September 2017

Supervisory Highlights

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Consumer Financial Protection Bureau

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1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The Bureau supervises both bank and nonbank institutions to help meet this goal. The findings reported here reflect information obtained from supervisory activities that were generally completed between January 2017 and June 2017 (unless otherwise stated). In some instances, not all corrective actions, including through enforcement, have been completed at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance management system and compliance with applicable Federal consumer financial laws. When Supervision determines that a supervised entity has violated a statute or regulation, Supervision directs the entity to undertake appropriate corrective measures, such as implementing new policies, changing written communications, improving training or monitoring, or otherwise changing conduct to ensure the illegal practices cease. Supervision also directs the entity to send refunds to consumers, pay restitution, credit borrower accounts, or take other remedial actions as appropriate.

Recent supervisory resolutions have resulted in total restitution payments of approximately $14 million to more than 104,000 consumers during the review period. In addition to these nonpublic supervisory activities, the Bureau also resolves violations using public enforcement

actions.[1] CFPB's recent supervisory activities have either led to or supported two recent public enforcement actions, resulting in about $1.15 million in consumer remediation and an additional $1.75 million in civil money penalties.

Please submit any questions or comments to CFPB_Supervision@cfpb.gov.

[1] In 2016, about 70 percent of CFPB examinations did not raise issues that led the Bureau to consider opening an enforcement investigation. Instead, these matters were resolved with nonpublic agreements by the company to quickly fix any problems and provide appropriate relief to consumers. *See infra* pp. 37-39 (discussing these figures). *See also* https://www.consumerfinance.gov/about-us/blog/how-we-keep-you-safe-consumer-financial-marketplace/.

2. Supervisory observations

Recent supervisory observations are reported in the areas of automobile loan servicing, credit card account management, debt collection, deposits, mortgage origination, mortgage servicing, remittances, service provider program, short-term small-dollar lending, and fair lending.

2.1 Automobile loan servicing

In the Bureau's recent auto servicing examinations, examiners reviewed how servicers are overseeing repossession agents and how repossessions are conducted. Through that work, examiners identified an unfair practice relating to repossession at one or more automobile servicers.

2.1.1 Repossessions of borrower vehicles after borrowers make catch-up payments or enter agreements to avoid repossession

To secure an auto loan, borrowers give creditors a security interest in their vehicles. When a borrower defaults, a creditor can exercise its rights under the contract and repossess the secured vehicle. Many auto servicers provide options to borrowers to avoid repossession once a loan is delinquent or in default. Servicers may have formal extension agreements that allow borrowers to forbear payments for a certain period of time or may cancel a repossession order once a borrower makes a payment.

In one or more recent exams, examiners found that one or more entities were repossessing vehicles after the repossession was supposed to be cancelled. In these instances, the servicer(s) wrongfully coded the account as remaining delinquent, customer service representatives did not timely cancel the repossession order after borrowers made sufficient payments or entered an

agreement with the servicer to avoid repossession, or repossession agents had not checked the documentation before repossessing and thus did not learn that the repossession had been cancelled.

Bureau examiners concluded that it was an unfair practice to repossess vehicles where borrowers had brought the account current, entered an agreement with the servicer to avoid repossession, or made a payment sufficient to stop the repossession, where reasonably practicable given the timing of the borrower's action.

Supervision directed the servicer(s) to stop the practice. In response to our examiners' findings, the servicer(s) informed Supervision that the affected consumers were refunded the repossession fees. The servicer(s) also implemented a system that requires repossession agents to verify that the repossession order is still active immediately prior to repossessing the vehicle, for example, through a specially designed mobile application for that purpose.

2.2 Credit card account management

Supervision reviewed the credit card account management operations of one or more supervised entities over the past few months. Typically, examiners assess advertising and marketing, account origination, account servicing, payments and periodic statements, dispute resolution, and the marketing, sale and servicing of credit card add-on products. Bureau examiners found that supervised entities generally are complying with Federal consumer financial laws. However, in one or more recent examinations, examiners observed that one or more entities violated Regulation Z and committed the deceptive practices as described below.

2.2.1 Failure to provide required tabular account-opening disclosures

Examiners observed that one or more credit card issuers violated Regulation Z by failing to provide the requisite tabular disclosures with the account opening materials provided to numerous cardholders.[2] Specifically, the account-opening disclosures were missing the table set forth in Appendix G-17 of Regulation Z, resulting in consumers receiving incomplete disclosures.[3] At one or more entities, management attributed this violation to an employee's incorrect entry of source code for printing disclosures, controls that were not appropriately structured to detect errors, and the entity's lack of an independent disclosure review. After acknowledging the violations with examiners, one or more entities initiated a review to ensure that the errors were limited, the root causes were further identified, and corrective actions were developed.

2.2.2 Deceptive misrepresentations to consumers regarding costs and availability of pay-by-phone options

During one or more examinations, credit card companies provided consumers with the opportunity to pay their credit card bills by mail, online, or in person free of charge or by using one of two pay-by-phone services. The first pay-by-phone service permitted consumers to make an expedited payment for a predetermined fee, credited the same day or the following business day. The second pay-by-phone service allowed consumers to arrange future payments options free of charge to be credited to the consumer's account as soon as two days after the call. Customer service representatives were given a call script to read to consumers describing both the fee-based expedited payment option and the free future payments option.

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[2] 12 CFR 1026.6(b)(1)-(2).

[3] Appendix G to 12 CFR Part 1026, Form G-17(A) – Account-Opening Model Form.

A review of calls between customer service representatives and consumers revealed that in one or more examinations representatives did not follow the script in its entirety and often read the script for expedited payments only. Typically, customer service representatives did not inform consumers of any free payment options until after the consumer authorized the expedited phone payment and the customer service representatives did not inform consumers that the payment could be paid free of charge by phone by not expediting when the payment was credited. This practice resulted in consumers incurring fees for expedited payments that could have been avoided. Supervision found this practice was deceptive because these customer service representatives made an implied misrepresentation to consumers paying over the phone that all of the pay-by-phone services carried a fee.[4]

Supervision directed the entity(ies) to establish effective controls over communications to consumers, ensure representatives informed consumers of free payment options prior to authorization of an expedited phone payment, and reimburse fees to consumers impacted by the deceptive representations about the costs and availability of pay-by-phone options.

2.2.3 Deceptive misrepresentations to consumers concerning benefits and terms of credit card add-on products

One or more entities provided its customer service representatives with call scripts that contained basic information about debt cancellation credit card add-on product(s). A review of calls by examiners indicated that customer service representatives often did not read the entire script, and in some instances, did not read the script at all. In one or more instances, the customer service representatives did not correct consumers' stated erroneous assumptions concerning the benefits of the product(s), misrepresented the potential fees, and assured consumer(s) that the product(s) would avoid the accrual of late fees or other penalties.

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[4] 12 USC 5536(a)(1)(B).

Supervision found such practices constituted deceptive marketing and sales practices by misrepresenting product features, such as the cost and coverage of the optional debt cancellation add-on product.[5] Supervision directed these entities to establish effective controls over marketing and sales practices for the debt cancellation credit card add-on products, ensure representatives make accurate disclosure of the add-on product's terms, conditions, and costs, and to reimburse the costs of the credit card add-on products to impacted consumers.

2.2.4 Failure to comply with billing error resolution and unauthorized transactions

Regulation Z requires credit card issuers to follow an error resolution process when a cardholder submits a billing error notice and provides that, during resolution, the cardholder may withhold payment for the disputed amount and the issuer shall not report the disputed amount as delinquent.[6] In addition, Regulation Z also limits the amount a cardholder can be held liable for any unauthorized use.[7]

During one or more examinations, examiners observed that entities: (1) failed to provide consumers with a timely written acknowledgement of receipt of a billing error notice;[8] (2) generally failed to timely comply with the billing error resolution procedures;[9] (3) failed to limit the liability of cardholders for unauthorized use to the lesser of $50 or the amount of money, property, labor or services obtained by the unauthorized use before the card issuer is notified;[10]

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[5] 12 USC 5536(a)(1)(B).

[6] 12 CFR 1026.13.

[7] 12 CFR 1026.12(b).

[8] 12 CFR 1026.13(c)(1).

[9] 12 CFR 1026.13(c)(2).

[10] 12 CFR 1026.12(b)(1)(ii).

(4) before a billing error was resolved, made or threatened to make an adverse credit report concerning the consumer's credit standing, or that the amount or account was delinquent, because the consumer failed to pay the disputed amount or applicable related finance or other charges;[11] (5) failed to timely correct billing errors and credit consumers' accounts with disputed amounts or related finance or other charges, as applicable;[12] (6) failed to send, or failed to timely send, consumers a correction notice where the issuer concluded that the billing error occurred as asserted;[13] (7) failed to conduct, or failed to timely conduct, a reasonable investigation before determining that no billing error occurred;[14] or (8) failed to provide, or failed to timely provide, consumers with a written explanation for its determination as to why it concluded that a billing error did not occur.[15]

The root cause of these regulatory violations can, among other things, be attributed to weak oversight of service providers that handle dispute resolution for the card issuers. At one or more entities, management failed to perform sufficient due diligence of a service provider hired to perform intake of incoming phone calls from customers who reported billing errors and other disputes, and ceased doing business with the service provider because of increasing complaints about the service provider's customer service. One or more entities failed to have sufficient documentation of its monitoring of service providers and did not audit its oversight of service providers.

Supervision directed one or more entities to develop a plan that ensures the handling of billing error disputes is corrected, identifies all impacted consumers, and remediates harmed

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[11] 12 CFR 1026.13(d)(2).

[12] 12 CFR 1026.13(c)(2) & 1026.13(e)(1).

[13] 12 CFR 1026.13(c)(2) & (e)(2).

[14] 12 CFR 1026.13(c)(2) & (f).

[15] 12 CFR 1026.13(c)(2) & (f)(1).

consumers. One or more entities were directed to revise their service provider program(s) to require document retention relating to service provider monitoring and risk assessment reviews.

2.3 Debt collection

The Bureau's Supervision program covers certain bank and nonbank creditors that originate and collect their own debt, as well as nonbanks that are larger participants in the debt collection market. These reviews, among other things, evaluate the adequacy of the relevant entities' compliance management systems and communications with consumers. At one or more entities, examiners' review of these systems and practices included activities conducted in a foreign country. During recent examinations of larger participants, examiners identified several violations of the Fair Debt Collection Practices Act (FDCPA),[16] including unauthorized communications with third parties, false representations made to authorized credit card users regarding their liability for debts, false representations regarding credit reports, and communications with consumers at inconvenient times.

At one or more entities, examiners discovered that debt collectors followed client instructions that led to violations of the FDCPA. Entities can mitigate the risk of an FDCPA violation if they determine whether client instructions would violate the FDCPA before following them.

2.3.1 Impermissible communications with third parties

Under section 805(b) of the FDCPA, a debt collector generally may not communicate with a person other than the consumer in connection with the collection of a debt without permission from the consumer. Examiners determined that one or more entities did not confirm that the

[16] 15 USC 1692-1692p.

correct party had been contacted prior to beginning collection activities. As a result, one or more entities communicated with a third party in connection with the collection of a debt by discussing the debt with an authorized user of a credit card who was not financially responsible for the debt (and who was not otherwise a "consumer" under section 805(b)). In response to these findings, one or more entities enhanced consumer verification processes to include the verification of first and last names, and confirmation of date of birth or the last four digits of Social Security number, before disclosing the debt or the nature of the call to the consumer. Additionally, one or more entities revised their processes to discuss the debt with an authorized user only after explicit authorization from the cardholder. Lastly, the entities trained their collection agents on the enhanced policies and procedures.

2.3.2 Deceptively implying that authorized users are responsible for a debt

Under section 807(10) of the FDCPA, a debt collector may not use false representations or deceptive means to collect or attempt to collect any debt. Examiners determined that one or more entities violated the FDCPA by attempting to collect a debt directly from the authorized user of a credit card even though the authorized user was not financially responsible for the debt. The practice of soliciting payment from a non-obligated user in a manner that implies that the authorized user is personally responsible for the debt constitutes a deceptive means to collect a debt in violation of the FDCPA. One or more entities have undertaken remedial and corrective actions regarding these violations, which are under review by Supervision.

2.3.3 False representations regarding the effect on a consumer's credit report of paying a debt in full rather than settling the debt in full

As noted above, a debt collector may not use false representations or deceptive means to collect or attempt to collect any debt under section 807(10) of the FDCPA. Examiners found that one or more entities made false representations to consumers about the effect on their credit score of paying a debt in full rather than settling the debt for less than the full amount. As the CFPB explained in a 2013 bulletin, representations about the impact of paying a debt on a consumer's credit score may be deceptive. The bulletin states that "in light of the numerous factors that influence an individual consumer's credit score, such payments may not improve the credit score of the consumer to whom the representation is being made. Consequently, debt owners or

third-party debt collectors may well deceive consumers if they make representations that paying debts in collection will improve a consumer's credit score."[17] In response to these findings, one or more entities amended training materials to remove references to how a consumer's credit score may be affected by either settling the debt in full or paying the debt in full.

2.3.4 Communicating with consumers at a time known to be inconvenient

Under section 805(a)(1) of the FDCPA, a debt collector may not communicate with a consumer in connection with the collection of any debt at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. Examiners discovered that consumers were contacted by one or more entities outside of the hours of 8:00 am to 9:00 pm (which, in the absence of knowledge to the contrary, may be assumed to be convenient) or at times consumers had previously informed the entities were inconvenient. These violations were caused by the failure to accurately update account notes and the use of auto dialers that based call parameters solely on the consumer's area code, rather than also considering the consumer's last known address. Supervision directed one or more entities to enhance compliance monitoring for dialer systems to ensure that they input system parameters accurately and to ensure that they properly monitor collectors for inputting and adhering to account notations.

2.4 Deposits

The CFPB continues to examine banks for compliance with Regulation E as well as review for any unfair, deceptive, or abusive acts or practices (UDAAPs) in connection with deposit accounts. As described in more detail below, CFPB examiners continue to find deceptive acts or

[17] CFPB Bulletin 2013-08, *Representations Regarding Effect of Debt Payments on Credit Reports and Scores*, *available at*: http://files.consumerfinance.gov/f/201307_cfpb_bulletin_collections-consumer-credit.pdf.

practices related to deposit disclosures and representations that incorrectly inform consumers about fees, including conditions when certain fees will apply. Separately, Supervision concluded that one or more institutions were engaging in deceptive acts or practices by misrepresenting deposit overdraft protection products. Examiners also found unfair acts or practices related to conditions where one or more institutions froze deposit accounts. Finally, examiners continue to find issues associated with Regulation E error resolution investigations.

In all cases where examiners found UDAAPs or violations of Regulation E, Supervision directed institutions to make appropriate changes to address the underlying issue(s), as well as enhance compliance management systems to prevent future violations and, where appropriate, to remediate consumers for harm they experienced.

2.4.1 Freezing of deposit accounts

Examiners found that one or more institutions engaged in unfair acts or practices by placing hard holds on customer accounts to stop all activity when the institution(s) observed suspicious activity. These hard holds resulted in the consumers' accounts being locked, resulting in payments not being honored, deposits being rejected, and the consumer lacking access to his or her funds for as long as two weeks. Examiners also found that one or more institutions failed to clearly, consistently, and promptly communicate information about the nature and status of these hard holds to consumers. Examiners found that less drastic measures would have sufficiently addressed the suspicious activity concern in many instances. Even where the hard holds were appropriate, the failure to properly communicate with consumers prevented consumers from being able to take measures to mitigate the injury.

Supervision directed the institution(s) to cease unnecessarily placing hard holds on consumer deposit accounts and to develop and implement policies and procedures to clearly, consistently, and promptly communicate with consumers with respect to hard holds placed on their accounts.

2.4.2 Misrepresentations about monthly service fees

Examiners found that one or more institutions engaged in deceptive acts or practices by representing in deposit account fee schedules that monthly account service fees would be waived under circumstances in which those fees, in fact, would be assessed. One or more institutions offered a deposit product that contained a monthly service fee. The service fee was waived if consumers met certain qualifications. One such qualification – as described in the fee schedules

– was if the consumer made ten or more payments from the checking account during a statement cycle. In fact, only debit card purchases and debit card payments qualified toward the fee waiver threshold, and other payments from a consumer's checking account, such as ACH payments, did not qualify. Moreover, only payments that "posted" during the statement cycle qualified toward the waiver and payments that were initiated but not posted during the statement cycle did not qualify. The representations that the institution(s) made in the fee schedules could lead a reasonable consumer to believe that all checking-account payments initiated during the statement cycle would qualify toward the ten-payment fee waiver threshold, a material aspect of the product or service. As a result, Supervision cited the institution(s) for deceptive acts or practices. Supervision directed the institution(s) to ensure that all disclosures regarding the fee waivers include accurate and non-misleading information.

2.4.3 Violations of error resolution requirements

Supervision continues to find violations of Regulation E's error resolution requirements. As noted in the Fall 2014 edition of *Supervisory Highlights*, Regulation E, which implements the Electronic Fund Transfer Act, imposes specific requirements on financial institutions for how to resolve error allegations reported by consumers related to electronic fund transfers. Among other requirements, Regulation E requires financial institutions to promptly investigate error allegations, to provide timely provisional credit to consumers, to promptly provide consumers with notice of the findings of the financial institution's investigation, and to allow consumers to review the documentation the financial institution relied upon in the course of the investigation.[18]

Examiners found that one or more institutions violated several of the error resolution provisions of Regulation E. Among other things, examiners observed that one or more entities prematurely closed investigations and denied claims when consumers failed to submit, or delayed in submitting, supplemental information beyond that which financial institutions may require

[18] 12 CFR 1005.11.

under Regulation E.[19] Examiners also found that the institution(s) failed to investigate claims and to provide provisional credit within 10 business days of receiving notice of the alleged error.[20] Examiners further observed that one or more institutions refused consumers' requests to review material relied upon by the institution(s) in denying error claims, and incorrectly informed consumers that subpoenas would be required to review that material.[21] With respect to these types of violations, Supervision directed the relevant entities to take measures to ensure compliance with the error resolution provisions of Regulation E.

2.4.4 Deceptive statements about overdraft protection products

In 2010, federal rules took effect that prohibited banks and credit unions from charging overdraft fees on ATM and one-time debit card transactions unless consumers affirmatively opted in.[22] Many depository institutions provide a variety of overdraft products that may cover consumer transactions that overdraw accounts.

Supervision determined that one or more institutions engaged in a deceptive act or practice by misrepresenting their opt-in deposit overdraft protection products when answering inbound telephone calls from consumers, including that:

- The overdraft protection product applied to check, automated clearing house (ACH), and recurring bill payment transactions, when the overdraft protection product did not apply to those transactions;

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[19] *See* 12 CFR 1005.11(b).

[20] *See* 12 CFR 1005.11(c)(1) & (c)(2)(i).

[21] *See* 12 CFR 1005.11(d)(1).

[22] 74 Fed. Reg. 59033 (Nov. 17, 2009) (codified at 12 CFR part 1005.17), *available at* https://www.gpo.gov/fdsys/granule/FR-2009-11-17/E9-27474.

- The overdraft protection product would allow a consumer to withdraw more than the daily ATM cash withdrawal limit and be subject to only one overdraft fee. In actuality, a consumer would not have been allowed to surpass the daily ATM cash withdrawal limit, regardless of enrollment in the overdraft protection product, and it was not possible to do so while incurring only one overdraft fee; and
- The overdraft protection product would take effect on the same day as enrollment, when the product would not actually take effect until the next day.

Supervision determined that these representations misled or were likely to mislead a reasonable consumer regarding a material aspect of the overdraft protection product and that account opening disclosures or subsequent enrollment disclosures did not cure the misleading representations. Supervision directed one or more depository institutions to cease misrepresenting features of their overdraft protection products.

2.5 Mortgage origination

Supervision assessed the mortgage origination operations of one or more supervised entities for compliance with applicable Federal consumer financial laws. Examiners identified instances of regulatory violations and one or more instances where supervised entities engaged in a deceptive practice, as described below.

2.5.1 Know Before You Owe mortgage disclosure rule

Supervision has completed its first round of mortgage origination examinations for compliance with the Know Before You Owe mortgage disclosure rule. The Bureau stated that it would be sensitive to the progress made by supervised entities focused on making good faith efforts to come into compliance with the rule upon the effective date of October 3, 2015. Initial examination findings and observations conclude that, for the most part, supervised entities, both banks and nonbanks, were able to effectively implement and comply with the Know Before You Owe mortgage disclosure rule changes. However, examiners did find some violations. Listed below are violations found by examiners relating to the content and timing of Loan Estimates and Closing Disclosures:

- Amounts paid by the consumer at closing exceeded the amount disclosed on the Loan Estimate beyond the applicable tolerance threshold;[23]
- The entity(ies) failed to retain evidence of compliance with the requirements associated with the Loan Estimate;[24]
- The entity(ies) failed to obtain and/or document the consumer's intent to proceed with the transaction prior to imposing a fee in connection with the consumer's application;[25]
- Waivers of the three-day review period did not contain a bona fide personal financial emergency;[26]
- The entity(ies) failed to provide consumers with a list identifying at least one available settlement service provider, if the creditor permits the consumer to shop for a settlement service;[27]
- The entity(ies) failed to disclose the amount payable into an escrow account on the Loan Estimate and Closing Disclosure when the consumer elected to escrow taxes and insurance;[28]
- Loan Estimates did not include the date and time at which estimated closings cost expire;[29] and

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[23] 12 CFR 1026.19(e)(3)(i), (ii).

[24] 12 CFR 1026.25(c)(1).

[25] 12 CFR 1026.19(e)(2)(i)(A), 1026.25(c)(1).

[26] 12 CFR 1026.19(f)(1)(iv).

[27] 12 CFR 1026.19(e)(1)(vi)(c).

[28] 12 CFR 1026.37(c)(2)(iii), .38(c)(1).

- The entity(ies) failed to properly disclose on the Closing Disclosure fees the consumer paid prior to closing.[30]

Examiners worked in a collaborative manner with one or more entities to identify the root cause of these violations and determine appropriate corrective actions, including reimbursement to consumers where tolerance violations occurred.

2.5.2 Failure to reimburse unused portions of a required service deposit where certain disclosure language was used constituted an unfair practice

At one or more entities, pursuant to certain disclosure language a specified service deposit was collected from consumers but unused portions were not reimbursed when consumers withdrew their applications. This would constitute unfair acts or practices in those cases where the loans did not proceed to closing due to the entity's unreasonable actions or inactions. Supervision directed each entity to conduct a review to identify impacted consumers. Refunds were provided to consumers where the loan files could not support retention of the service deposit.

2.5.3 Deceptive practice involving an arbitration notice on certain residential mortgage loan documents

Under Regulation Z, a contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction.[31]

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[29] 12 CFR 1026.37(a)(13)(ii).

[30] 12 CFR 1026.38(f)(2), (f)(5), (h)(2), (i)(2)(ii).

[31] 12 CFR 1026.36(h)(1).

Despite this prohibition, at one or more entities examiners identified template language for certain residential loan document(s) containing a notice that the note is subject to arbitration. Supervision concluded that use of the arbitration-related notice constitutes a deceptive act or practice since it is likely to mislead a reasonable consumer into believing that a claim arising under the residential loan document must be submitted to arbitration. After having viewed the notice, a consumer would have been more likely to agree to post-dispute arbitration or to fail to pursue judicial remedies under the mistaken belief that arbitration was required. Supervision directed one or more of the entities to cease further use of the template.

2.6 Mortgage servicing

2.6.1 Requirements to help borrowers complete loss mitigation applications

Regulation X provides important process protections for borrowers in financial distress who apply for a foreclosure alternative. Specifically, it requires mortgage servicers to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.[32] A complete loss mitigation application includes all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.[33]

While Regulation X permits a servicer to offer a loss mitigation option based on a borrower's incomplete application under certain circumstances,[34] the servicer still must act with reasonable

[32] 12 CFR 1024.41(b)(1).

[33] 12 CFR 1024.41(b)(1).

[34] 12 CFR 1024.41(c)(2)(ii) and (iii).

diligence to collect the information needed to complete the application.[35] For example, in the context of a short-term payment forbearance program offered based on an incomplete loss mitigation application, reasonable diligence could include notifying the borrower that the borrower is being offered a payment forbearance program based on an evaluation of an incomplete application and that the borrower retains the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower.[36] Near the end of the program, and prior to the end of the forbearance period, it may also be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.[37] Generally, the reasonable diligence requirement helps address the concern that borrowers offered a short-term payment forbearance program or short-term repayment plan may be experiencing a hardship, for which other, longer-term loss mitigation solutions might be more appropriate given their individual circumstances.

In recent exams, examiners found that one or more servicers received oral incomplete loss mitigation applications and pre-approved borrowers for short-term payment forbearance programs based on those applications. However, the servicer(s) did not notify borrowers of their right to complete the application and did not separately request other information needed to evaluate for all the other loss mitigation options offered by the owner or assignee of the loan. And near the end of the program, and prior to the end of the short-term payment forbearance period, the servicer(s) failed to conduct outreach to determine whether borrowers wished to complete the application and proceed with a full loss mitigation evaluation.

Supervision determined that the servicer(s) violated Regulation X by failing to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation

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[35] 12 CFR 1024.41(b)(1) and Comments 41(b)(1)-4.iii and 41(c)(2)(iii)-2.

[36] Comment 1024.41(b)(1)-4.iii.

[37] Comment 1024.41(b)(1)-4.iii.

application.[38] Supervision directed the servicer(s) to implement policies and procedures to ensure that the servicer(s) exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application for borrowers entering into short term payment forbearance programs based on incomplete applications, including by contacting the borrowers near the end of the program, and prior to the end of the forbearance period.

2.6.2 Broad waivers in short sale and cash-for-keys agreements

Supervision previously identified broad waiver of rights clauses in forbearance, loan modification and other loss mitigation options as violating the Dodd-Frank Act's prohibition against unfair or deceptive acts or practices.[39] Supervision determined such waivers to be deceptive where reasonable consumers could construe the waivers as barring them from bringing claims in court – including Federal claims – related to their mortgages. Regulation Z states that a "contract or other agreement relating to a consumer credit transaction secured by a dwelling . . . may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law."[40] Supervision also determined broad waivers to be unfair insofar as they are offered in a "take it or leave it" fashion in the ordinary course of offering loss mitigation agreements, rather than in the context of resolution of a contested claim or another individualized analysis of the servicer's risks and the consumer's potential claims.[41]

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[38] 12 CFR 1024.41(b)(1).

[39] 12 USC 5536(a)(1).

[40] 12 CFR 1026.36(h)(2).

[41] *See* Supervisory Highlights: Winter 2013, at 6, *available at* http://files.consumerfinance.gov/f/201401_cfpb_supervision-highlights.pdf.

Supervision continues to find broad waivers of rights in loss mitigation agreements. For example, in exchange for a short sale agreement, one or more servicers required consumers to completely waive, release, and relinquish any claims of any nature against the servicer(s) arising out of or relating to the mortgage note and any obligations thereunder, and to agree that they had no defenses to payment in full under the note. Supervision determined the waiver to be deceptive and required the servicer(s) to remove it from the agreements.

In one or more servicing exams, Supervision also identified blanket waivers in cash-for-keys agreements that gave borrowers the opportunity to receive a payment in exchange for their commitment to vacate the property by a date certain, thereby avoiding eviction proceedings. The servicer(s) presented the waivers as take-it-or-leave-it boilerplate and a reasonable borrower would have construed them to broadly waive all claims or defenses including any in connection with the original credit transaction that the borrower might have asserted against the servicer(s). Supervision determined the waiver to be deceptive and unfair, and directed the servicer(s) to remove all such waivers from the agreements.

2.7 Remittances

The CFPB continues to examine both large banks and nonbanks for compliance with the CFPB's amendments to Regulation E governing international money transfers (or remittances).[42] Regulation E, Subpart B (or the Remittance Rule) provides protections, including disclosure requirements, and error resolution and cancellation rights to consumers who send remittance transfers to other consumers or businesses in a foreign country.[43] The amendments implement statutory requirements set forth in the Dodd-Frank Act.

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[42] *See* 78 Fed. Reg. 30662 (May 22, 2013) (codified at 12 CFR part 1005), *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-05-22/pdf/2013-10604.pdf.

[43] Regulation E implements the Electronic Fund Transfer Act (EFTA).

CFPB's examination program for both bank and nonbank remittance providers assesses the adequacy of each entity's CMS for remittance transfers. These reviews also check for providers' compliance with the Remittance Rule and other applicable Federal consumer financial laws. Supervision directed entities to make appropriate changes to compliance management systems to prevent future violations and, where appropriate, to remediate consumers for harm they experienced.

2.7.1 International top-up and bill pay services

Examiners found that one or more supervised entities violated section 919(a)(1)[44] of EFTA and applicable provisions of Regulation E by failing to treat international mobile top-up services in excess of $15 as a remittance transfer. An international mobile top-up service converts funds from consumers in the United States to airtime on a phone account based on the usage and rate plan selected by the owner of the phone residing in a foreign country. The entirety of these transactions occurs exclusively in currencies up until the point funds are received by the international cellphone carrier. The entity(ies) failed to provide the disclosures, cancellation, or error resolution rights to international top-up consumers required by EFTA and Regulation E.

Similarly, one or more institutions violated section 919(a)(1) of EFTA and applicable provisions of Regulation E by failing to treat international bill payment services in excess of $15 as remittance transfers and, as a result, failed to comply with the required disclosure, error resolution, and cancellation requirements of the Remittance Rule. Supervision directed entities to make appropriate changes to their CMS in order to prevent future violations.

[44] 15 USC 16930-1(a)(1).

2.8 Service provider program

The Spring 2017 edition of *Supervisory Highlights* described Supervision's service provider program, which involves the direct examination of service providers, particularly in the mortgage origination and mortgage servicing markets. Examiners are focusing on the structure, operations and compliance management systems of various service providers, as well as certain other targeted areas.

2.8.1 Deficient mortgage periodic statements

Examiners reviewed whether one or more service provider(s) adequately considered certain requirements of the Title XIV Final Rule in developing products for mortgage servicers.[45] Examiners found that the service provider(s) developed a mortgage servicing information technology (IT) system functionality that failed to implement certain Regulation Z requirements for periodic statements. The service provider(s)' billing files failed to list the total sum of any fees or charges imposed, and the transaction activity that occurred since the last statement.[46] Moreover, the service provider(s) did not adequately consider client concerns about the issue. Supervision concluded that these weaknesses contributed to the clients' violations of Regulation Z and directed the service provider(s) to implement policies and procedures that span systems design and application controls to ensure that the billing files made available through the mortgage servicing IT system functionality enable compliance with Regulation Z. In addition, Supervision directed the service provider(s) to ensure that when clients communicate potential regulatory issues, the service provider(s) analyze and implement changes as appropriate to enable users of the mortgage servicing IT system functionality to comply with Regulation Z.

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[45] Title XIV Final Rule updates effective January 10, 2014, with the exception of the appraisal requirements effective for applications received on or after January 18, 2014.

[46] 12 CFR 1026.41(d)(2)(ii); (d)(4).

2.9 Short-term, small-dollar lending

The Bureau's Supervision program covers entities that offer or provide payday loans. Such entities often offer other short-term, small dollar (STSD) products to consumers as well such as single payment, installment, or auto or vehicle title loans. During the examinations of STSD entities, examiners identified CMS weaknesses and violations of Federal consumer financial law, including the Dodd-Frank Act's prohibition on UDAAPs. Highlighted below are some of the UDAAP findings in recent examinations regarding collection practices, marketing representations, representations regarding use of references, and payment practices.

2.9.1 Short-term, small-dollar debt collection

As noted in the Spring 2014 *Supervisory Highlights*, a continued focus of the CFPB's short-term, small-dollar lending examination program is how lenders collect consumer debt. Since then, we have learned that 11 percent of consumers who indicated that they had been contacted about a debt in collection reported attempts to collect on a payday loan.[47] Nearly ten percent of all debt collection complaints handled by the CFPB are related to payday loans.[48] Examiners have identified a range of illegal collections practices by small-dollar lenders, some of which are highlighted below.

Workplace collection calls

Examiners found that one or more entities, in the course of collecting their own debt, called borrowers at their places of employment. The entity(ies) placed repeated calls to borrowers at work even after borrowers asked the lenders to stop calling them at work or told the lenders that

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[47] Consumer Experiences with Debt Collection (Jan. 2017) at 19, *available at* http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

[48] Semi-annual report of the Consumer Financial Protection Bureaus (Fall 2016) at 31, *available at* https://www.consumerfinance.gov/documents/1977/122016_cfpb_SemiAnnualReport.pdf.

the borrowers' employers did not allow such calls. Examiners determined that this collection activity constituted an unfair act or practice. The practice of continuing to call borrowers repeatedly at the workplace after requests to stop causes or is likely to cause substantial injury because continued contact may result in negative employment consequences to the borrower. Borrowers cannot avoid the injury when the lenders continue to make repeated calls after the borrowers requested that they stop. Where the lender has been expressly told to stop contacting the consumer at work or that the employer prohibits such calls, the harm to consumers from continued calling outweighs any countervailing benefits to consumers and competition. One or more lenders have undertaken remedial and corrective actions regarding these violations, which are under review by Supervision.

Repeated collection calls to third parties

Examiners observed one or more entities routinely making repeated calls to third parties, including personal and work references that borrowers listed on their loan applications. In some instances, one or more entities repeatedly requested that the third parties relay messages to delinquent borrowers in a manner that disclosed or risk disclosing the debt. The loan applications required consumers to list the names and numbers of third parties and, in some instances, disclosures provided to consumers conveyed that the individuals listed would be contacted by the entity(ies) only as part of the origination and underwriting process. The collection calls to third parties were not made for the purpose of locating the borrowers.

Supervision determined that these collection activities constituted unfair acts or practices. Through these calls, the entity(ies) caused or was likely to cause substantial injury because the entity(ies) either disclosed or risked disclosing borrowers' default or delinquency to third parties. The consumer injury associated with the calls could not be reasonably avoided because the borrowers were not aware that the lenders would contact references or other third parties for debt collection purposes, nor were they aware that one or more lenders would continue to call such references after requests to stop. The benefits to consumers and to competition did not outweigh the injury; the entities had the borrower's location information and therefore had other ways to reach consumers without disclosing or risking disclosure of the borrowers' default or delinquency to third parties. One or more entities have undertaken remedial and corrective actions regarding these violations, which are under review by Supervision.

Misrepresentations in collections

Examiners observed one or more entities in the course of collecting delinquent or defaulted loans making statements to borrowers that they must immediately contact the lenders to avoid additional collection activity, including being visited at home or work. In fact, the entity(ies) did not actually conduct such in-person collection visits. Supervision concluded these representations constituted deceptive acts or practices. Delinquent consumers could reasonably interpret the entity(ies)' statements to mean that in-person visits to the consumers' place of employment or home would take place if the consumers did not immediately contact the entity(ies). The representations were material to consumers because they could cause consumers to change their behavior to avoid the promised visits. One or more entities agreed to modify their collection practices to comply with Federal consumer financial laws.

2.9.2 Marketing misrepresentations about small dollar loan products

No credit check

Examiners observed that one or more entities advertised that consumers could receive loans without undergoing credit checks. However, these entity(ies) obtained consumer reports from specialty consumer reporting companies during their underwriting processes and sometimes denied loans to consumers based on the information in the reports. Supervision concluded that this conduct constituted deceptive acts or practices. The advertisements were deceptive because they were likely to mislead reasonable consumers into believing that no credit inquiries would be conducted and thus, they could receive a loan without a credit check. These misrepresentations were likely to influence consumers' decisions to choose to apply for the loans. Supervision directed the one or more entities to cease advertising that consumers could receive loans without credit checks.

Availability of products and services

Examiners observed that one or more entities advertised products and services in outdoor signage that the entity(ies) did not, in fact, offer. They consisted of products and services that the lenders had not offered for several years but would be of interest to payday loan customers. Supervision concluded that by advertising products and services the entity(ies) did not, in fact, offer, the lenders engaged in deceptive acts or practices. A reasonable consumer could interpret

the outdoor advertising to mean that the consumers who wished to purchase the advertised services could do so inside the stores. The representations were material because they impacted a consumer's conduct in terms of whether to visit the stores. Supervision directed the one or more entities to cease advertising products and services that they did not offer.

Comparisons to competitors

Examiners observed one or more entities advertising that many of their products and services had substantially lower fees than their competitors' products and services. The entity(ies), however, did not have substantiation to support these claims. The entity(ies) relied on out-of-date internal analyses that only covered fees for a small number of products and services and did not reflect current rates, products, or services or those of their competitors. Supervision concluded that by making these misleading comparisons, the entity(ies) engaged in deceptive acts or practices. The representations were likely to mislead reasonable consumers into believing that the entity(ies) had a basis for claiming that consumers would pay lower fees for the products and services identified in the advertisement. This misrepresentation was material because it likely influenced consumers' decisions to obtain these products and services from the entity(s) over other short-term, small-dollar lenders. Supervision directed one or more entities to cease advertising that their fees were lower than their competitors, absent adequate substantiation.

Ability to apply online

Examiners observed one or more entities representing on their websites that consumers may "apply online" by completing lengthy online forms. The forms solicited all or most of the information that a consumer would typically submit in order to apply for a short-term, small-dollar loan. The forms also permitted consumers to list most states as their home state, suggesting that an application for an online loan was available to consumers nationwide. In fact, consumers could not apply online because the entity(ies) only originate loans at their physical store front locations and do not originate loans based on the purported online loan applications. Consumers could only receive a loan from the lenders if they visited storefront locations. In addition, the entity(ies) only extends credit in a small number of states where they operate, not nationwide. Supervision determined that the entity(ies)' representations constituted deceptive acts or practices. Consumers acting reasonably were likely to view the "apply online" advertisements on the lenders' websites and comprehensive online applications as invitations to apply for, and receive, loans online. The representations were material because had consumers

understood that they could not obtain a loan from the entity(ies) based on where they lived or that would be required to visit a storefront location to obtain a loan, many consumers would decide not to submit the purported application forms with detailed contact and financial information, and instead seek out other loan options. Supervision directed the one or more entities to revise their websites and other marketing materials.

2.9.3 Misrepresentations regarding use of references provided by borrowers in small dollar loan applications

Examiners observed one or more entities making false representations regarding the use of information provided by consumers in loan applications. The entity(ies) required applicants to provide names of references, including work colleagues, neighbors, and family members, on the loan applications. On its loan applications, the entity(ies) represented, directly and by implication, that the references would only be contacted to verify information and evaluate creditworthiness in connection with the consumers' loans. However, the entity(ies) also contacted the applicants' references to market loan products to them. Supervision concluded that the entity(ies), by misleading consumers about how they would use the consumers' references, engaged in deceptive acts or practices. A consumer acting reasonably under the circumstances could interpret the loan applications to mean that the entity(ies) would only contact references in connection with the consumers' loans and that the entity(ies) would not market their services to the individuals identified by consumers as references. The representations were material because they were likely to impact consumer behavior. For example, if borrowers were aware that the entity(ies) makes marketing calls to the references listed on applications, borrowers may provide different references or not apply for the loan at all. Supervision directed one or more lenders to ensure that all disclosures regarding the collection and use of references do not include any false or misleading information.

Examiners also observed one or more entities representing, directly or by implication, in loan applications that the reference information provided by borrowers would be used only to contact references regarding the borrowers' loan applications. The entity(ies) indicated that these references would be "checked," implying that they would be contacted only at loan origination. Instead, the entity(ies) repeatedly contacted the references when the borrowers' loans became delinquent. Supervision concluded that these representations constituted deceptive acts or practices. The entity(ies) applications were likely to mislead consumers acting reasonably under the circumstances by creating the net impression that references would be contacted only at

origination. This representation was material because borrowers might have supplied other names of references or not applied for loans at all if they had known their references would be contacted for debt collection purposes. Supervision directed one or more entities to review all disclosures regarding the collection and use of references, including references listed by borrowers on loan applications, and to ensure that the disclosures do not include any false or misleading information.

2.9.4 Small dollar lending unauthorized debits and overpayments

Examiners observed that one or more entities debited the accounts of borrowers who had already paid their debts. Under the applicable loan agreements, the entity(ies) was permitted to initiate ACH debits from the accounts of borrowers whose loans were past due. However, one or more entities sought payment through the ACH system from the accounts of borrowers who had already paid their loans by making cash payments at branch locations. Supervision concluded that failing to implement adequate processes to reasonably avoid unauthorized charges of, debits to, and overpayments by borrowers constituted unfair acts or practices. The failure to prevent successful and unsuccessful payment attempts to the accounts of borrowers who paid their debts caused substantial injury in the form of overpayments and fees. Consumers could not avoid this injury because they were not aware, regardless of whether they were making payments in response to collection efforts, that ACH debits had been initiated. The injury to consumers from failing to have adequate processes to avoid the unauthorized charges, debits and overpayments outweighs the benefits to consumers or competition, given that implementing such processes would not involve excessive costs to the entity(ies). One or more entities have undertaken remedial and corrective actions regarding these violations, which are under review by Supervision.

One or more entities also failed to implement adequate processes to accurately and promptly identify and refund borrowers who paid more than they owed, either in person at stores or via the ACH network. Several consumers did not receive refunds until examiners alerted the entity(ies) to the overpayments, which in some cases was almost a year after the borrowers made the overpayments. Supervision concluded that by failing to implement adequate processes to accurately and promptly monitor, identify, correct, and refund overpayments by consumers, the entity(ies) engaged in unfair acts or practices. The acts or practices caused injury to borrowers who have paid their debts because a number of consumers were deprived of their

funds for extended periods of time. They could not avoid the injury because they were unaware that the entity(ies) would double debit their accounts and the consumers have no control over the lenders' refund process. The injury to borrowers from failing to have adequate processes to refund borrowers outweighs the benefits to them or to competition, given that implementing such processes would not involve excessive costs to the entity(ies). One or more entities have undertaken remedial and corrective actions regarding these violations, which are under review by Supervision.

2.10 Fair lending

2.10.1 Mortgage servicing

As part of its fair lending work, the Bureau seeks to ensure that creditworthy consumers have access to the full array of appropriate options when they have trouble paying their mortgages, without regard to any prohibited basis. Mortgage servicing, and specifically default servicing, may introduce fair lending risks because of the complexity of certain processes, the range of default servicing options, and the discretion that can sometimes exist in evaluating and selecting among available default servicing options.

In mortgage servicing, our supervisory work has included use of the Mortgage Servicing Exam Procedures and the ECOA Baseline Modules, both of which are part of the CFPB Supervision and Examination Manual. Examination teams use these procedures to conduct ECOA Baseline Reviews, which evaluate institutions' compliance management systems (CMS), or ECOA Targeted Reviews, which are more in-depth reviews of activities that may pose heightened fair lending risks to consumers. As discussed in the Mortgage Servicing Special Edition of

Supervisory Highlights,[49] published in June 2016, these exam procedures contain questions about, among other things, the fair lending training of servicing staff, fair lending monitoring of servicing, and servicing of consumers with limited English proficiency.

In one or more ECOA targeted reviews of mortgage servicers, CFPB examiners found weaknesses in fair lending CMS. In general, examiners found deficiencies in oversight by board and senior management, monitoring and corrective action processes, compliance audits, and oversight of third-party service providers.

In one or more examinations, data quality issues, which were related to a lack of complete and accurate loan servicing records, made certain fair lending analyses difficult or impossible to perform. Examiners attributed these data quality issues to significant weaknesses in CMS-related policies, procedures, and service provider oversight.

Separately, fair lending analysis at one or more mortgage servicers was affected by a lack of readily-accessible information concerning a borrower's ethnicity, race, and sex information that had been collected pursuant to Regulation B or Regulation C and transferred to the servicer. One or more mortgage servicers acknowledged the importance of retaining in readily-accessible format – for the express purpose of performing future fair lending analyses – ethnicity, race, and sex data that it had received in the borrower's origination file.

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[49] *See* Supervisory Highlights Mortgage Servicing Special Edition 2016, at 5, *available at* http://files.consumerfinance.gov/f/documents/Mortgage_Servicing_Supervisory_Highlights_11_Final_web_.pdf.

3. Remedial actions

3.1 Public enforcement actions

3.1.1 Fay Servicing

On June 7, 2017, the CFPB announced an enforcement action against Fay Servicing for failing to provide mortgage borrowers with certain protections against foreclosure that are required by law.[50] The Bureau found that Fay violated the CFPB's servicing rules by keeping borrowers in the dark about critical information about the process of applying for foreclosure relief. As part of the requirements for keeping borrowers informed, servicers generally must send an acknowledgement notice when they receive an application for foreclosure relief. The notice must state whether and what additional documents or information are required from the borrower to complete the application. After a borrower completes the application, servicers must also generally send an evaluation notice spelling out what foreclosure relief options they are offering, the deadline to accept or reject the offer, and the rights borrowers have to appeal a servicer's decision to deny certain types of relief.

[50] *See* related Consent Order, *available at* http://www.consumerfinance.gov/documents/4820/062017_cfpb_Fay_Servicing-consent_order.pdf.

Fay Servicing failed to send or timely send both acknowledgment and evaluation notices with the relevant, correct information, putting the onus on borrowers to try to determine what else they had to do to attempt to save their homes or otherwise avoid foreclosure. The Bureau also found instances where the servicer illegally launched or moved forward with the foreclosure process while borrowers were actively seeking help to save their homes. The CFPB has ordered Fay Servicing to provide timely and accurate acknowledgment and evaluation notices, to solicit certain consumers for available loss mitigation options and pay up to $1.15 million to harmed borrowers.

3.1.2 Nationstar Mortgage LLC, d/b/a Mr. Cooper

On March 15, 2017, the Bureau announced an enforcement action against Nationstar Mortgage LLC, d/b/a Mr. Cooper (Nationstar) for violating the Home Mortgage Disclosure Act (HMDA) by consistently failing to report accurate data from 2012 through 2014, under the version of the HMDA rule that predates the creation of the CFPB.

Through its supervision process, the Bureau found that Nationstar's HMDA compliance systems were flawed and generated mortgage lending data with significant, preventable errors. Nationstar also failed to maintain detailed HMDA data collection and validation procedures, and failed to implement adequate compliance procedures. It also created reporting discrepancies by failing to maintain consistent data definitions among its various lines of business.

Nationstar has a history of HMDA non-compliance. In 2011, the Commonwealth of Massachusetts Division of Banks reached a settlement with Nationstar to address HMDA compliance deficiencies. The loan file samples reviewed by the Bureau showed substantial error rates in three consecutive reporting years, even after the settlement with the Massachusetts Division of Banks. In the samples reviewed, the Bureau found error rates of 13 percent in 2012, 33 percent in 2013, and 21 percent in 2014.

The Bureau's consent order requires Nationstar to pay a $1.75 million penalty to the Bureau's Civil Penalty Fund. Nationstar must also review, correct, and make available its corrected HMDA data from 2012-14. In addition, Nationstar must assess and undertake any necessary improvements to its HMDA compliance management system to prevent future violations. The action includes the largest HMDA civil penalty imposed by the Bureau to date, which stems

from Nationstar's market size, the substantial magnitude of its errors, and its history of previous violations.

3.2 Nonpublic supervisory actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately $14 million in restitution to more than 104,000 consumers. These nonpublic supervisory actions generally have been the product of CFPB supervision and examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law during the course of an examination. Recent nonpublic resolutions were reached in auto finance origination matters.

4. Supervision program developments

4.1 Use of enforcement and supervisory authority

In the Summer 2015 edition of *Supervisory Highlights*, the Bureau provided information on its Potential Action and Request for Response (PARR) letter process and the Action Review Committee (ARC) process. The ARC process is used by senior executives in the Bureau's Division of Supervision, Enforcement, and Fair Lending to determine through a deliberative and rigorous process whether matters that originate from examinations will be resolved through confidential supervisory action or be further investigated for possible public enforcement action.[51]

In June 2017, the Bureau released a blog which noted that in fiscal year 2016, about one-third of those examinations that were considered through the ARC process were determined appropriate

[51] *See* Supervisory Highlights: Summer 2015, at 27, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf

for further investigation for possible public enforcement action. This equated to approximately 10 percent of all examinations in fiscal year 2016.[52]

More detailed information on the number of ARC decisions is presented in Table 1 below. This table reflects the total number of ARC decisions and their outcomes for the fiscal years 2012 through 2016. The numbers in the table do not reflect all supervisory examinations or all enforcement investigations in any given year. Instead, they show the ARC decisions made on the subset of matters that go through the ARC process, which are generally those examinations in which the exam team found evidence of significant violations of Federal consumer financial law. These numbers are also reflective in part of the Bureau's risk-based approach to supervision. Pursuant to that approach, the Bureau concentrates its efforts on institutions and product lines that it determines through its analytical prioritization process pose the greatest risk to consumers.

As reflected in the table, since 2014, the number of matters raising issues that trigger the ARC process and the number of those matters that are determined appropriate for further investigation for possible public enforcement action moving to enforcement – in whole or in part – have remained somewhat consistent. Taken together, about a third of the ARC decisions in fiscal years 2014 to 2016 were determined appropriate for further investigation for possible public enforcement action. Any violations identified in the remaining matters were determined appropriate to be resolved through confidential supervisory action.

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[52] For more information regarding the evaluation factors, *see* CFPB blog titled "How we keep you safe in the consumer financial market place" *available at* https://www.consumerfinance.gov/about-us/blog/how-we-keep-you-safe-consumer-financial-marketplace/.

TABLE 1: ARC DECISIONS THROUGH FY 2016 (SEPTEMBER 30, 2016).

Outcome	FY 12*	FY 13	FY 14	FY 15	FY 16	Total	% of total
Determined appropriate for further investigation for possible public enforcement action	7	10	11	9	8	45	24.59%
Determined appropriate for resolution through confidential supervisory action	7	6	32	41	31	117	63.93%
Determined appropriate, in part for further investigation for possible public enforcement, and in part for resolution through confidential supervisory action **	0	1	8	5	7	21	11.48%
Total	14	17	51	55	46	183	100.00%

*Reflects part of the Fiscal Year; the ARC process was first implemented partway through FY 2012.

**With respect to some exams, some findings are referred to supervision and some findings are referred to enforcement. Either Enforcement or Supervision will exclusively consider each finding.

The Bureau commits to publishing ARC data going forward at the conclusion of each fiscal year, beginning with the data for fiscal year 2017 in the next edition of *Supervisory Highlights*.

4.2 Fair lending developments

4.2.1 HMDA data collection and reporting reminders for 2017

As reported in previous editions of *Supervisory Highlights*, beginning with Home Mortgage Disclosure Act (HMDA) data collected in 2017 and submitted in 2018, responsibility to receive and process HMDA data will transfer from the Federal Reserve Board (FRB) to the CFPB.[53] The HMDA agencies have agreed that a covered institution filing HMDA data collected in or after 2017 with the CFPB will be deemed to have submitted the HMDA data to the appropriate Federal agency.[54]

The effective date of the change in the Federal agency that receives and processes the HMDA data does not coincide with the effective date for the new HMDA data to be collected and reported under the Final Rule amending Regulation C published in the *Federal Register* on October 28, 2015. The Final Rule's new data requirements will apply to data collected beginning on January 1, 2018. The data fields for data collected in 2017 have not changed.

Additional information about HMDA, the HMDA Filing Instructions Guide (FIG) and other data submission resources are located at: http://www.consumerfinance.gov/data-research/hmda/.

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[53] For additional information regarding HMDA data collection and reporting reminders for 2017, see *Supervisory Highlights*, Fall 2016, *available at* http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13___Final_10.31.16.pdf.

[54] The "HMDA agencies" refers collectively to the CFPB, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the FRB, the National Credit Union Administration (NCUA) and the Department of Housing and Urban Development (HUD).

4.2.2 HMDA data reviews and the adequacy of HMDA compliance programs

As part of its supervision of very large banks and nonbank mortgage lenders, the CFPB reviews the accuracy of HMDA data and the adequacy of HMDA compliance programs. In 2013, the CFPB issued a bulletin reminding mortgage lenders about the importance of submitting correct mortgage loan data. The CFPB has conducted HMDA reviews at dozens of bank and nonbank mortgage lenders, and has found that many lenders have adequate compliance systems and produce HMDA data with few errors. Moreover, while some lenders have been required to resubmit their HMDA data because their errors exceeded the relevant resubmission thresholds, most of those matters have been addressed through a supervisory resolution.

As noted above, the 2015 Final Rule's new data requirements will apply to data collected beginning on January 1, 2018. Given the recent updates to the rule, the Bureau's current principal focus is on providing regulatory implementation support to financial institutions, to assist them in operationally implementing the recent changes to the HMDA requirements. After the rule takes effect, consistent with our approach to the implementation of other Bureau rules requiring significant systems and operational changes, our approach will generally be diagnostic and corrective, not punitive. In our initial examinations for compliance with the rule, we intend to consider whether companies have made good faith efforts to come into compliance with the rule in a timely manner. Specifically, we will be evaluating a company's overall efforts to come into compliance, including assessing the compliance management system and conducting transaction testing. If errors are identified, we will work with the institution to determine the root cause of the issue and determine what corrective actions, if any, are necessary.

4.2.3 FFIEC releases updates to HMDA examiner transaction testing guidelines

In August 2017, the FFIEC, of which the Bureau is a member agency, released the *FFIEC HMDA Examiner Transaction Testing Guidelines* (Guidelines).[55] For HMDA data collected by financial institutions in or after 2018, these new FFIEC Guidelines replace the Bureau's *HMDA Resubmission Schedule and Guidelines* which was released in October 2013.

The Guidelines will help ensure accurate data and address reporting burden concerns

When examining financial institutions, federal supervisory agencies may check the accuracy of HMDA data within a sample of reported transactions. If examiners find that the number of errors in the sample exceeds certain thresholds, the lender is directed to correct and resubmit its HMDA data.

In light of the new data fields that will be required beginning in 2018, the new Guidelines:

- Eliminate the file error resubmission threshold under which a financial institution would be directed to correct and resubmit its entire Loan Application Register (LAR) if the total number of sample files with one or more errors equaled or exceeded a certain threshold.
- Establish, for the purpose of counting errors toward the field error resubmission threshold, allowable tolerances for certain data fields.
- Provide a more lenient 10 percent field error resubmission threshold for financial institutions with LAR counts of 100 or less, many of which are community banks and credit unions.

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[55] *See* the related Guidelines, *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_ffiec-hmda-examiner-transaction-testing-guidelines.pdf.

At the same time, the Guidelines ensure HMDA data integrity by maintaining field error resubmission thresholds that safeguard the accuracy of each data field, and thus all data, reported under HMDA. Furthermore, under the Guidelines, examiners may direct financial institutions to change their policies, procedures, audit processes, or other aspects of its compliance management system to prevent the reoccurrence of errors.

All federal HMDA supervisory agencies will use the same Guidelines

The Guidelines represent a joint effort by the Bureau, the FRB, the OCC, the FDIC, and the NCUA to provide – for the first time – uniform guidelines across all federal HMDA supervisory agencies. This collaboration began with the Bureau issuing a Request for Information[56] and holding outreach meetings in which the other supervisory agencies participated. The agencies then worked together to develop the Guidelines.

Information about HMDA and other data submission resources are located at http://www.consumerfinance.gov/adata-research/hmda/.

4.3 Examination procedures

4.3.1 Updates to the compliance management review examination procedures

On August 30, 2017, the CFPB released revised Compliance Management Review examination procedures. The procedures were updated in order to reflect changes to the FFIEC Interagency Consumer Compliance Ratings System (CC Ratings System), which became effective March 31, 2017. These procedures do not reflect any new or additional expectations of institutions

[56] *See* the related Request for Information, *available at* http://files.consumerfinance.gov/f/201601_cfpb_request-for-information-regarding-home-mortgage-disclosure-act-resubmission.pdf.

regarding their CMS, nor do they change the examiner's assessment from that which examiners have been conducting in the past: they only reorganize the procedures to align with the CC Ratings System and formalize current CMS review processes.

As revised, the CMS examination procedures are divided into five Modules:

- Module 1: Board and Management Oversight
- Module 2: Compliance Program
- Module 3: Service Provider Oversight
- Module 4: Violations of Law and Consumer Harm
- Module 5: Examiner Conclusions and Wrap-Up

In general, all CFPB reviews will include Modules 1, 2, 3, and 5. Module 4 will generally be included in targeted reviews of individual product lines, as well as examinations that will result in the institution receiving a consumer compliance rating. The CMS review for target reviews will generally be limited to reviewing aspects of CMS pertaining to the product line under review. To the extent that CMS for a particular product line or a specific institution has been previously reviewed, CFPB examiners may evaluate CMS by reviewing previous conclusions and assessing only the changes to the current CMS program.

4.3.2 Updates to the education loan examination procedures

On June 22, 2017, the CFPB updated its education loan examination procedures.[57] The updated procedures ensure that Bureau examinations look at whether student loan servicers are:

[57] *See* https://www.consumerfinance.gov/documents/4858/201706_cfpb_Education-Loan-Servicing-Exam-Manual.pdf.

- Telling eligible consumers what they need to do to qualify for loan forgiveness;
- Warning consumers who believe they are on track to qualify when they are not;
- Providing clear information about the loan forgiveness program; and
- Accurately evaluating borrowers' eligibility and progress toward loan forgiveness.

These updated procedures will be part of the CFPB's regular oversight of student loan servicers' compliance with Federal consumer financial law.

4.4 Recent CFPB guidance

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

4.4.1 Phone pay fees bulletin

On July 31, 2017, the Bureau released Bulletin 2017-01,[58] which provides guidance to covered persons and service providers regarding fee assessments for pay-by-phone services. The bulletin provides examples of conduct observed during supervisory examinations and enforcement investigations that may violate the Dodd-Frank Act prohibition on engaging in UDAAPs, as well as the FDCPA. The bulletin clarifies that the Bureau is not mandating specific pay-by-phone disclosure requirements, but states that the Bureau expects supervised entities to review their practices on charging phone pay fees for potential risks of violating Federal consumer financial laws. To that end, the bulletin offers a number of suggestions for entities assessing whether their

[58] *See* Compliance Bulletin 2017-01, *available at* https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-phone-pay-fees/.

practices violate these laws and further recommends having in place a corrective action program to address any violations identified and reimburse consumers when appropriate.

5. Conclusion

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

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