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Supervisory Highlights

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1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of consumer reporting, debt collection, deposits, fair lending, and mortgage servicing that were completed between September 2019 and December 2019.[1]

It is important to keep in mind that institutions are subject only to the requirements of relevant laws and regulations. The information contained in *Supervisory Highlights* is disseminated to help institutions better understand how the Bureau examines institutions for compliance with those requirements. This document does not impose any new or different legal requirements. In addition, the legal violations described in this and previous issues of *Supervisory Highlights* are based on the particular facts and circumstances reviewed by the Bureau as part of its examinations. A conclusion that a legal violation exists on the facts and circumstances described here may not lead to such a finding under different facts and circumstances.

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] This time frame refers to the Supervisory Observations section only.

2. Supervisory observations

Recent supervisory observations are reported in the areas of consumer reporting, debt collection, deposits, fair lending, and mortgage servicing.

2.1 Consumer reporting

Entities that obtain or use consumer reports from consumer reporting companies (CRCs),[2] or that furnish information to CRCs 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)[3] and its implementing regulation, Regulation V,[4] including the requirement to only obtain or use reports for a permissible purpose, and to furnish data subject to the relevant accuracy and dispute handling requirements. In one or more recent furnishing reviews, examiners found deficiencies in user and furnisher compliance with FCRA permissible purpose, accuracy, and dispute investigation requirements.

2.1.1 Prohibition against using or obtaining consumer reports without a permissible purpose

The FCRA prohibits a person from using or obtaining a consumer report unless the consumer report is obtained for a purpose authorized by the FCRA.[5] This prohibition protects the privacy of consumers and prevents the potential negative impact of certain inquiries. Examiners found that one or more lenders obtained consumers' credit reports without a permissible purpose. In reviewing files for compliance with permissible purpose requirements, examiners found that the lenders' employees obtained consumers' credit reports from a CRC without first establishing that the lenders had a permissible purpose to obtain the report under the FCRA. After identification of these issues, one or more lenders revised permissible purpose policies, procedures, and training materials. While consumer consent is not required by the FCRA when

[2] 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).

[3] 15 U.S.C. § 1681 et seq.

[4] 12 C.F.R. Part 1022.

[5] 15 U.S.C. § 1681b(f).

a lender has another permissible purpose to obtain the consumer's report, one or more mortgage lenders decided to require that the lender's employees document consumer consent prior to obtaining the consumers' credit reports, as an additional precaution to ensure that the lender had a permissible purpose to obtain the consumers' reports.

2.1.2 Furnisher duty to provide notice of delinquency of accounts

The FCRA requires furnishers of information regarding delinquent accounts to report the date of delinquency to the CRC within 90 days.[6] The FCRA specifies that the date of first delinquency reported by the furnisher "shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action."[7]

In one or more examinations of third-party debt collection furnishers, examiners found that the furnishers failed to establish and follow reasonable procedures to obtain the actual date of first delinquency from their clients. Instead, they furnished a date they knew or had reason to believe was an incorrect date of first delinquency. The third-party debt collection furnishers were furnishing information about cable, satellite, and telecommunications accounts. The furnishers reported, as the date of first delinquency, the date that the consumer's service was disconnected, despite telecommunications companies routinely disconnecting service several months after the first missed payment that commenced the delinquency. In addition, in one or more examinations of third-party debt collection furnishers, examiners found the furnisher provided the charge-off date as the date of first delinquency, which is often several months after the commencement of delinquency. Subsequent to these findings, one or more furnishers ceased operations.

2.1.3 Duty to conduct reasonable investigation of disputes

For disputes filed directly with furnishers, Regulation V requires furnishers to conduct a reasonable investigation with respect to the disputed information and review all relevant information provided by the consumer with the dispute notice.[8] Similarly, for indirect disputes

[6] 15 U.S.C. § 1681s-2(a)(5)(A). This provision applies to accounts being placed for collection, charged to profit or loss, or subjected to similar action.

[7] *Id.*

[8] 12 C.F.R. § 1022.43(e)(1-2).

filed with CRCs, the FCRA requires that, upon receiving notice of the dispute from the CRC, the furnisher must conduct an investigation with respect to the disputed information and review all relevant information provided by the CRC.[9] In one or more examinations, examiners found that, for both direct and indirect disputes, the furnishers failed to review underlying account information and documentation, account history notes, or dispute-related correspondence provided by the consumer to assess what reasonable investigative steps would be necessary. Inadequate staffing and high daily dispute resolution requirements contributed to the furnishers' failure to conduct reasonable investigations. As with the findings described above in Section 2.1.2, subsequent to these findings, one or more furnishers ceased operations.

2.2 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.[10] Recent examinations of larger participant debt collectors identified one or more violations of the Fair Debt Collection Practices Act (FDCPA).

2.2.1 False litigation threats and misrepresentations regarding litigation

Section 807(5) of the FDCPA prohibits "[t]he threat to take any action that cannot legally be taken or that is not intended to be taken."[11] Section 807(10) prohibits "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt . . . ."[12] Examiners found that one or more debt collectors falsely threatened consumers with lawsuits that the collectors could not legally file or did not intend to file, in violation of Section 807(5). Examiners also determined that one or more debt collectors made false representations regarding the litigation process and a consumer's obligations in the event of litigation, in violation of Section 807(10). In response to these findings, the debt collectors are making changes to their training, scripts, monitoring, and other compliance processes.

[9] 15 U.S.C. § 1681s-2(b)(1)(A)-(B).

[10] 12 C.F.R. § 1090.

[11] 15 U.S.C. § 1692e(5).

[12] 15 U.S.C. § 1692e(10).

2.2.2 False implication that debt could be reported to CRCs

Section 807(10) of the FDCPA prohibits "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt . . . ."[13] Examiners observed that one or more debt collectors made implied representations to consumers that they would report their debts to CRCs[14] if they were not paid by a certain date. The debt collectors did not report debts to CRCs for the relevant clients. Examiners concluded that the debt collectors' statements were false representations that violated Section 807(10). In response to these findings, the debt collectors are making changes to their training and monitoring.

2.2.3 False representation that debt collector is a CRC

Section 807(16) of the FDCPA prohibits "[t]he false representation or implication that a debt collector operates or is employed by a consumer reporting agency . . . ."[15] Examiners observed that one or more debt collectors falsely represented or implied to consumers that they operated or were employed by CRCs in violation of Section 807(16). In response to these findings, the debt collectors are making changes to their training and monitoring.

2.3 Deposits

The CFPB continues to examine banks for compliance with Regulation E,[16] which implements the Electronic Fund Transfer Act (EFTA). EFTA establishes a legal framework for the offering and use of electronic fund transfer services and remittance transfer services.[17] The CFPB also continues to review the deposits operations of the entities under its supervisory authority for

[13] *Id.*

[14] As noted above in Footnote 2, the term "consumer reporting company" means the same as "consumer reporting agency," as defined in the FCRA, 15 U.S.C. § 1681a(f).

[15] 15 U.S.C. § 1692e(16).

[16] 12 C.F.R. § 1005.

[17] 12 U.S.C. §1693.

compliance with relevant statutes and regulations, including Regulation DD,[18] which implements the Truth in Savings Act.[19]

2.3.1 Waivers of consumers' error resolution and stop payment rights and financial institutions' liability

EFTA states that "no writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter."[20] EFTA and Regulation E state that consumers have a right to have their claims of error investigated if their notice of error meets certain criteria.[21] As described below, the criteria does not include agreeing to "cooperate" with the financial institution's error investigation. EFTA and Regulation E together establish that consumers have a right to have a financial institution investigate their error subject only to the requirements set forth in EFTA and Regulation E.

Examiners found that one or more financial institutions required consumers to sign deposit account agreements that stated that the consumers would "cooperate" with the institution's investigation of any errors filed by the consumer. The "cooperation" included providing affidavits and notifying law enforcement authorities. By requiring consumers to "cooperate" with Regulation E error investigations and provide information beyond that which is required in EFTA and Regulation E, the financial institutions' agreements contained provisions that waived consumers' rights in violation of EFTA.

EFTA and Regulation E also provide consumers with rights to stop preauthorized payments.[22] Under EFTA, consumers have the right to stop payment, subject only to those limitations set forth in EFTA and Regulation E.[23] Regulation E contains a comprehensive list of actions consumers must take in order to make an effective request to stop payment.[24] The list does not

[18] 12 C.F.R. § 1030.

[19] *Id.*

[20] 15 U.S.C. § 1693l.

[21] 15 U.S.C. § 1693f and 12 C.F.R. § 1005.11(b)(1).

[22] 15 U.S.C. § 1693e and 12 C.F.R. § 1005.10(c).

[23] 15 U.S.C. §§ 1693e and 1693l and 12 C.F.R § 1005.10(c)(1).

[24] 12 C.F.R. § 1005.10(c)(1).

include agreeing to indemnify and hold the financial institution harmless for costs that may arise from honoring the valid stop payment request or agreeing not to hold the institution liable if it is unable to stop payment due to inadvertence, accident, or oversight.

Examiners found that one or more financial institutions required consumers to sign stop payment request forms and deposit agreements in which the consumers agreed to indemnify and hold the institutions harmless for various claims and expenses arising from the institutions honoring stop payment requests. This included not holding the financial institutions liable if they were unable to stop the payment due to inadvertence, accident, or oversight. As this language requires more of consumers than EFTA and Regulation E allow, the stop payment forms and deposit agreements impermissibly waived consumers' rights in violation of, and waived the institutions' liability under, EFTA and Regulation E for certain failures to stop payment.[25]

In response to the examiners' findings, the financial institutions revised their deposit agreements and stop payment forms to ensure they do not contain any waivers of rights in violation of EFTA.

2.3.2 Reliance on incorrect date to assess timeliness of EFT error notice

Regulation E requires that financial institutions comply with specific requirements with respect to qualifying oral or written notices of an EFT error. With respect to timing, EFTA and Regulation E require that the oral or written notice must be received by the institution "no later than 60 days after the institution sends the periodic statement . . . on which the alleged error is first reflected."[26]

Examiners found that one or more financial institutions required that EFT notice errors relating to ACH transactions be received within 60 days of the date of the transactions. For claims received after 60 days from the date of the transaction, the institutions treated the error notice as late, and would request permission from the merchant's bank to reverse the charges.

The financial institutions revised their policies on EFT error notice processing to comply with the Regulation E timing requirements.

[25] 15 U.S.C. §§ 1693h and 1693l.

[26] 12 C.F.R. § 1005.11(b)(1)(i).

2.3.3 Violation of error results notice requirements

Both Section 908(a) of EFTA and Regulation E require a financial institution investigating an alleged EFT error to communicate to consumers, among other elements, (1) the investigation determination; and (2) an explanation of the determination when it determines that no error or a different error occurred within its report of results.[27]

To give purpose to both obligations, the meaning of an "explanation" is not synonymous with that of a "determination." Financial institutions must go beyond just providing the findings to actually explain or give the reasons for or cause of those findings.

Examiners found that one or more financial institutions violated Regulation E by failing to provide an explanation of its findings within the report of results. In addition, examiners found that one or more financial institutions violated Regulation E by providing an inaccurate or irrelevant response to the consumer when it determined that no error or a different error occurred.[28]

Regulation E also requires financial institutions to note, in the report of results, the consumer's right to request the documents that the institution relied on in making its determination when the institution determines no error or a different error occurred.[29] Examiners found that one or more financial institutions' reports of results letters sent to consumers after determining that no error or a different error occurred, were missing the required notice of the consumer's right to request the documents that the institution relied on in making its determination, as required by Regulation E.[30]

In response to the examiners' findings, the financial institutions undertook a revision of its report of results templates used when the financial institutions determine no error or different error occurred to ensure that the letter provides: (a) the determination; (b) an explanation of the financial institution's findings; and, (c) a statement noting the consumer's right to request the

[27] 12 U.S.C. §§ 1693f(a) and 1693f(d) and 12 C.F.R. § 1005.11(d)(1).

[28] *Id.*

[29] *Id.*

[30] *Id.*

documents that the financial institutions relied on in making its determination, as required by Regulation E.[31]

2.3.4 Failure to fulfill advertised bonus offer

Regulation DD requires that advertisements of deposit accounts not mislead, be inaccurate, or misrepresent the financial institution's deposit contract.[32]

Examiners found that one or more financial institutions advertised bonuses for consumers who opened an account at the financial institutions and met certain requirements that the advertisement specified. These financial institutions failed to provide the promised bonuses in instances where consumers met the requirements. The financial institutions did not have appropriate quality control and monitoring procedures to ensure all eligible consumers received the bonus. Therefore, the advertisement of bonus offer was misleading and inaccurate in violation of Regulation DD.

In response to the examiners' findings, the financial institutions enhanced their account opening training, as well as monitoring and quality control procedures, to ensure that consumer accounts were correctly coded as bonus-eligible and that all consumers eligible for the advertised bonuses received them.

2.4 Fair lending

The Bureau's fair lending supervision program assesses compliance with the Equal Credit Opportunity Act (ECOA)[33] and its implementing regulation, Regulation B,[34] as well as the Home Mortgage Disclosure Act (HMDA)[35] and its implementing regulation, Regulation C,[36] at banks

[31] *Id.*

[32] 12 C.F.R. § 1030.8(a)(1).

[33] 12 U.S.C. § 1691.

[34] 12 C.F.R. § 1002.

[35] 12 U.S.C. § 2801.

[36] 12 C.F.R. § 1003.

and nonbanks over which the Bureau has supervisory authority. Examiners found one or more lenders engaged in violations of ECOA and Regulation B.

2.4.1 Redlining

Regulation B prohibits discouragement of "applicants or prospective applicants" and it also 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."[37] The Official Interpretations of Regulation B also explains that Regulation B "covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit."[38]

In the course of conducting supervisory activity of bank and nonbank mortgage lenders, examiners have observed that one or more lenders violated ECOA and Regulation B, intentionally redlining majority-minority neighborhoods in two Metropolitan Statistical Areas (MSAs) by engaging in acts or practices directed at prospective applicants that may have discouraged reasonable people from applying for credit.

Examiners determined that the lenders used marketing that would discourage reasonable persons on a prohibited basis from applying to the lenders for a mortgage loan. First, the lenders advertised in a publication with a wide circulation in the MSAs, on a weekly basis, for two years. These ads prominently featured a white model. Second, the lenders' marketing materials, which were intended to be distributed to consumers by the lenders' retail loan originators, featured almost exclusively white models. Third, the lenders included headshots of the lenders' mortgage professionals in nearly all its open house marketing materials, and in almost all these materials, the headshots showed professionals who appeared to be white.

The statistical analysis of the HMDA data and U.S. census data provided evidence regarding the lenders' intent to discourage prospective applicants from majority-minority neighborhoods. General and refined peer analyses showed that the lenders received significantly fewer applications from majority-minority and high-minority neighborhoods[39] relative to other peer lenders in the MSAs. Also, the lenders' direct marketing campaign that focused on majority-white areas in the MSAs provided additional evidence of the lenders' intent to discourage prospective applicants on a prohibited basis.

[37] 12 C.F.R. § 1002.4(b).

[38] 12 C.F.R. pt. 1002, Supp. I, para. 4(b)-1.

[39] Examination teams defined majority-minority areas as >50% minority and high-minority areas as >80% minority.

In response to the examination findings, lenders implemented outreach and marketing programs focused on increasing their visibility among consumers living in or seeking credit in majority-minority census tracts in the MSAs. One or more lenders also are improving compliance management systems, including board and management oversight, monitoring and/or audit programs, and handling of consumer complaints.

2.4.2 Failure to consider public assistance income

The ECOA states that it is "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . because all or part of the applicant's income derives from any public assistance program."[40] The Official Interpretation of Regulation B defines "public assistance program" as follows: "Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is 'public assistance' for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation."[41] Regulation B allows a creditor to "consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness."[42] However, the Official Interpretation further provides that "[i]n considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances."[43]

Examiners found that one or more lenders violated ECOA and Regulation B by maintaining a policy and practice that excluded certain forms of public assistance income, without considering the applicant's actual circumstances including unemployment compensation and SNAP benefits, commonly known as food stamps, from consideration in determining a borrower's eligibility for mortgage modification programs. One or more lenders acknowledged that they excluded certain types of public assistance income from income calculations when evaluating loss mitigation applications, even though the lenders did not have written policies directing the practice. Examiners identified several instances whereby the applicant listed certain forms of public assistance income in the loss mitigation application. In each instance, the lenders excluded the

[40] 15 U.S.C. § 1691(a)(2).

[41] 12 C.F.R. pt. 1002, Supp. I, para. 2(z)-(3).

[42] 12 C.F.R. § 1002.6(b)(5).

[43] 12 C.F.R. pt. 1002, Supp. 1, para. 6(b)(5)-(3)(ii); *see also id.* at 6(b)(5)-(1) ("A creditor must evaluate income derived from . . . public assistance on an individual basis. . . .).

public assistance income from their income calculations and, in certain instances, the applicant was denied a loss mitigation option due to insufficient income.

In response to the examination findings, the lenders updated policies and procedures and enhanced training to ensure that their practices concerning public assistance income comply with ECOA and Regulation B. In addition, lenders identified borrowers who, due to their reliance on certain forms of public assistance income, were denied mortgage modifications or otherwise harmed. The lenders provided such borrowers with financial remuneration and an appropriate mortgage modification.

2.5 Mortgage servicing

Recent mortgage servicing examinations have identified various Regulation Z and Regulation X violations. These include violations of Regulation Z requirements to provide consumers in bankruptcy with periodic statements and violations of Regulation X provisions related to force-placed insurance and escrow accounts. In the context of loan transfers, examiners identified violations of Regulation X requirements to provide servicing transfer notices and exercise reasonable diligence to complete a loss mitigation application; violations of FDCPA requirements to provide debt validation notices; and violations of Regulation Z requirements to credit payments as of the date of receipt and provide mortgage loan ownership transfer disclosures. Additionally, examiners identified one or more ECOA violations for failure to consider certain forms of public assistance income when considering borrowers for mortgage modification programs (that violation is summarized in the fair lending section of this issue).

2.5.1 Failure to provide consumers in bankruptcy with periodic statements

In general, Regulation Z requires servicers to provide consumers with closed-end mortgage loans with periodic statements that meet certain requirements.[44] Prior to April 2018, servicers were not required to provide periodic statements to consumers in bankruptcy. After April 2018, servicers are required to provide periodic statements when any consumer on the mortgage loan is in bankruptcy, unless an exemption is met.[45]

[44] 12 C.F.R. § 1026.41(a).

[45] *See* 12 C.F.R. § 1026.41(e)(5); 81 Fed. Reg. 72160 (Oct. 19, 2016), available at: https://www.govinfo.gov/content/pkg/FR-2016-10-19/pdf/2016-18901.pdf.

Examiners found that one or more servicers violated Regulation Z by failing to provide periodic statements when a consumer on the loan was in Chapter 12 or Chapter 13 Bankruptcy. Examiners found that causes included system limitations and failure to reconcile accounting records. The servicers contracted with third parties to maintain records regarding costs related to bankruptcy. However, these records were not reconciled with the servicers' systems of record, so the servicers were unable to provide accurate information about the total amount due, payment history, costs, and fees associated with the account. Instead of reconciling the amounts to enable them to send accurate statements, for a period of time servicers did not send statements when a consumer was in in Chapter 12 or Chapter 13 Bankruptcy. In response to these findings, the servicers developed a process to reconcile accounting records and began sending periodic statements to consumers in Chapter 12 or Chapter 13 Bankruptcy in accordance with the regulation.

2.5.2 Failure to have a reasonable basis for charging borrowers for force-placed insurance

Under Regulation X, a servicer may not assess a borrower a premium charge or fee for force-placed insurance unless the servicer has a "reasonable basis" to believe that the borrower failed to maintain required hazard insurance.[46]

Examiners found that one or more servicers violated Regulation X by charging borrowers for force-placed insurance without a reasonable basis for believing that the consumer had not maintained required hazard insurance. Examiners found that in some instances borrowers had provided their servicers with proof of required hazard insurance policies, either directly or through their insurance companies. However, the servicers failed to update their systems of record to reflect receipt of this information and subsequently charged borrowers for force-placed insurance. Examiners observed that this violation was caused by inadequate procedures and lack of adequate staffing. In other instances, the servicers received a bill for the borrowers' hazard insurance but did not assign it to the proper account. The servicers later charged borrowers for force-placed insurance, despite not having a reasonable basis to believe that the borrowers lacked hazard insurance. Examiners attributed this violation to a weakness in service provider oversight. In response to these findings, the servicers are improving service provider oversight or hiring new service providers to manage force-placed insurance charges.

[46] 12 C.F.R § 1024.37(b).

2.5.3 Failure to timely refund all force-placed insurance charges for overlapping coverage

Regulation X generally requires a servicer to cancel force-placed insurance and refund force-placed insurance premium charges for any period where a consumer provides evidence of overlapping insurance coverage within 15 days of receiving the evidence of coverage.[47]

Examiners found that one or more servicers violated Regulation X by failing to cancel force-placed insurance and refund charges within 15 days of receiving evidence of overlapping insurance coverage. Examiners observed that this was caused by failure to process proof of insurance and insufficient staffing. In response to these findings, the servicers are improving management of force-placed insurance programs to ensure timely cancellation of force-placed insurance and timely refunds to borrowers.

2.5.4 Permitted repayment options in annual escrow statements

Under Regulation X, servicers generally must annually complete an escrow analysis and determine the "target balance" in an escrow account for the next escrow computation year.[48] If the escrow account balance is below the "target balance," there is a "shortage;" if the consumer's escrow account balance is negative, then there is a "deficiency."[49] Regulation X provides specific permitted options for servicers as to the treatment of shortages and deficiencies. Which options are available depends in part on the extent of the shortage or deficiency.[50] For example, for shortages equal to or greater than one month's escrow account payment, the servicer must either (1) allow the shortage to exist and do nothing to change it; or (2) require repayment of the shortage in equal monthly payments over at least a 12-month period.[51] For deficiencies equal to or greater than one month's escrow account payment, the servicer must either (1) allow the deficiency to exist and do nothing to change it; or (2) require repayment of the deficiency in

[47] 12 C.F.R. § 1024.37(g)(1)&(2).

[48] 12 C.F.R. § 1024.17(c)(3).

[49] 12 C.F.R. § 1024.17(b).

[50] 12 C.F.R. § 1024.17(f)(3)&(4).

[51] 12 C.F.R. § 1024.17(f)(3)(ii).

equal monthly payments over a period of 2 months or more.[52] Regulation X also requires servicers to send borrowers annual escrow account statements which must include "[a]n explanation of how any shortage or deficiency is to be paid by the borrower."[53]

Examiners found that one or more servicers sent consumers annual escrow account statements which included options for repayment of shortages and deficiencies that are not enumerated in Regulation X. Specifically, for borrowers with either shortages or deficiencies equal to or greater than one month's escrow account payment, servicers listed two options borrowers could choose for repayment: (1) equal monthly payments over a 12-month period or (2) a lump sum payment. The first option is a permitted repayment option under Regulation X, while the second option is not.[54] Regulation X requires that annual escrow account statements include an explanation of how shortages or deficiencies are to be paid by borrowers.[55] Because the enumerated repayment options are exclusive, the servicers violated the regulatory requirements by sending disclosures that provided borrowers with repayment options that they cannot require under Regulation X.[56]

In response to these findings, the servicers are amending their annual escrow disclosures to only include repayment options they are permitted to require under Regulation X.

2.5.5 Violations after servicing transfers

Examiners have identified various violations after servicing transfers, including: failure to provide an accurate effective date for the transfer of servicing in the required notice of servicing transfer;[57] failure to exercise reasonable diligence to obtain documents and information necessary to complete a loss mitigation application;[58] failure to credit a periodic payment as of the date of receipt;[59] and, when a servicer is acting as a debt collector, failure to provide a

[52] 12 C.F.R. § 1024.17(f)(4)(ii).

[53] 12 C.F.R. § 1024.17(i)(1)(vii).

[54] *See* 12 C.F.R. § 1024.17(f)(3)&(4).

[55] 12 C.F.R. § 1024.17(i)(1)(vii).

[56] *See* 12 C.F.R. § 1024.17(i)(1)(vii).

[57] 12 C.F.R. § 1024.33(b)(4)(i).

[58] 12 C.F.R. § 1024.41(b)(1).

[59] 12 C.F.R. § 1026.36(c)(1)(i).

validation notice within 5 days of the initial communication with the borrower when such notice is required.[60]

For example, in the context of loans with loss mitigation applications in process at the time of the transfer, certain applications were virtually complete, but some transferee servicers asked borrowers to submit new applications, leading examiners to conclude that servicers had failed to exercise reasonable diligence to obtain the information necessary to complete these loss mitigation applications as the regulation requires. Examiners found that these violations were caused by errors during the onboarding process as well as inadequate policies and procedures. In response to these findings, the servicers increased attention to due diligence during servicing transfers and improved relevant policies and procedures to prevent violations in future servicing transfers.

2.5.6 Failure to provide loan ownership transfer disclosures

Regulation Z generally requires that when ownership of a loan transfers, the new owner must send a disclosure with required content to consumers.[61]

Examiners found that one or more servicers failed to send consumers the mortgage transfer disclosure after acquiring the loans, in violation of Regulation Z. In response to these findings, the servicers are reviewing the contracts that assign responsibilities between transferees and transferors and reinforcing the regulatory requirements internally; servicers who violated the rule will send mortgage transfer disclosures after future transfers in accordance with Regulation Z.

2.6 Payday lending

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

[60] 15 U.S.C. § 1692g(a). The notice is required unless the information is contained in the initial communication or the consumer has paid the debt.

[61] 12 C.F.R. § 1026.39(b).

2.6.1 Misleading representations about the ability to apply for a loan online

Sections 1031 and 1036(a)(1)(b) of the Consumer Financial Protection Act (CFPA) prohibit a covered person such as a payday lender from engaging in any unfair, deceptive, or abusive act or practice.[62] A representation, omission, or practice is deceptive if: (1) the representation, omission, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, or practice is material.[63]

Examiners found that one or more lenders engaged in deceptive acts or practices in violation of the CFPA when they represented on websites and in mailed advertising that consumers could apply for payday loans online. Examiners found the representations misled or were likely to mislead consumers. Although consumers could enter limited information online, the lenders required them to visit physical storefront locations to re-enter information and complete the loan application process. A consumer could reasonably interpret the express and indirect representations to mean they could complete the application process online. The representations were material because they were likely to affect consumer decisioning. For example, a consumer could have chosen to apply with a different lender who had a faster or otherwise more convenient process. In response to examination findings, the entity or entities ceased misleading advertising on websites and in mailed advertising, and implemented enhanced advertising policies and procedures and oversight.

2.6.2 False representation that no credit check will be conducted

Examiners observed one or more lenders engaged in deceptive acts or practices in violation of the CFPA when they falsely represented on proprietary websites, social media, and other advertising that they would not conduct a credit check. In fact, the lenders used consumer reports from at least one CRC 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 loans. Prospective customers may have had credit history concerns and made a different choice. In response to the examination findings, one or more lenders ceased making misleading

[62] 12 U.S.C. §§ 5531, 5536(a)(1)(B).

[63] *See FTC Policy Statement on Deception*, appended to *In re Cliffdale Assoc.*, Inc., 103 F.T.C. 110, 174 (1984).

representations online and elsewhere, and implemented enhanced advertising policies and procedures and oversight.

2.6.3 False threats of lien placement or asset seizure

Examiners found one or more lenders engaged in deceptive acts or practices by sending collection letters that falsely threatened lien placement or asset seizure if consumers did not make payments, although the entities did not take those measures. Moreover, certain consumer assets may have been exempt from lien or seizure under state law. It was reasonable for consumers to interpret the representations to mean that the entities could and would take such measures, and the statements were material because consumers may have made different payment choices had they known the representations were false. In response to the examination findings, one or more entities ceased including the erroneous information in collection letters.

2.6.4 False threats of being subject to late payment fee

Examiners found one or more lenders engaged in deceptive acts or practices by sending collection letters that falsely threatened to charge late fees if consumers did not make payments, even though the entities did not charge late fees. A consumer could reasonably interpret the representations as meaning that the entities would charge late fees absent payment. Such threats were material, because they were likely to affect consumers' payment choices. In response to the findings, one or more lenders ceased including the false statements in collection letters.

2.6.5 Failure to make triggering disclosures in payday loan advertisements

Regulation Z requires advertisements for closed-end credit that contain certain triggering terms, such as the amount of any finance charge, to disclose additional terms.[64] Required additional advertising disclosures include the annual percentage rate (APR) and terms of repayment.[65]

Examiners observed that one or more lenders failed to provide required additional disclosures in advertisements offering "free" loans to new customers. An advertisement of the total cost of

[64] 12 C.F.R. § 1026.24(d)(1).

[65] 12 C.F.R. § 1026.24(d)(2)(ii) and (iii).

consumer credit is an advertisement of the dollar amount of a finance charge,[66] a triggering term.[67] Accordingly, the entities were obligated to provide additional advertising disclosures under Regulation Z. In response to the findings, one or more entities implemented enhanced advertising policies and procedures and oversight, and ensured that all applicable advertisements that contain triggering terms include required Regulation Z disclosures.

2.6.6 Not actually prepared to offer advertised loan term

Regulation Z also requires an advertisement for credit that states specific credit terms to state only those terms that actually are or will be arranged or offered by the creditor.[68]

Examiners concluded that one or more entities violated Regulation Z when they advertised that a new customer's first payday loan would be free, even though the lenders were not actually prepared to offer the advertised term. Instead, the entities offered consumers one free week for loans lasting longer than one week, that featured considerable APRs. In response to the findings, one or more entities implemented enhanced advertising policies and procedures and oversight, and ceased advertising loan terms that lenders were not actually prepared to offer, including that a consumer's first loan would be free.

[66] *See* 12 C.F.R. § 1026.4(a).

[67] 12 C.F.R. § 1026.24(d)(1)(iv).

[68] 12 C.F.R. § 1026.24(a).

3. Supervisory program developments

This section includes statements, compliance bulletins, and rules that have been issued since the last edition of Supervisory Highlights. The general timeframe is February 1, 2020 to June 25, 2020. This section also describes supervisory program developments that occurred during the same time period.

3.1 COVID-19 related information and guidance

3.1.1 Interagency statement on pandemic planning

On March 6, 2020, the Federal Financial Institutions Examination Council (FFIEC) on behalf of its member agencies published updated guidance[69] identifying actions that financial institutions should take to minimize the potential adverse effects of a pandemic. The statement noted that financial institutions should periodically review related risk management plans, including business continuity plans, to ensure that they are able to continue to deliver products and services in a wide range of scenarios with minimal disruption.

3.1.2 Joint statement encouraging responsible small-dollar lending in response to COVID-19

On March 26, 2020, the Bureau along with the Board of Governors of the Federal Reserve Bank, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of Currency (collective the Agencies) issued a joint statement[70] that encouraged banks, savings associations, and credit unions to offer responsible small-dollar loans to consumers and small businesses in response to COVID-19. The statement noted that loans should be offered in a manner that provides fair treatment of consumers, complies with

[69] The statement can be found at: https://www.federalreserve.gov/supervisionreg/srletters/SR2003a1.pdf.

[70] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_small-dollar-lending-covid-19_2020-03.pdf.

applicable laws and regulations, and is consistent with safe and sound practices. The joint statement also encouraged lenders to work with borrowers who may experience unexpected circumstances and cannot repay a loan as structured.

3.1.3 CFPB provides flexibility during Covid-19 pandemic

On March 26, 2020, the Bureau published three separate statements[71] noting its flexible approach during the pandemic. The Bureau announced that as of March 26, 2020, and until further notice the Bureau does not intend to cite in an examination or initiate an enforcement action against an entity for failure to submit to the Bureau:

- quarterly submissions of HMDA data;
- annual submissions concerning agreements between credit card issuers and institutions of higher education;
- quarterly submission of consumer credit card agreements;
- collection of certain credit card price and availability information; and
- submission of prepaid account agreements and related information.

Entities should maintain records sufficient to allow them to make delayed submissions pursuant to future Bureau guidance.

The Bureau also announced that it will work with affected financial institutions in scheduling examinations and other supervisory activities to minimize disruption and burden. When conducting examinations and other supervisory activities and in determining whether to take enforcement action, the Bureau will consider the circumstances that entities may face as a result of the COVID-19 pandemic and will be sensitive to good-faith efforts demonstrably designed to assist consumers.

[71] The three statements are: (1) Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act; (2) Statement on Supervisory and Enforcement Practices Regarding Bureau Information Collections for Credit Card and Prepaid Account Issuers; and (3) Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic. The statements can be found at: https://files.consumerfinance.gov/f/documents/cfpb_hmda-statement_covid-19_2020-03.pdf https://files.consumerfinance.gov/f/documents/cfpb_data-collection-statement_covid-19_2020-03.pdf https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf.

3.1.4 Statement on supervisory and enforcement practices regarding the Fair Credit Reporting Act and Regulation V in light of the CARES Act

On April 1, 2020, the Bureau released a statement,[72] which outlined the responsibilities of CRCs and furnishers during the COVID-19 pandemic.

The statement noted that the CARES Act requires lenders to report to CRCs that a consumer is current on their loans if the lender has provided the consumer with payment relief in certain circumstances. In addition, the Bureau noted temporary and targeted flexibility in its supervisory and enforcement approach for lenders and CRCs facing challenges as a result of the COVID-19 pandemic in the time they take to investigate disputes. The Bureau stated that it will consider a furnisher's or CRC's individual circumstances and does not intend to cite in an examination or bring an enforcement action against firms impacted by the pandemic who exceed the deadlines to investigate such disputes as long as they make good faith efforts during the pandemic to do so as quickly as possible. The Bureau also released FAQs on June 16, 2020, to help ensure that consumers receive the credit reporting protections required by the CARES Act. [73]

3.1.5 Joint statement on supervisory and enforcement practices regarding the mortgage servicing rules in response to COVID-19 and the CARES Act

On April 3, 2020, the Agencies and the state financial regulators issued a joint policy statement[74] providing regulatory flexibility to enable mortgage servicers to work with struggling consumers affected by the COVID-19 emergency.[75] The statement informs servicers of the Agencies' flexible supervisory and enforcement approach during the COVID-19 emergency regarding certain communications to consumers required by the mortgage servicing rules.

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[72] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

[73] The FAQs can be found at: https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf.

[74] The statement can be found at: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200403a1.pdf.

[75] In conjunction with this statement, the Bureau published, "Mortgage Servicing Rules FAQs Related to the COVID-19 Emergency." The FAQs can be found at: https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.

The policy statement clarified that the agencies do not intend to take supervisory or enforcement action against mortgage servicers for:

- delays in sending certain early intervention and loss mitigation notices and taking certain related actions required by the mortgage servicing rules, provided that servicers are making good faith efforts to provide these notices and take these actions within a reasonable time;
- failing to provide an acknowledgement notice within five days of receipt of an incomplete application, where the borrower enters certain short-term payment forbearance programs or short-term repayment plans, provided the servicer sends the acknowledgment notice before the end of the forbearance or repayment period; and
- delays in sending annual escrow statements, provided that servicers are making good faith efforts to provide these statements within a reasonable time.

3.1.6 Interagency statement on loan modifications by financial institutions working with consumers affected by the coronavirus

On April 7, 2020, the Agencies, in consultation with state financial regulators, issued an interagency statement[76] encouraging financial institutions to work constructively with borrowers affected by COVID-19 and providing additional information regarding accounting and reporting considerations for loan modifications.[77] The statement encouraged financial institutions to work with borrowers impacted by the coronavirus and promised not to criticize institutions for doing so in a safe-and-sound manner. It also highlighted that when working with borrowers, lenders and servicers should adhere to consumer protection requirements, including fair lending laws, to provide the opportunity for all borrowers to benefit from these arrangements. It stated that Agencies will consider various facts and circumstances when conducting supervisory work evaluating compliance during the relevant time period. Additionally, it stated that the Agencies do not expect to take a consumer compliance public enforcement action against an institution, provided that the circumstances were related to the national emergency and that the institution made good faith efforts to support borrowers and

[76] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_loan-modifications-reporting-covid-19_2020-04.pdf.

[77] This statement replaces one previously issued by the Agencies on March 22, 2020. The revised statement clarifies the interaction between the interagency statement issued on March 22, 2020, and the temporary relief provided by Section 4013 of the CARES Act.

comply with the consumer protection requirements, as well as respond to any needed corrective action.

3.1.7 Treatment of pandemic relief payments under Regulation E and application of the compulsory use prohibition

On April 13, 2020, the Bureau issued an interpretive rule[78] to provide guidance to government agencies distributing aid to consumers in response to the COVID-19 pandemic.

The Bureau concluded that certain pandemic-relief payments are not "government benefits" for purposes of Regulation E and EFTA and are therefore not subject to the compulsory use prohibition in EFTA, if certain conditions are met.

Specifically, the Bureau interprets the term "government benefit" to exclude payments from Federal, State, or local governments if those payments are made:

1. To provide assistance to consumers in response to the COVID-19 pandemic or its economic impacts;
2. Outside of an already-established government benefit program;
3. On a one-time or otherwise limited basis; and
4. Without a general requirement that consumers apply to the agency to receive funds.

3.1.8 Interagency statement on appraisals and evaluations for real estate related transactions affected by the coronavirus

On April 14, 2020, the Bureau, together with the Agencies, issued an interagency statement outlining flexibilities in industry appraisal standards and in appraisal regulations and described temporary changes to Fannie Mae and Freddie Mac appraisal standards.

[78] The interpretative rule can be found at: https://files.consumerfinance.gov/f/documents/cfpb_interpretive-rule_pandemic-relief-payments-reg-e.pdf and at: https://www.federalregister.gov/documents/2020/04/27/2020-08084/treatment-of-pandemic-relief-payments-under-regulation-e-and-application-of-the-compulsory-use.

3.1.9 Compliance bulletin and policy guidance: Handling of information and documents during mortgage servicing transfers (CFPB Bulletin 2020-02)

On April 24, 2020, the Bureau published a Bulletin[79] to provide mortgage servicers clarity, facilitate compliance, and prevent harm to consumers during the transfer of residential mortgages.

Regulation X imposes specific requirements on transferors and transferees to prevent harm to consumers resulting from servicing transfers, including requiring transferee servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer. The Bulletin listed some examples of servicer practices that the Bureau may consider as contributing to policies and procedures that are reasonably designed to achieve the objectives of these transfer requirements, including:

- Developing a servicing transfer plan that includes a communications plan, testing plan (for system conversion), a timeline with key milestones and an escalation plan for potential problems;
- Engaging in quality control work after a transfer of preliminary data to validate that the data on the transferee's system matches the data submitted by the transferor;
- Conducting a post-transfer review or debrief to determine effectiveness of the transfer plan and whether any gaps have arisen that require resolution;
- Monitoring consumer complaints and loss mitigation performance metrics; and
- Identifying any loans in default, active foreclosure and bankruptcy or any forbearance or other loss mitigation agreements entered in with the borrower.

The Bulletin also highlights the importance of data quality. To that end, it encourages servicers to adopt an industry data standard for mortgage records, called Mortgage Industry Standards Maintenance Organization standards.

[79] The bulletin can be found at: https://files.consumerfinance.gov/f/documents/cfpb_policy-guidance_mortgage-servicing-transfers_2020-04.pdf. The bulletin is also available in the Federal Register at 85 Fed. Reg. 25281 (May 1, 2020).

The Bureau noted that it began developing the Bulletin well before the coronavirus pandemic, in consultation with interagency and intergovernmental partners. In light of the national emergency declared on March 13, 2020, the Bulletin sets forth that, if a servicing transfer is requested or required by a Federal regulator or by the security issuer of "Government Loans" (as defined in the CARES Act) during a specified time frame, the Bureau will take into consideration the challenges facing mortgage servicers due to COVID-19 and will focus any supervisory feedback for institutions on identifying issues, correcting deficiencies, and ensuring appropriate remediation for consumers.

3.1.10 CFPB paves way for consumers facing financial emergencies to obtain access to mortgage credit more quickly

On April 29, 2020, the Bureau issued an interpretive rule clarifying that consumers can exercise their rights to modify or waive certain required waiting periods under the TILA-RESPA Integrated Disclosure Rule and Regulation Z rescission rules[80]. The Bureau also issued an FAQ document[81] that addresses when creditors must provide appraisals or other written valuations to mortgage applicants in order to expedite access to credit for consumers affected by the COVID-19 pandemic.

3.1.11 Amendments to the remittance rule and statement on supervisory and enforcement practices regarding the remittance rule in light of the COVID-19 pandemic

On May 11, 2020, the Bureau issued a final rule amending the remittance rule.[82] Among its requirements, the remittance rule mandates that remittance transfer providers generally must disclose the exact exchange rate, the amount of certain fees, and the amount expected to be delivered to the recipient. The remittance rule also allows for insured institutions to estimate certain fees and exchange rate information under certain circumstances, but by statute, this provision expires in July 2020.

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[80] The interpretative rule can be found at: https://files.consumerfinance.gov/f/documents/cfpb_tila-respa-integrated-disclosure_rescission-pandemic-interpretive-rule.pdf.

[81] The FAQs can be found at: https://files.consumerfinance.gov/f/documents/cfpb_mortgage-origination-rules_faqs-covid-19.pdf.

[82] 12 C.F.R. § 1005.30 *et seq*.

The amendments in the May 2020 rule, which will become effective in July of 2020, allow certain banks and credit unions to continue to provide estimates of the exchange rate and certain fees under certain conditions. The amendments also increase the safe harbor threshold that determines whether an entity makes remittance transfers in the normal course of its business and is subject to the rule. Under the amendments, entities making 500 or fewer transfers annually in the current and prior calendar years are not subject to the rule.

In April, the Bureau announced that it would take a flexible enforcement and supervisory approach in light of the expiration of the statutory temporary exception and the challenges the COVID-19 pandemic may cause insured institutions as they prepare to commence providing actual third-party fee and exchange rate information as of July 21, 2020.[83]

For international remittance transfers that occur on or after July 21, 2020 and before January 1, 2021, the Bureau will neither cite supervisory violations nor initiate enforcement actions against insured institutions for continuing to provide estimates to consumers under the temporary exception, instead of actual amounts.

3.1.12 Statement on supervisory and enforcement practices regarding regulation Z billing error resolution timeframes in light of the COVID-19 Pandemic

On May 13, 2020, the Bureau issued a statement informing creditors of the Bureau's flexible supervisory and enforcement approach during the pandemic regarding the timeframe within which creditors complete their investigations of consumers' billing error notices.[84] Specifically, in evaluating a creditor's compliance with the maximum timeframe for billing error resolution set forth in Regulation Z, the Bureau intends to consider the creditor's circumstances. The Bureau does not intend to cite a violation in an examination or bring an enforcement action against a creditor that takes longer than required by the regulation to resolve a billing error notice, so long as the creditor has made good faith efforts to obtain the necessary information and make a determination as quickly as possible, and complies with all other requirements pending resolution of the error.

[83] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_policy-statement_remittances-covid-19_2020-04.pdf.

[84] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_statement_regulation-z-error-resolution-covid-19_2020-05.pdf.

3.1.13 CFPB, CSBS issue consumer guide on mortgage relief options

On May 15, 2020, the Bureau and the Conference of State Bank Supervisory (CSBS) issued a guide to assist homeowners with federally backed loans through the process of obtaining mortgage relief. The guide details borrowers' rights to mortgage payment forbearance and foreclosure protection under the CARES Act.[85]

3.1.14 Complaint bulletin

On May 21, 2020, the Bureau issued a consumer complaint Bulletin[86]. The bulletin shows that mortgage and credit card complaints top the list of complaints the Bureau has received that mention coronavirus or related terms. In April and May, the Bureau received historically higher complaints, however, complaints mentioning COVID-related terms amounted to a total of 4,500 complaints during those two months.

Mortgage and credit card complaints top the list for complaints that mention coronavirus terms, with 22 percent and 19 percent of complaints, respectively. Among mortgage complaints that mention coronavirus keywords, 59 percent of consumers identified struggling to pay the mortgage as the issue. For credit card complaints, 19 percent of consumers identified a problem with purchase shown or statement as the issue.

The Bureau also received its highest complaint volumes in its history in March and April at 36,700 and 42,500, respectively. In 2019, the monthly average for complaints was 29,000. The bulletin attributes the higher numbers to factors such as market conditions and more public awareness of the complaint system.

3.1.15 Prioritized assessments

The COVID-19 pandemic has significantly impacted the financial marketplace and has resulted in a temporary shift in the Bureau's supervisory work. In late May, the Bureau rescheduled some of its planned examination work and instead began conducting Prioritized Assessments (PAs). PAs are higher-level inquiries than traditional examinations, designed to obtain real-

[85] The guide can be found at: https://files.consumerfinance.gov/f/documents/cfpb_csbs_consumers-forbearance-guide_2020-05.pdf.

[86] The complaint bulletin can be found at: https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_coronavirus-complaints.pdf.

time information from entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues. In July of 2020, the Bureau released Prioritized Assessments FAQs.[87]

3.1.16 Statement on supervisory and enforcement practices regarding electronic credit card disclosures in light of COVID-19 pandemic

On June 3, 2020, the Bureau issued a statement[88] indicating that it will take a flexible supervisory and enforcement approach during the pandemic regarding card issuers' electronic provision of disclosures required to be in writing for account-opening disclosures and temporary rate or fee reduction disclosures mandated under the provisions governing non-home secured, open-end credit in Regulation Z. Specifically, this statement pertains to oral telephone interactions where a card issuer may seek to open a new credit card account for a consumer, to provide certain temporary reductions in APRs or fees applicable to an existing account, or to offer a low-rate balance transfer. In these instances, the Bureau does not intend to cite a violation in an examination or bring an enforcement action against an issuer that during a phone call does not obtain a consumer's E-Sign consent to electronic provision of the written disclosures required by Regulation Z, so long as the issuer during the phone call obtains both the consumer's oral consent to electronic delivery of the written disclosures and oral affirmation of his or her ability to access and review the electronic written disclosures.

3.1.17 CFPB and state regulators provide additional guidance to assist borrowers impacted by the COVID-19 pandemic

On June 4, 2020, the Bureau and CSBS issued joint guidance to mortgage servicers to assist in complying with the CARES Act.[89] Servicers of federally-backed mortgages, such as Fannie Mae or Freddie Mac, Department of Housing and Urban Development, Department of Veterans Affairs, or Department of Agriculture loans, must grant forbearance to borrowers with pandemic-related hardships that may last as long as two consecutive 180-day periods.

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[87] The FAQs can be found at: https://files.consumerfinance.gov/f/documents/cfpb_prioritized-assessment_frequently-asked-questions.pdf.

[88] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_e-sign-credit-card_statement_2020-06.pdf.

[89] The guidance can be found at: https://files.consumerfinance.gov/f/documents/cfpb_csbs_industry-forbearance-guide_2020-06.pdf.

Furthermore, additional interest, fees, or penalties beyond the amounts scheduled or calculated should be waived with no negative impact to the borrower's mortgage contract during the forbearance.

Mortgage servicers could violate the CARES Act or other applicable law and potentially cause consumer harm if they were to require documentation from borrowers to prove financial hardship, if they did not grant the forbearance once properly requested, or if they steered borrowers away from forbearance or misled them.

3.1.18 CFPB issues interim final rule on loss mitigation options for homeowners recovering from pandemic-related financial hardships

On June 23, 2020 the Bureau issued an interim final rule (IFR)[90] that will make it easier for consumers to transition out of financial hardship caused by the COVID-19 pandemic and easier for mortgage servicers to assist those consumers.

The CARES Act provides forbearance relief for consumers with federally-backed mortgage loans. The mortgage industry has developed different options for borrowers to repay the payments that were forborne under the CARES Act. For example, the Federal Housing Finance Agency, Fannie Mae and Freddie Mac may permit some borrowers to defer repayment of the forborne amounts until the end of the mortgage loan. The Federal Housing Administration (FHA) has a similar program. These programs require the servicer to collect only minimal information from the borrower before offering the option.

The IFR makes it clear that servicers do not violate Regulation X by offering certain COVID-19-related loss mitigation options based on an evaluation of limited application information collected from the borrower. Normally, with certain exceptions, Regulation X would require servicers to collect a complete loss mitigation application before making an offer.

The IFR specifies that the loss mitigation option must meet certain criteria to qualify for an exception from the typical requirement to collect a complete application. Among other things, the option must allow the borrower to delay paying all principal and interest payments that were forborne or became delinquent as a result of a financial hardship due, directly or indirectly, to the COVID-19 emergency. Servicers may not charge any fees to borrowers in connection with

[90] The IFR can be found at: https://files.consumerfinance.gov/f/documents/cfpb_interim-final-rule_respa_covid-19-related-loss-mitigation-options.pdf.

the option, and the borrower's acceptance ends any preexisting delinquency. The exception is not limited to payments forborne under the CARES Act.

The IFR also provides servicers relief from certain requirements under Regulation X that normally would apply after a borrower submits an incomplete loss mitigation application. Once the borrower accepts an offer for an eligible program under the IFR, the servicer need not exercise reasonable diligence to obtain a complete application and need not provide the acknowledgment notice that is generally required under Regulation X when a borrower submits a loss mitigation application.

Servicers still must comply with Regulation X's other requirements after a borrower accepts a loss mitigation offer. For example, if the borrower becomes delinquent again after accepting the offer, the servicer would have to satisfy Regulation X's early intervention requirements. Similarly, if the servicer receives a new loss mitigation application from the borrower, the servicer would have to comply with Regulation X's loss mitigation procedures.

3.2 Non-COVID related guidance

3.2.1 Statement of policy regarding prohibition on abusive acts or practices

On January 24, 2020, the Bureau issued a policy statement[91] providing a framework on how it intends to apply the "abusiveness" standard in supervision and enforcement matters. Through this policy statement, the Bureau provided clarification on how it intends to apply abusiveness in order to promote compliance and certainty. In its supervision and enforcement work, the Bureau intends to:

- Focus on citing or challenging conduct as abusive in supervision and enforcement matters only when the harm to consumers outweighs the benefit.
- Generally, avoid "dual pleading" of abusiveness and unfairness or deception violations arising from all or nearly all the same facts, and allege "stand alone" abusiveness violations that demonstrate clearly the nexus between cited facts and the Bureau's legal analysis.

[91] The statement can be found at: https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.

- Seek monetary relief for abusiveness only when there has been a lack of a good-faith effort to comply with the law, except the Bureau will continue to seek legal or equitable remedies, such as damages and restitution for injured consumers regardless of whether a company acted in good faith or bad faith.

3.2.2 Responsible business conduct: Self-assessing, self-reporting, remediating, and cooperation (CFPB Bulletin 2020-01)

In 2013, the Bureau issued a Bulletin that identified several activities that businesses may engage in that could prevent and minimize harm to consumers, referring to these activities as "responsible conduct." On March 6, 2020, the Bureau issued an updated Bulletin[92] to clarify its approach to responsible conduct and to reiterate the importance of such conduct. The Bulletin noted that the Bureau principally considers four categories of conduct when evaluating whether some form of credit is warranted in an enforcement investigation or supervisory matter: self-assessing, self-reporting, remediating, and cooperating. However, if an entity engages in another type of activity particular to its situation that is both substantial and meaningful, the Bureau may take that activity into consideration as well.

3.2.3 Innovation updates

On May 22, 2020, the Bureau announced that it issued two No-Action Letter (NAL) Templates under its innovation policies. To encourage innovation, last year the Bureau introduced an improved NAL Policy that includes, among other things, a more streamlined review process focusing on the consumer benefits and risks of the applicant's product or service. NALs provide increased regulatory certainty through a statement that the Bureau will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances. The improved Policy also includes an innovative provision concerning NAL templates, which permits entities such as service providers and trade associations to secure a template that can serve as the foundation for NAL applications from companies that provide consumer financial products and services. Specifically, NAL templates include (among other things) a non-binding statement of the Bureau's intent to grant NAL applications based on it.

[92] The Bulletin can be found at: https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.

Using the first NAL Template, requested by Brace Software, Inc. (Brace), mortgage servicers seeking to assist struggling borrowers would be able to apply for NALs in connection with the use of Brace's online platform to implement loss-mitigation efforts for those borrowers.[93] As described in Brace's application, the platform is an online version of the Fannie Mae Form 710, which is the loss mitigation application used by most mortgage servicers. While the Bureau does not endorse particular products or providers, the Bureau observes that digitizing the loss mitigation application process has the potential to improve a process that is experiencing an increase in loss mitigation requests from consumers due to the COVID-19 pandemic.

The Bureau also approved a NAL template that insured depository institutions intending to offer the standardized, small-dollar credit product described therein can use to support applications for the issuance of individual NALs.[94] The NAL template contemplates that NALs based on it will include certain important protections for consumers who seek the covered small-dollar loan products.

3.2.4 Bureau launches pilot advisory opinion program to provide regulated entities clear guidance and improve compliance

On June 18, 2020 the Bureau launched a pilot advisory opinion (AO) program[95] to publicly address regulatory uncertainty in the Bureau's existing regulations. The pilot AO program will allow entities seeking to comply with regulatory requirements to submit a request where uncertainty exists. The Bureau will then select topics based on the program's priorities and make the responses available to the public.

The pilot program will focus on four key priorities:

- Consumers are provided with timely and understandable information to make responsible decisions.

[93] Brace's application can be found at: https://files.consumerfinance.gov/f/documents/cfpb_brace_no-action-letter-request.pdf. The Brace NAL Template can be found at: https://files.consumerfinance.gov/f/documents/cfpb_brace_no-action-letter.pdf

[94] The Bank Policy Institute (the BPI) application can be found at: https://files.consumerfinance.gov/f/documents/cfpb_bpi_no-action-letter-request.pdf. The BPI NAL Template can be found at: https://files.consumerfinance.gov/f/documents/cfpb_bpi_no-action-letter.pdf.

[95] More information about the AO program can be found at:
https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinions-pilot_fr-notice.pdf
https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinions-proposal_fr-notice.pdf.

- Identify outdated, unnecessary or unduly burdensome regulations in order to reduce regulatory burdens.
- Consistency in enforcement of Federal consumer financial law in order to promote fair competition.
- Ensuring markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

Additionally, initial factors weighing for the appropriateness of an AO include: that the interpretive issue has been noted during prior Bureau examinations as one that might benefit from additional regulatory clarity; that the issue is one of substantive importance or impact or one whose clarification would provide significant benefit; and/or that the issue concerns an ambiguity that the Bureau has not previously addressed through an interpretive rule or other authoritative source. There will be a strong presumption against appropriateness of an AO for issues that are the subject of an ongoing investigation or enforcement action or the subject of an ongoing or planned rulemaking.

If deemed appropriate, the Bureau will issue an advisory opinion based on its summary of the facts presented that would be applicable to other entities in situations with similar facts and circumstances. The advisory opinions would be posted on the Bureau's website and published in the Federal Register.

In addition to the pilot, the Bureau also announced that the public can comment on the proposed AO program. Following the conclusion of the pilot, the proposed AO program will be fully implemented after the Bureau's review of comments received.

3.2.5 CFPB issues interpretative rule on method for determining underserved areas

On June 23, 2020, the Bureau issued an interpretive rule[96] with respect to how the Bureau determines which counties qualify as "underserved" for a given calendar year under Regulation Z.

The Bureau's annual list of rural and underserved counties and areas is used in applying various provisions under Regulation Z, which implements the Truth in Lending Act (TILA). These provisions include the exemption from the requirement to establish an escrow account for a

[96] The interpretative rule can be found at: https://files.consumerfinance.gov/f/documents/cfpb_interpretive-rule_determining-underserved-areas-using-hmda-data.pdf.

higher-priced mortgage loan and the ability to originate balloon-payment qualified mortgages and balloon-payment high cost mortgages.

Regulation Z states that an area is "underserved" during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times. The Bureau previously interpreted how HMDA data would be used to determine which areas meet this standard using a method set forth in the commentary to Regulation Z. However, portions of this method have become obsolete because they rely on data elements that were modified or eliminated by certain 2015 amendments to the Bureau's HMDA regulations, which became effective in 2018.

The interpretive rule describes the HMDA data that will instead be used in determining that an area is "underserved" for purposes of the standard described in Regulation Z. This interpretation supersedes the outdated methodology set forth in the commentary to Regulation Z.

4. Remedial actions

4.1 Public enforcement actions

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

4.1.1 Citizens Bank, N.A.

On January 30, 2020, the Bureau filed suit against Citizens Bank, N.A. (Citizens), a national banking association headquartered in Providence, Rhode Island. The Bureau's complaint[97] alleges violations of TILA and TILA's implementing Regulation Z, including violations of amendments to TILA contained in the Fair Credit Billing Act (FCBA) and the Credit Card Accountability Responsibility and Disclosure Act (CARD Act).

As described in the complaint, the Bureau alleges that for several years Citizens violated TILA, as amended by the FCBA, and Regulation Z by failing to properly manage and respond to credit card disputes. The complaint alleges that Citizens automatically denied consumers' billing error notices and claims of unauthorized use in certain circumstances. The complaint further alleges that Citizens failed to fully refund finance charges and fees when consumers asserted meritorious disputes or fraud claims, and failed to send consumers required acknowledgement letters and denial notices in response to billing error notices.

The Bureau further alleges that for several years Citizens violated TILA by violating provisions passed under the CARD Act. The Bureau alleges that Citizens violated TILA and Regulation Z by failing to provide credit counseling referrals to consumers who called Citizens' toll-free number designated for that purpose. These alleged violations of TILA—including those under the FCBA and the CARD Act—and Regulation Z also constitute violations of the Consumer Financial Protection Act.

The Bureau's complaint seeks, among other remedies, an injunction against defendants and the imposition of civil money penalties.

[97] The complaint can be found at: https://files.consumerfinance.gov/f/documents/cfpb_citizens-bank_complaint_2020-01.pdf.