at: https://files.consumerfinance.gov/f/documents/cfpb_td-bank-na_consent-order_2020-08.pdf

attempted to obscure, the overdraft notice to prevent a new customer's review of their pre-marked "enrolled" status in DCA.

To provide relief for consumers affected by TD Bank's unlawful overdraft enrollment practices, the Bureau's consent order requires TD Bank to provide an estimated $97 million in restitution to about 1.42 million consumers. TD Bank must also pay a civil money penalty of $25 million. The consent order also requires TD Bank to correct its DCA enrollment practices, stop using pre-marked overdraft notices to obtain a consumer's affirmative consent to enroll in DCA, and adopt policies and procedures designed to ensure that TD Bank's furnishing practices concerning nationwide specialty consumer reporting agencies comply with all applicable Federal consumer financial laws.

### 4.1.2 Sigue Corporation

On August 31, 2020, the Bureau entered into a consent order with Sigue Corporation and its subsidiaries, SGS Corporation and GroupEx Corporation.[116] Sigue and its subsidiaries, which are all headquartered in Sylmar, California, provide consumers with international money-transfer services, including remittance-transfer services.

The Bureau's investigation of Sigue and its subsidiaries found that between 2013 and 2019, they violated EFTA and the Remittance Transfer Rule. Specifically, the Bureau found that Sigue and its subsidiaries failed to refund transaction fees when they did not make funds available by the disclosed date of availability, and they failed to inform consumers of the remedies available for remittance errors. When Sigue and its subsidiaries investigated remittance errors, they failed to report to consumers in writing the results of their investigations into transaction errors or consumers' rights as required by the Remittance Transfer Rule. Sigue and its subsidiaries also failed to develop and maintain adequate written policies and procedures designed to ensure compliance with certain Remittance Transfer Rule error-resolution requirements and failed to comply with several Remittance Transfer Rule disclosure requirements.

The consent order against Sigue and its subsidiaries requires them to pay about $100,000 in consumer redress and a $300,000 civil money penalty. They must also implement and maintain written policies and procedures designed to ensure compliance with the Remittance Transfer Rule and maintain a compliance-management system that is designed to ensure that their operations comply with the Remittance Transfer Rule, including conducting training and

[116] A copy of the consent order is available at: https://files.consumerfinance.gov/f/documents/cfpb_sigue-corporation_consent-order_2020-08.pdf

oversight of all agents, employees, and service providers, and not violating the Remittance Transfer Rule in the future.

### 4.1.3 Lobel Financial Corporation

On September 21, 2020, the Bureau issued a consent order against Lobel Financial Corporation (Lobel), an auto-loan servicer based in Anaheim, California.[117] The Bureau found that Lobel engaged in unfair practices with respect to its Loss Damage Waiver (LDW) product, in violation of the CFPA. When a borrower has insufficient insurance, rather than force-placing CPI, Lobel places the LDW product, which is not itself insurance, on borrower accounts and charges a monthly premium. The LDW product provides that Lobel will pay for the cost of covered repairs and, in the event of a total vehicle loss, cancel the borrower's debt. The Bureau's investigation found that, since 2012, Lobel charged customers LDW premiums after they had become ten-days delinquent on their auto loans but did not provide them with LDW coverage. The Bureau also found that Lobel charged some customers LDW-related fees that Lobel had not disclosed in its LDW contract. The Order requires Lobel to pay $1,345,224 in consumer redress to approximately 4,000 harmed consumers and a $100,000 civil money penalty. The consent order also prohibits Lobel from failing to provide consumers with LDW coverage or similar products or services for which it has charged consumers or from charging consumers fees that are not authorized by its LDW contracts.

### 4.1.4 Envios de Valores La Nacional Corp.

On December 21, 2020, the Bureau announced a consent order with Envios de Valores La Nacional Corp. (La Nacional) based on the Bureau's finding that La Nacional violated EFTA and the Remittance Transfer Rule.[118] La Nacional is a large remittance transfer provider incorporated in New York and licensed in 15 states and the District of Columbia. La Nacional sent $2.2 billion in remittance transfers between November 2016 and April 2018 from the United States to recipients in several countries in Central America, South America, the Caribbean, and Africa.

The Bureau found that, since the 2013 effective date of the Remittance Transfer Rule, La Nacional has engaged in thousands of violations of the Remittance Transfer Rule. Specifically,

[117] A copy of the consent order is available at: https://files.consumerfinance.gov/f/documents/cfpb_lobel-financial-corporation_consent-order_2020-09.pdf

[118] The consent order is available at: https://files.consumerfinance.gov/f/documents/cfpb_envios-de-valores-la-nacional-corp_consent-order_2020-12.pdf

the Bureau's investigation found that La Nacional violated EFTA and the Remittance Transfer Rule by failing to honor cancellation requests and failing to refund certain fees and taxes when funds were not available on time. The Bureau also found that La Nacional has failed to maintain appropriate error resolution policies and procedures, to adhere to error resolution requirements, and to provide consumers with reports of investigation findings. The Bureau further found that La Nacional has failed to treat international bill pay services as remittance transfers and to make proper disclosures in numerous instances.

The consent order requires La Nacional to pay a $750,000 civil money penalty and imposes requirements to prevent future violations. Under the terms of the consent order, in addition to paying a penalty, La Nacional must adopt a compliance plan to ensure that its remittance transfer acts and practices comply with all applicable Federal consumer financial laws and the consent order.