

# SUPERVISORY HIGHLIGHTS

Issue 28, Fall 2022

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# 1. Introduction

The Consumer Financial Protection Bureau's (CFPB or Bureau) supervision program is focused on ensuring that financial institutions subject to its authority comply with Federal consumer financial laws. Where violations of law or compliance weaknesses are found, CFPB encourages compliance and deters misconduct and recidivism.<sup>1</sup> *Supervisory Highlights* promotes transparency in the Bureau's supervisory work and provides the public with insight into supervisory findings.

In this issue of *Supervisory Highlights* several trends are evident. The first is that examiners continue to identify the same violations of law across multiple institutions of a certain type, even though past editions of *Supervisory Highlights* have publicized such violations at other institutions of that type. Another is findings related to entities that engaged in unfair, deceptive or abusive acts or practices (UDAAP) in violation of the Consumer Financial Protection Act (CFPA).<sup>2</sup> In addition, there are findings on CARES Act-related or COVID-19-related issues. Finally, this issue contains certain types of novel supervisory findings that have not previously been reported in *Supervisory Highlights* involving unique factual or legal analysis.

The findings in this report cover examinations in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, mortgage servicing and payday lending completed between January 1, 2022, and June 31, 2022. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.

Supervision is increasing its focus on repeat offenders, particularly those who violate agency or court orders. As part of that focus, Supervision has created a Repeat Offender Unit.

The Repeat Offender Unit is focused on:

- reviewing and monitoring the activities of repeat offenders;
- identifying the root cause of recurring violations;
- pursuing and recommending solutions and remedies that hold entities accountable for failing to consistently comply with Federal consumer financial law; and,

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<sup>1</sup> If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

<sup>2</sup> 12 U.S.C. § 5531, 5536.

- designing a model for order review and monitoring that reduces the occurrences of repeat offenders.

The Repeat Offender Unit will focus on ways to enhance the detection of repeat offenses, develop a process for rapid review and response designed to address the root cause of violations, and recommend corrective actions designed to stop recidivist behavior. This will include closer scrutiny of corporate compliance with orders to ensure that requirements are being met and any issues are addressed in a timely manner.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at [CFPB\\_Supervision@cfpb.gov](mailto:CFPB_Supervision@cfpb.gov).

## 2. Supervisory Observations

### 2.1 Auto Servicing

The Bureau continues to evaluate auto loan servicing activities, primarily to assess whether entities have engaged in any UDAPs prohibited by the CFPA.<sup>3</sup> Examiners identified unfair and deceptive acts or practices across many aspects of auto servicing, including violations related to add-on product charges, loan modifications, double billing, use of devices that interfered with driving, collection tactics, and payment allocation.

#### 2.1.1 Overcharging for add-on products at early payoff

When consumers purchase an automobile, auto dealers and finance companies offer optional, add-on products that consumers can purchase. Some of the add-on products provide specific types of potential benefits, such as guaranteed asset protection (GAP) products that offer to help pay off an auto loan if the car is totaled or stolen and the consumer owes more than the car's depreciated value, accident and health protection, or credit life protection. The add-on products' potential benefits apply only for specific time periods, such as four years after purchase or for the term of the loan, and only under certain circumstances.

Auto dealers and finance companies often charge consumers all payments for any add-on products as a lump sum at origination of the auto loan or purchase of the vehicle. Dealers and finance companies generally include the lump sum cost of the add-on product as part of the total vehicle financing agreement, and consumers typically make payments on these products throughout the loan term, even if the product expires years earlier.

An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.<sup>4</sup>

Examiners identified instances where consumers paid off their loans early, but servicers failed to ensure consumers received refunds for unearned fees related to add-on products.<sup>5</sup> At that point, certain products no longer offered any possible benefit to consumers. In contrast to early payoff

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<sup>3</sup> 12 U.S.C. § 5531, 5536.

<sup>4</sup> 12 U.S.C. § 5531(c).

<sup>5</sup> The Bureau previously discussed similar issues with add-on product refunds after repossession in *Supervisory Highlights*, Issue 26, Spring 2022, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-26\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf).

scenarios, after repossession, servicers did ensure that refunds for unearned fees were applied to consumers' accounts either by obtaining the refunds directly or by debiting reserve accounts servicers had established for dealers.

Consumers suffered substantial injury because they were essentially required to pay for services they could no longer use, as the relevant products terminated when the loan contract terminated. Consumers could not reasonably avoid the injury because they had no control over the servicers' refund processing actions. When servicers present consumers with payoff amounts, consumers may have no reason to know that the amounts are inflated by add-on product premiums as consumers may be unaware that they paid unearned premiums, let alone that the amount could be refunded upon payoff. And reasonable consumers may not apply for refunds themselves because they may have been unaware that the contract provided that they could do so. Examiners concluded that the injury was not outweighed by any countervailing benefits to consumers or competition and that servicers engaged in unfair acts or practices by failing to ensure consumers received refunds for the specific unused add-on products.

In response to these findings, servicers are remediating impacted consumers and implementing processes to obtain refunds for consumers for add-on products with no benefit after early payoff.

## 2.1.2 Misleading consumers about loan modification approval

In calls where consumers who were delinquent on their loans requested payment assistance, servicers stated that the consumers were "preliminarily approved" for loan modifications but had to make a payment equal to the standard monthly payment before the servicers would finalize the modifications. This created a net impression that if consumers made the payments, they had a high likelihood of having the modifications finalized. In fact, servicers denied most of the modification requests after consumers made the requested payments.

Sections 1031 and 1036 of the CFPA prohibit deceptive acts or practices.<sup>6</sup> A representation, omission act, or practice is deceptive when: (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer's interpretation of the representation, omission act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material.

Examiners found that servicers engaged in deceptive acts or practices by representing to consumers that their modifications were preliminarily approved pending a "good faith"

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<sup>6</sup> 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

payment, when in fact they denied most of the modification requests. Consumers' understanding that they had a high likelihood of having the modifications finalized was reasonable under the circumstances. And the likelihood that a modification would be finalized was material to the consumer's decision regarding whether to make the good faith payment.

In response to these findings, servicers ceased making these representations, developed policies and procedures to prevent company representatives from making these representations, implemented related training, and enhanced monitoring.

### 2.1.3 Double billing consumers for collateral protection insurance

When consumers enter auto finance agreements, they generally agree to maintain vehicle insurance that covers physical damage to the property in order to protect the lender's interest in the collateral. Some contracts allow servicers to purchase insurance, called Collateral Protection Insurance (CPI) or Force-placed Insurance (FPI), if the consumer fails to maintain appropriate coverage; charges for CPI are generally passed along to consumers.

Examiners found that servicers engaged in an unfair act or practice when they double billed consumers for CPI charges. Servicers purchased CPI and billed consumers for a certain amount. Servicers then charged consumers twice for the CPI in error; billing and collecting these charges caused, or was likely to cause, substantial injury to consumers. Consumers could not reasonably avoid the injury, and it was reasonable for consumers to rely on the billed amount. The injury associated with billing consumers for erroneous amounts is not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers proposed implementing changes to address the violation.

### 2.1.4 Unfairly engaging devices that interfered with driving

When consumers enter into auto finance agreements, lenders sometimes require consumers to have technologies that interfere with driving (sometimes called starter interrupt devices) installed in their vehicles. These devices, when activated by servicers, either beep or prevent a vehicle from starting.

Examiners found that, in certain instances, servicers engaged in unfair acts or practices by activating these devices in consumers' vehicles when consumers were not past due on payment, contrary to relevant contracts and disclosures. Servicers inappropriately activated the devices due to errors with their internal systems. In these instances, servicers caused injury in one of two ways. First, in some instances they activated the devices and prevented consumers from

starting their vehicles, causing substantial injury by unexpectedly depriving these consumers of their vehicles. Second, in some instances servicers caused the devices to sound late payment warning beeps despite consumers being current, often for several days. The devices sounded these beeps each time the consumer started the car. This caused, or was likely to cause, substantial injury to consumers because they may have ceased using the vehicle because they understood from the beeps that servicers might disable the vehicle. Additionally, the warning beeps were likely to harass consumers and risk harming consumers' reputations by communicating to others, the consumers' purported delinquencies. Consumers could not reasonably avoid these injuries because they had no control over servicers' activation of the devices. The harm outweighed any countervailing benefits to consumers or competition.

In response to these findings, servicers proposed implementing changes to address the violations.

### 2.1.5 Making deceptive representations during collection calls

Examiners found that certain servicers made deceptive representations during collections calls. Specifically, servicers' representatives told delinquent consumers that their driver's licenses and tags would be or may be suspended if they did not make a prompt payment to the servicer. In fact, servicers do not have authority to suspend consumers' driver's licenses and tags. Additionally, examiners found that some representatives told consumers that their accounts had, or would be, transferred to the legal department. In fact, consumers' accounts were not at risk of imminent referral to the legal department. In these instances, servicers engaged in deceptive acts or practices. It was reasonable for consumers to believe that servicers had the authority to take the actions they threatened to take and would take those actions. And the representations were material because they were likely to impact consumers' choices regarding whether to pay their auto loans or other debts.

In response to these findings, servicers remediated impacted consumers and enhanced training, procedures, and call monitoring related to collection activity.

## 2.2 Consumer Reporting

Companies in the business of regularly assembling or evaluating information about consumers for the purpose of providing consumer reports to third parties are "consumer reporting



companies” (CRCs).<sup>7</sup> These companies, along with the entities -- such as banks, loan servicers, and others -- that furnish information to the CRCs for inclusion in consumer reports, play a vital role in availability of credit and have a significant role to play in the fair and accurate reporting of credit information. They are subject to several requirements under the Fair Credit Reporting Act (FCRA)<sup>8</sup> and its implementing regulation, Regulation V,<sup>9</sup> including the requirement to reasonably investigate disputes and, for furnishers, to furnish data subject to the relevant accuracy requirements. In recent reviews, examiners found deficiencies in CRCs’ compliance with FCRA dispute investigation requirements and furnisher compliance with FCRA and Regulation V accuracy and dispute investigation requirements.

## 2.2.1 NCRC duty to review and report determinations and actions taken in response to applicable complaints

The FCRA requires that nationwide CRCs (NCRCs) must take certain actions in response to complaints received from consumers that the Bureau transmits to the NCRC if those complaints are about “incomplete or inaccurate information” that a consumer “appears to have disputed” with the NCRC.<sup>10</sup> For this category of complaints, the FCRA requires that NCRCs: (1) review such complaints to determine if all legal obligations have been met; (2) provide regular reports to the Bureau regarding the determinations and actions taken in response to the reviews; and (3) maintain records regarding the disposition of such complaints for a reasonable amount of time to demonstrate compliance with the obligation to review and report on the complaints.

In recent reviews of one or more NCRCs, examiners found that NCRCs failed to report the outcome of complaint reviews to the Bureau. Specifically, examiners found that NCRCs failed to report to the Bureau determinations about whether all legal obligations had been met and actions taken in response to complaints. Examiners also found that NCRCs failed to address applicable complaints based on the NCRCs’ unsubstantiated suspicions that the complaints were submitted by unauthorized third parties (e.g., credit repair organizations). In response to these findings, NCRCs revised policies and procedures for identifying applicable complaints subject to these heightened obligations. NCRCs also revised processes for notifying consumers whose complaints are identified as being submitted by unauthorized third parties to allow consumers to confirm whether the complaints were authorized.

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<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. § 1681 *et seq.*

<sup>9</sup> 12 C.F.R. Part 1022.

<sup>10</sup> 15 U.S.C. § 1681i(e).

## 2.2.2 Furnisher prohibition of reporting information with actual knowledge of errors

Examiners are continuing to find that furnishers are violating the FCRA by inaccurately reporting information despite actual knowledge of errors.<sup>11</sup> In reviews of auto loan furnishers, examiners found that entities furnished information to CRCs while knowing or having reasonable cause to believe such information was inaccurate because the information furnished did not accurately reflect the information in the furnishers' account servicing systems. For example, examiners found that furnishers reported a consumer's account to CRCs as delinquent despite placing the account in deferment during the time periods for which delinquent status was furnished. Examiners also found that the prohibition on furnishing inaccurate information under this provision applied because the furnishers did not clearly and conspicuously specify to consumers an address for notices relating to inaccurately furnished information. For example, furnishers disclosed a general-purpose corporate address on their websites and/or provided instructions on their websites for the submission of complaints or general concerns by consumers. However, examiners found that the furnishers did provide an address for consumers to send notices about inaccurate credit reporting information.

In response to these findings, furnishers corrected the furnished information for affected consumers. Furnishers also revised website language to specify the address for the submission by consumers of notices relating to inaccurately furnished information.<sup>12</sup>

## 2.2.3 Furnisher duty to correct and update information

Examiners are continuing to find that furnishers are violating the FCRA duty to correct and update furnished information after determining such information is not complete or accurate.<sup>13</sup> In reviews of third-party debt collection furnishers, examiners found that furnishers failed to send updated or corrected information to CRCs after making a determination that information the furnishers had reported was not complete or accurate. For example, examiners found that furnishers continued to report consumer accounts to CRCs with an indication that the dispute investigation was still open when, in fact, the furnisher had determined that the accounts were no longer being investigated after completing their dispute investigations. As a result, furnishers did not promptly notify CRCs of the determination that the accounts were no longer under active dispute investigation and provide CRCs with corrected information that the

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<sup>11</sup> 15 U.S.C. § 1681s-2(a)(1)(A).

<sup>12</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 20, Fall 2019, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-20\\_122019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf).

<sup>13</sup> 15 U.S.C. § 1681s-2(a)(2).

accounts had been corrected or had previously been disputed. In response to these findings, furnishers implemented automated processes to update and provide corrections of account dispute statuses to CRCs upon the completion of dispute investigations.<sup>14</sup>

In addition, in reviews of auto loan furnishers, examiners found that furnishers did not promptly correct or update CRCs following the placement of consumer accounts into retroactive deferments. Upon placing consumer accounts into retroactively applicable deferments, furnishers updated their systems of record to reflect that the accounts did not have any payments due until a deferment began, and therefore had not been delinquent. However, examiners found that furnishers did not send corrections or updates to CRCs indicating that the previously reported delinquencies on such accounts were no longer accurate as a result of the accommodation. In response to these findings, furnishers are conducting lookbacks to identify and furnish corrections to the CRCs in connection with all affected consumer accounts and are implementing internal controls to ensure they promptly furnish such corrections going forward.

## 2.2.4 Furnisher duty to provide notice of delinquency of accounts

Examiners are continuing to find that furnishers are violating the FCRA duty to notify CRCs of the date of first delinquency (DOFD) on applicable accounts.<sup>15</sup> In recent reviews of debt collection furnishers, examiners found that furnishers violated this provision by failing to establish and follow reasonable procedures to report the appropriate DOFD. Examiners found that furnishers were reporting on collections accounts that arose from unpaid utility accounts—accounts typically disconnected several months after the first missed payment causing delinquency before being sent to collections. Examiners found that reasonable procedures would prevent a furnisher from calculating a DOFD that preceded the account going to collections by only a brief window, such as less than 40 days. In response to these findings, the furnishers worked with the original creditors to ensure they received the DOFD from them directly and implemented written policies and procedures and enhanced monitoring and audit to ensure they obtain the correct DOFD and furnish it to CRCs consistent with FCRA requirements.<sup>16</sup>

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<sup>14</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 26, Spring 2022 available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-26\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf).

<sup>15</sup> 15 U.S.C. § 1681s-2(a)(5).

<sup>16</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 22, Summer 2020, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-22\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf).

## 2.2.5 Furnisher duty to establish and implement reasonable policies and procedures concerning the accuracy and integrity of furnished information

Examiners are continuing to find that furnishers are violating the Regulation V duty to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished to a CRC and to consider and incorporate, as appropriate, the guidelines of Appendix E to Regulation V.<sup>17</sup> Recent supervisory reviews identifying violations of the Regulation V requirement for reasonable written policies and procedures include:

- In reviews of auto loan furnishers, examiners found furnishers' policies and procedures did not document the basis on which dispute agents should determine consumer direct disputes reasonably qualify as frivolous or irrelevant.
- Examiners found that furnishing policies and procedures at auto loan furnishers and debt collection furnishers did not provide for adequate document retention. Specifically, furnishers' procedures failed to provide for the maintenance of records for a reasonable period of time in order to substantiate the accuracy of the information furnished that was subject to dispute investigations.
- Examiners also found that furnishers lacked reasonable written policies and procedures establishing and implementing appropriate internal controls regarding the accuracy and integrity of furnished information, such as by implementing standard procedures and verifying random samples of furnished information.

In response to these findings, furnishers are taking corrective actions including developing written policies and procedures regarding the accuracy and integrity of information furnished to CRCs and the proper handling and document retention of information related to consumer disputes.<sup>18</sup>

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<sup>17</sup> 12 C.F.R. § 1022.42(a),(b).

<sup>18</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 26, Spring 2022, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-22\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf).

## 2.2.6 Furnisher duty to conduct reasonable investigations of direct disputes

Examiners are continuing to find that furnishers are violating the Regulation V duty to conduct a reasonable investigation of direct disputes.<sup>19</sup> Recent examples of failures to conduct reasonable investigations of direct disputes include:

- Debt collection furnishers failed to conduct reasonable investigations by neglecting to review relevant, underlying information and documentation. In response to these findings, the furnishers updated policies and procedures to ensure that furnishing dispute investigations are reasonable, complete, and reported within the time periods required by Regulation V.
- Auto furnishers neither conducted reasonable investigations nor sent notices that disputes were frivolous or irrelevant where direct dispute notices may have been prepared by a credit repair organization and such notices contained all of the information needed to conduct a reasonable investigation (*e.g.*, name, address, partial account number, description of information disputed, and explanation of the basis for the dispute). In response to these findings, the furnishers are revising procedures regarding documentation standards and improving training.<sup>20</sup>

## 2.3 Credit Card Account Management

The Bureau assessed the credit card account management operations of several supervised entities for compliance with applicable Federal consumer financial services laws. Examinations of these entities identified violations of Regulation Z and deceptive and unfair acts or practices prohibited by the CFPA.

### 2.3.1 Billing error resolution

Regulation Z contains billing error resolution provisions that a creditor must comply with following receipt of a billing error notice from a consumer. Examiners found that certain entities violated Regulation Z's billing error resolution provisions by:

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<sup>19</sup> 12 C.F.R. § 1022.43(e).

<sup>20</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 22, Summer 2020, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-22\\_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf).

- failing to mail or deliver written acknowledgements to consumers within 30 days of receiving a billing error notice<sup>21</sup>;
- failing to resolve disputes within two complete billing cycles, or no later than 90 days after receiving a billing error notice<sup>22</sup>;
- failing to conduct reasonable investigations after receiving billing error notices;<sup>23</sup>
- failing to provide explanations to consumers after determining that no billing error occurred or that a different billing error occurred from that asserted.<sup>24</sup>

In response to these findings, the relevant entities are implementing plans to improve compliance with Regulation Z's billing error resolution requirements, which include enhanced policies and procedures, monitoring and audit, and training. The entities also are remediating affected consumers.<sup>25</sup>

## 2.3.2 Rate reevaluation violations

Under Regulation Z, as revised to implement the Card Accountability Responsibility and Disclosure (CARD) Act, after increasing a consumer's Annual Percentage Rate (APR or rate), credit card issuers must periodically assess whether it is appropriate to reduce the account's APR.<sup>26</sup> Issuers must first reevaluate each such account no later than six months after the rate increase and at least every six months thereafter until the APR is reduced to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase, or, to a rate that is lower than the rate applicable immediately prior to the increase.<sup>27</sup> In reevaluating each account to determine whether it was appropriate to reduce the account's APR, the issuer must review: (a) the factors on which the rate increase was originally based (hereinafter, the original factors); or, (b) the factors the issuer currently considers when determining the APR applicable to similar, new consumer credit card accounts (hereinafter, the acquisition factors).<sup>28</sup>

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<sup>21</sup> 12 C.F.R. § 1026.13(c)(1).

<sup>22</sup> 12 C.F.R. § 1026.13(c)(2).

<sup>23</sup> 12 C.F.R. § 1026.13(f).

<sup>24</sup> 12 C.F.R. § 1026.13(f)(1).

<sup>25</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 26, Spring 2022 and Issue 25, Fall 2021. These issues are available at:

[https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-25\\_2021-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf) and [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-26\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf).

<sup>26</sup> 12 C.F.R. § 1026.59(a).

<sup>27</sup> 12 C.F.R. § 1026.59(c), (f).

<sup>28</sup> 12 C.F.R. § 1026.59(d)(1).

Examiners found a number of violations of these provisions of Regulation Z. In one set of violations, the creditors failed to consider appropriate factors when performing rate reevaluations. First, in reevaluating accounts subject to default pricing, the creditors used the original factors method, but also used the acquisition rate for new customers as one of the variables in reevaluating these accounts. As such, examiners determined that the creditors improperly mixed original factors and acquisition factors when reevaluating accounts subject to a rate increase. Additionally, if the creditors, after reevaluation, determined that a consumer's rate should be reduced, the rate would be reduced, but not below the higher of the consumer's pre-default interest rate or the lowest current acquisition rate. In response to these findings, the creditors will remediate affected consumers.

Additionally, examiners found that the creditors violated these provisions by failing to evaluate the full rate increase for certain accounts converted from fixed to variable rate. Specifically, for consumer accounts that received a default rate increase and converted from fixed to variable rate, the creditors reevaluated the interest rates using original factors. However, if during the reevaluation period, the variable rate for those accounts increased due to an increase in the prime rate, the creditors did not consider that increase as part of the rate reduction reevaluation. In response to these findings, the creditors agreed to remediate affected consumers.

In a separate set of violations, the creditors failed to reevaluate all credit card accounts subject to the rate reevaluation provisions at least once every six months. For certain accounts, the creditors failed to review the accounts until they reduced the rate to the rate applicable immediately prior to the increase or to a rate that was lower than the rate applicable immediately prior to the increase. For other accounts, the creditors inadvertently excluded recently added accounts from the master list file of accounts with an increased interest rate subject to the rate reevaluation process. Additionally, once the master list file of accounts reached its file size capacity, older accounts were automatically deleted each time new accounts were added to the file. This resulted in monetary harm to consumers who were not included in the creditors' rate reevaluation process and did not receive potential rate reductions. In response to these findings, the creditors will remediate affected consumers and design and implement policies and procedures to ensure compliance.

Finally, examiners found creditors improperly removed accounts from the APR reevaluation process. Specifically, examiners found that the creditors improperly removed consumer accounts from the APR reevaluation process before the consumer had achieved either a comparable APR to what the consumer enjoyed at the time the rate was increased or the current

rate offered to a new customer with similar credit characteristics. In response to these findings, the creditors will remediate affected consumers.<sup>29</sup>

### 2.3.3 Deceptive and unfair marketing, sale, and servicing of add-on products

The CFPA prohibits unfair and deceptive acts or practices.<sup>30</sup> Examiners found that certain entities engaged in deceptive acts or practices in the marketing, sale, and servicing of credit card add-on products to consumers.

Examiners found that the entities engaged in deceptive acts or practices in relation to the marketing, sale, and servicing of credit card add-on products. Specifically, examiners found that the entities misled consumers when their service providers used sales scripts that claimed that self-employed consumers were eligible for the products when they were not; when, in marketing materials, service providers claimed that consumers could cancel the product coverage simply by calling a toll-free number when, instead, they were required to take additional steps to cancel; and when, in live sales calls, service providers claimed that consumers would not be required to pay product premiums for months in which they had a zero balance when, in fact, consumers were required to carry a zero average daily balance for the billing cycle to avoid paying the premium for that month. In each instance, examiners concluded it was reasonable for consumers, under the circumstances, to believe the misrepresentations because the entities' service providers expressly stated them. These acts or practices were material because they likely made consumers more willing to purchase the products than they otherwise would have been.

Examiners also found that the entities engaged in unfair acts or practices in relation to the marketing, sale, and servicing of the credit card add-on products. Specifically, examiners found that the entities treated consumers unfairly when they omitted disclosure of the burdensome administrative requirements that consumers were required to satisfy to submit benefits claims for the product. Examiners also found that the entities treated consumers unfairly when they failed to cancel the products on the date of the consumer's request and failed to issue pro rata refunds based on the date of the request as required by the insurance agreement. Examiners concluded that these acts or practices were unfair because they caused substantial injury to consumers by leading them to purchase a product that was likely of significantly less value than the consumer initially believed. The acts or practices were not reasonably avoidable by

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<sup>29</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 26, Spring 2022, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-26\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf).

<sup>30</sup> 12 U.S.C. §§ 5531 and 5536.



consumers since consumers were unaware of the coverage restrictions because the entities did not disclose those limitations to consumers at the time of purchase and were not outweighed by countervailing benefits to consumers or competition as the acts or practices were injurious in their net effects.<sup>31</sup>

### 2.3.4 Deceptive representations regarding the fixed payment option for automatic withdrawal of the minimum payment due

Examiners found that certain entities engaged in deceptive acts or practices by inaccurately representing to consumers enrolled in their fixed payment option that the entities would withdraw automatically, from the consumer's bank account, an amount equal to the minimum payment due on their credit card account whenever such payment exceeded the fixed amount designated by the consumer. The entities' inaccurate representations about the fixed payment option conveyed false messages to consumers that likely misled them to reasonably believe that the withdrawn payment amount would be increased to satisfy the minimum payment due when such amount was higher than the fixed amount designated by the consumer. These representations are material because they likely induced consumers to enroll in the fixed payment option and led them to believe they did not need to check that they made the minimum payment due. In certain instances, however, the entities failed to withdraw the minimum payment due, and only withdrew the fixed amount, resulting in the consumer failing to pay the minimum payment due. These failures resulted in consumers experiencing late charges, default pricing, and derogatory credit reporting.

In response to these findings, the entities agreed to remediate affected consumers.

## 2.4 Debt Collection

The Bureau has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including very large depository institutions,<sup>32</sup> nonbanks that are larger participants in the consumer debt collection market,<sup>33</sup> and nonbanks that are service providers

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<sup>31</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 16 Summer 2017, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-26\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf).

<sup>32</sup> 12 U.S.C. §5515 (a)-(b).

<sup>33</sup> 12 U.S.C. §5514(a)(1)(B) and 12 C.F.R. §1090.105.

to certain covered persons.<sup>34</sup> Recent examinations of larger participant debt collectors identified violations of the Fair Debt Collection Practices Act (FDCPA).

## 2.4.1 Harassment regarding continued call conversations

During calls with consumers, examiners found that debt collectors engaged in conduct the natural consequence of which was to harass, oppress, or abuse the person with whom they were communicating. In these calls, examiners found that the debt collectors continued to engage the consumers in telephone conversations after the consumers stated that the communication was causing them to feel annoyed, harassed, or abused.

Examiners found that in at least one call, the debt collector continued to engage the consumer after the consumer stated multiple times they were driving and needed to discuss the account at another time. In another instance, examiners found that the debt collector used combative statements and continued the call after the consumer stated they were unemployed, affected by COVID-19, and unable to pay, and even after the consumer clearly stated that the call was “making him agitated”. By continuing the calls after the consumers expressed their desire to no longer engage with the collector, the debt collectors violated the FDCPA’s prohibition against harassing and abusive conduct.<sup>35</sup>

In response to these findings, Supervision directed the debt collectors to enhance their training requirements to ensure compliance with Federal consumer financial law including the FDCPA.

## 2.4.2 Communication with third parties

Examiners found multiple instances in which debt collectors violated the FDCPA by communicating with a person other than the consumer about the consumer’s debt, when the person had a name similar or identical to the consumer.<sup>36</sup>

In response to these findings, Supervision directed the debt collectors to update their identity authentication procedures to ensure that the person with whom the debt collector is communicating is the consumer obligated or allegedly obligated to pay the debt.<sup>37</sup>

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<sup>34</sup> 12 U.S.C. §§5514(e), 5514(d), 5516(e).

<sup>35</sup> 15 U.S.C. § 1692d(5).

<sup>36</sup> 15 U.S.C. §1692c(b).

<sup>37</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 24, Summer 2021, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-24\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf).

## 2.5 Deposits

### 2.5.1 Pandemic relief benefits - unfairness risks

The Bureau conducted prioritized assessments to evaluate how financial institutions handled pandemic relief benefits deposited into consumer accounts, as detailed in the *COVID-19 Prioritized Assessments Special Edition of Supervisory Highlights*, Issue 23.<sup>38</sup> These pandemic relief benefits included enhanced unemployment insurance funds and three rounds of economic impact payments.<sup>39</sup> The Bureau did a broad assessment centered on whether consumers may have lost access to pandemic relief benefits due to financial institutions' garnishment or setoff practices. Generally, requirements around garnishment practices derive from state-specific laws. For one economic impact payment round, Congress mandated nationwide protection from most garnishment orders. Various state and territorial laws may have protected economic impact payments and/or unemployment insurance funds from garnishment or setoff as well.

During the initial deposits prioritized assessments review, examiners identified indicators of risk at over two dozen depository institutions. Examiners then conducted follow-up assessments at these identified institutions. The follow-up prioritized assessments analyzed whether the institutions risked committing an unfair act or practice in violation of the Dodd-Frank Act, in connection with their treatment of pandemic relief benefits.<sup>40</sup>

Examiners identified unfairness risks at multiple institutions due to policies and procedures that may have resulted in one or more of the following practices:

- Using protected unemployment insurance or economic impact payments funds to set off a negative balance in the account into which the benefits were deposited (a.k.a. same-account setoff) or to set off a balance owed to the financial institution on a separate account (a.k.a. cross-account setoff), when such practices were prohibited by applicable state or territorial protections;
- Garnishing protected economic impact payments funds in violation of the Consolidated Appropriations Act of 2021;
- Garnishing protected unemployment insurance or economic impact payments funds in violation of applicable state or territorial protections;

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<sup>38</sup> This edition is available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-23\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf).

<sup>39</sup> Congress issued three rounds of economic impact payments to many consumers under the Coronavirus Aid, Relief, and Economic Security Act; the Consolidated Appropriations Act of 2021; and the American Rescue Plan Act.

<sup>40</sup> 12 U.S.C. § 5531, 5536.

- In connection with out-of-state garnishment orders, processing garnishments in violation of applicable state prohibitions against out-of-state garnishment;<sup>41</sup> and/or
- Failing to apply the appropriate state exemptions to certain consumers' deposit accounts after receiving garnishment notices.<sup>42</sup>

In response to these findings, Supervision directed the institutions to: (i) refund any protected economic impact payments funds that were taken by the institution in connection with improper same-account or cross-account setoffs; (ii) refund any garnishment-related fees assessed to account holders in connection with certain out-of-state garnishment orders; (iii) review, update, and implement policies and procedures to ensure the institution complies with applicable state and territorial protections regarding its garnishment practices, including in connection with the garnishment of unemployment insurance funds, federal benefits, any funds protected by state law where the consumer resides, and in connection with out-of-state garnishment orders; and/or (iv) review, update, and implement policies and procedures to ensure the institution complies with applicable state and territorial protections regarding its setoff practices, including in connection with the setoff of unemployment insurance funds and federal benefits.

These prioritized assessment findings highlight the importance of state and territorial laws that protect consumer funds held in deposit accounts, including critical relief benefits. And it underscores that the failure to comply with applicable state and territorial protections may, under certain circumstances, give rise to unfair acts or practices in violation of the CFPB. One or more cited institutions raised arguments that guidance on preemption meant they need not comply with state or territorial actions. Although preemption of state and territorial laws may apply in certain situations, all depository institutions generally must comply with, among other consumer protections, applicable state and territorial laws that govern garnishment and certain setoff practices.

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<sup>41</sup> A similar practice was recently the subject of a Bureau public enforcement action. This order is available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-10-million-penalty-for-illegal-garnishments/#:~:text=The%20CFPB's%20order%20requires%20Bank,a%20%2410%20million%20civil%20penalty.>

<sup>42</sup> *Id.*

## 2.6 Mortgage Origination

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

### 2.6.1 Reducing loan originator compensation to cover settlement cost increases that were not unforeseen

Regulation Z prohibits compensating mortgage loan originators in an amount that is based on the terms of a transaction or a proxy for the terms of a transaction.<sup>43</sup> This means that a “creditor and a loan originator may not agree to set the loan originator’s compensation at a certain level and then subsequently lower it in selective cases.”<sup>44</sup> The rule, however, permits decreasing a loan originator’s compensation due to unforeseen increases in settlement costs. An increase is unforeseen if it occurs even though the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing person at the time of the estimate.<sup>45</sup> Thus, a loan originator may decrease its compensation “to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or an unforeseen actual settlement cost not disclosed to the consumer pursuant to section 5(c) of RESPA.”<sup>46</sup>

Examiners found that certain entities provided consumers loan estimates based on fee information provided by loan originators. At closing, the entities provided consumers a lender credit when the actual costs of certain fees exceeded the applicable tolerance thresholds. The entities then reduced the amount of compensation to the loan originator after loan consummation by the amount provided to cure the tolerance violation. Examiners determined, however, that the correct fee amounts were known to the loan originators at the time of the initial disclosures, and that the fee information was incorrect as a result of clerical error. Specifically, in each instance, the settlement service had been performed and the loan originator knew the actual costs of those services. The loan originators, however, entered a cost that was completely unrelated to the actual charges that the loan originator knew had been incurred, resulting in information being entered that was not consistent with the best information reasonably available. Accordingly, the unforeseen increase exception did not apply.

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<sup>43</sup> 12 C.F.R. § 1026.36(d)(1)(i).

<sup>44</sup> 12 C.F.R. Part 1026, Supp. I, Comment 36(d)(1)-5.

<sup>45</sup> 12 C.F.R. Part 1026, Supp. I, Comment 36(d)(1)-7.

<sup>46</sup> *Id.*

As a result of these findings, the entities are revising their policies and procedures and providing training to ensure loan originator compensation is not reduced based on a term of a transaction.

## 2.6.2 Deceptive waiver of borrowers' rights in loan security agreements

Regulation Z states that a “contract or other agreement relating to a consumer credit transaction secured by a dwelling ... may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of Federal law.”<sup>47</sup> In light of this provision, examiners previously concluded that certain waiver provisions violate the CFPA’s prohibition on deceptive acts or practices where reasonable consumers would construe the waivers to bar them from bringing Federal claims in court related to their mortgages.<sup>48</sup>

Examiners identified a waiver provision in a loan security agreement that was used by certain entities in one state. The waiver provided that borrowers who signed the agreement waived their right to initiate or participate in a class action. Examiners concluded the waiver language was misleading, and that a reasonable consumer could understand the provision to waive their right to bring a class action on any claim, including federal claims, in federal court. The misrepresentation was material because it was likely to affect whether a consumer would consult with a lawyer or otherwise initiate or participate in a class action involving a federal claim in relation to the loan transaction. Thus, examiners concluded that the waiver provision was deceptive.

In response to these findings, the entities removed the waiver provision from the loan security agreements and sent a notice to affected consumers rescinding and voiding the waiver.<sup>49</sup>

## 2.7 Mortgage Servicing

The Bureau conducted examinations focused on servicers’ actions as consumers experienced financial distress related to the COVID-19 pandemic. In reviewing customer service calls, examiners found that servicers engaged in abusive acts or practices by charging sizable fees for phone payments when consumers were unaware of those fees. Examiners identified unfair acts

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<sup>47</sup> 12 C.F.R. § 1026.36(h)(2).

<sup>48</sup> 12 U.S.C. §§ 5531 and 5536.

<sup>49</sup> The Bureau previously reported similar violations in *Supervisory Highlights*, Issue 24, Summer 2021, available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-24\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf).

or practices and Regulation X policy and procedure violations regarding failure to provide consumers with CARES Act forbearances.<sup>50</sup> Examiners also found that servicers unfairly charged some consumers fees while they were in CARES Act forbearances or failed to maintain policies and procedures reasonably designed to properly evaluate loss mitigation options<sup>51</sup> And servicers made deceptive misrepresentations regarding how to accept deferral offers after forbearance and how to enroll in automatic payment programs when entering a deferral.

## 2.7.1 Charging sizable phone payment fees when consumers were unaware of the fees

Examiners found that servicers engaged in abusive acts or practices by charging sizable phone payment fees when consumers were unaware of the fees, thus taking unreasonable advantage of consumers' lack of understanding of the fees. Servicers charged consumers \$15 fees for making payments by phone with customer service representatives. During calls with consumers, representatives did not disclose the phone pay fees' existence or cost but charged them anyway.

An act or practice is abusive if it “takes unreasonable advantage of ... a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.”<sup>52</sup> Consumers lacked understanding of the material costs of the phone pay fees because servicer representatives failed to inform consumers of the fees during the phone call. And general disclosures, provided prior to making the payment, indicating that consumers “may” incur a fee for phone payments did not sufficiently inform consumers of the material costs. Servicers took unreasonable advantage of this lack of understanding because the cost of the phone pay fee was materially greater than the cost of other payment options and servicers profited from collecting the fees<sup>53</sup> In response to these findings, servicers are reimbursing all consumers who paid phone payment fees when those fees were not disclosed while processing payments over the phone.

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<sup>50</sup> 12 C.F.R. § 1024.38(b)(2)(i), (v).

<sup>51</sup> *Id.*

<sup>52</sup> 12 U.S.C. § 5531(d)(2)(A).

<sup>53</sup> Additionally, failing to disclose the prices of all available phone pay fees when different phone pay options carry materially different fees may be unfair, and failing to disclose that a phone pay fee would be added to a consumer's payment could create the misimpression that there was no service fee and thus be deceptive. For more information, see *CFPB Compliance Bulletin, 2017-01* available at: [https://files.consumerfinance.gov/f/documents/201707\\_cfpb\\_compliance-bulletin-phone-pay-fee.pdf](https://files.consumerfinance.gov/f/documents/201707_cfpb_compliance-bulletin-phone-pay-fee.pdf).

## 2.7.2 Charging illegal fees during CARES Act forbearances

Examiners found that servicers engaged in unfair acts or practices when they charged consumers fees during forbearance plans pursuant to the CARES Act. Section 4022 of the CARES Act prohibits a mortgage servicer from imposing “fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract” on consumers receiving a CARES Act forbearance.<sup>54</sup> Here, the CARES Act establishes a consumer right that provides a baseline for measuring injury. Servicers caused, or were likely to cause, substantial injury to consumers when they imposed illegal fees on their accounts. Consumers could not reasonably avoid the injury because they had no reason to anticipate servicers would impose illegal fees. And charging illegal fees has no benefits to consumers or competition.

In response to these findings, servicers developed remediation plans to compensate injured consumers.

## 2.7.3 Failure to process CARES Act forbearance requests

Examiners found that servicers engaged in unfair acts or practices when they failed to timely honor requests for forbearance from consumers. Section 4022 of the CARES Act provides that if a servicer of a federally backed mortgage loan receives a borrower request for a forbearance, and the borrower attests to a financial hardship caused by the COVID-19 emergency, then the servicer “shall” provide that borrower a forbearance.<sup>55</sup> During the forbearance servicers may not charge fees.<sup>56</sup> Here, the CARES Act establishes a consumer right that provides a baseline for measuring injury. Consumers suffered substantial injury when servicers failed to process forbearances because they did not gain the benefits of forbore payments, and the failure also resulted in additional fees being added to their accounts. Consumers could not reasonably avoid the injury because they had no reason to anticipate that servicers would fail to process their requests for forbearance. And even when consumers realized servicers had failed to process the requests, the servicers sometimes did not correct the errors. The injury was not outweighed by countervailing benefits to consumers or competition.

In response to these findings, servicers developed remediation plans to compensate injured consumers.

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<sup>54</sup> Pub. L. 116-136, § 4022(b)(3), 134 Stat. 281, 490 (Mar. 27, 2020).

<sup>55</sup> Pub. L. 116-136, § 4022(c)(1), 134 Stat. 281, 490 (Mar. 27, 2020).

<sup>56</sup> Pub. L. 116-136, § 4022(b)(3), 134 Stat. 281, 490 (Mar. 27, 2020).



## 2.7.4 Misrepresenting that payment amounts were sufficient to accept deferrals

Examiners found that servicers engaged in deceptive acts or practices by misrepresenting that certain payment amounts were sufficient for consumers to accept deferral offers at the end of their forbearance periods, when in fact, they were not. When consumers were exiting forbearances, servicers sent consumers paperwork allowing them to accept a deferral offer by making a payment. The specified payment amounts were often higher than the consumers' previous monthly payments because of updated escrow payments. When consumers contacted servicer representatives to confirm the payment amount, the representatives expressly represented that consumers' old monthly payment amounts (which were less than the amounts presented in the letters) were sufficient to accept the offer, when in fact, payment of these amounts would not constitute acceptance. It was reasonable for consumers to conclude that servicer representatives would provide accurate information about the payment amount necessary to accept the deferrals. These misrepresentations were material because borrowers acted on them to accept the deferral offers, and they led to improper charges and other negative consequences, precisely the outcome borrowers acted to avoid when contacting servicer representatives.

In response to these findings, servicers agreed to remediate consumers for late charges and improve their training for customer service representatives handling loss mitigation issues.

## 2.7.5 Failing to evaluate consumers for all loss mitigation options and provide accurate information

Regulation X<sup>57</sup> requires servicers to maintain policies and procedures that are reasonably designed to achieve the objectives in 12 CFR 1024.38(b). Commentary to Regulation X clarifies that "procedures" refers to the actual practices followed by the servicer.<sup>58</sup> Under Regulation X,<sup>59</sup> servicers are required to have certain policies and procedures concerning properly evaluating loss mitigation applications. Specifically, servicers' policies and procedures must be reasonably designed to ensure that servicers can provide borrowers with accurate information regarding available loss mitigation options and properly evaluate borrowers who submit applications for all available loss mitigation options that they may be eligible for.<sup>60</sup>

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<sup>57</sup> 12 C.F.R. § 1024.38(a).

<sup>58</sup> 12 C.F.R. § 1024.38(a)-comment 2.

<sup>59</sup> 12 C.F.R. § 1024.38(b)(2).

<sup>60</sup> 12 C.F.R. § 1024.38(b)(2)(i), (v).

Examiners found that some servicers violated Regulation X when they failed to maintain policies and procedures reasonably designed to achieve the objective of properly evaluating loss mitigation applications.<sup>61</sup> For example, servicers' policies and procedures were not reasonably designed to inform consumers of all available loss mitigation options, which resulted in some consumers not receiving information about options, such as deferral, when exiting forbearances. Additionally, servicers' policies and procedures were not reasonably designed to properly evaluate consumers for all available loss mitigation options, resulting in improper denial of deferral options.

In response to these findings, servicers improved relevant training for customer service representatives and refunded late charges that resulted from these practices.

## 2.8 Payday Lending

### 2.8.1 Order violations

Examiners found lenders failed to maintain records of call recordings necessary to demonstrate full compliance with conduct provisions in consent orders generally prohibiting certain misrepresentations. Consent order provisions required creation and retention of all documents and records necessary to demonstrate full compliance with all provisions of the consent orders. Failure to maintain records of such call recordings violated the consent orders and Federal consumer financial law. To facilitate supervision for compliance with the consent orders, Supervision directed the lenders to create and retain records sufficient to capture relevant telephonic communications.

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<sup>61</sup> 12 C.F.R. § 1024.38(b)(2)(i) & (v).

## 3. Supervision Program Developments

### 3.1 Recent Bureau Supervision Program Developments

Set forth below are statements, circulars, advisory opinions, and rules that have been issued since the last regular edition of *Supervisory Highlights*.

#### 3.1.1 CFPB issues circular - adverse action notification requirements in connection with credit decisions based on complex algorithms

On May 26, 2022, the CFPB confirmed in a circular <sup>62</sup> that the Equal Credit Opportunity Act and Regulation B require companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms.

#### 3.1.2 Prohibition on inclusion of adverse information in consumer reports for victims of human trafficking

On June 24, 2022, the CFPB amended Regulation V, which implements the FCRA, to address recent legislation that assists consumers who are victims of trafficking.<sup>63</sup> This final rule establishes a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibits the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information. The Bureau is taking this action as mandated by the National Defense Authorization Act for Fiscal

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<sup>62</sup> The circular is available at: <https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/>.

<sup>63</sup> The final rule is available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra-trafficking\\_final-rule\\_2022-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra-trafficking_final-rule_2022-06.pdf).

Year 2022 to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

### 3.1.3 Advisory opinion on debt collectors' collection of pay-to-pay fees

On June 29, 2022, CFPB issued an advisory opinion<sup>64</sup> to affirm that the FDCPA and Regulation F prohibit debt collectors from charging consumers pay-to-pay fees (also known as convenience fees) for making payment a particular way, such as by telephone or online, unless those fees are expressly authorized by the underlying agreement or are affirmatively permitted by law.

### 3.1.4 CFPB issues advisory to protect privacy when companies compile personal data

On July 7, 2022, the CFPB issued an advisory opinion<sup>65</sup> to ensure that companies that use and share credit reports and background reports have a permissible purpose under the FCRA. The CFPB's new advisory opinion makes clear that credit reporting companies and users of credit reports have specific obligations to protect the public's data privacy and affirms that a consumer reporting agency may not provide a consumer report to a user under FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. The advisory also reminds covered entities of potential criminal liability for certain misconduct.

### 3.1.5 CFPB issues circular on insufficient data protection or security for sensitive consumer information

On August 11, 2022, the CFPB confirmed in a circular<sup>66</sup> that financial companies may violate Federal consumer financial protection law when they fail to safeguard consumer data.

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<sup>64</sup> The advisory opinion is available at: <https://www.consumerfinance.gov/rules-policy/final-rules/advisory-opinion-on-debt-collectors-collection-of-pay-to-pay-fees/>.

<sup>65</sup> The advisory opinion is available at: <https://www.consumerfinance.gov/rules-policy/final-rules/fair-credit-reporting-permissible-purposes-for-furnishing-using-and-obtaining-consumer-reports/>.

<sup>66</sup> The circular is available at: <https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/>.

### 3.1.6 CFPB issues circular on debt collection credit reporting practices involving invalid nursing home debts

On September 8, 2022, the CFPB issued a circular<sup>67</sup> confirming that debt collection and consumer reporting practices related to nursing home debts that are invalid under the Nursing Home Reform Act, can violate the FDCPA and the FCRA.

### 3.1.7 Advisory opinion on fair credit reporting; facially false data

On October 20, 2022, the CFPB issued an advisory opinion<sup>68</sup> to highlight that a consumer reporting agency that does not implement reasonable internal controls to prevent the inclusion of facially false data, including logically inconsistent information, in consumer reports it prepares is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the FCRA.

### 3.1.8 CFPB issues circular on overdraft fee assessment practices

On October 26, 2022, the CFPB issued a circular<sup>69</sup> about overdraft-related fee practices that are likely unfair under existing law. The circular highlighted financial institution practices regarding unanticipated overdraft fees and provided some examples of those practices that might trigger liability. While not an exhaustive list, these examples concerned “authorize positive, settle negative” transactions.

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<sup>67</sup> The circular is available at: <https://www.consumerfinance.gov/compliance/circulars/circular-2022-05-debt-collection-and-consumer-reporting-practices-involving-invalid-nursing-home-debts/>.

<sup>68</sup> The advisory opinion is available at: <https://www.consumerfinance.gov/rules-policy/final-rules/advisory-opinion-on-fair-credit-reporting-facially-false->

<sup>69</sup> The circular is available at: <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/>.

### 3.1.9 CFPB issues bulletin regarding unfair returned deposited item fee assessment practices

On October 26, 2022, the CFPB issued a bulletin<sup>70</sup> stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

### 3.1.10 CFPB issues FCRA dispute resolution circular

On November 10, 2022, the CFPB issued a circular<sup>71</sup> to affirm that neither consumer reporting companies nor information furnishers can skirt dispute investigation requirements under the FCRA. The circular affirms that consumer reporting companies and furnishers are not permitted under the FCRA to impose obstacles that deter submission of disputes and that consumer reporting companies must promptly provide to the furnisher all relevant information regarding the dispute that the consumer reporting agency receives from the consumer.

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<sup>70</sup> The bulletin is available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_returned-deposited-item-fee-assessment-practice\\_compliance-bulletin\\_2022-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf).

<sup>71</sup> The circular is available at: <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/>.

## 4. Remedial Actions

### 4.1 Public Enforcement Actions

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

#### 4.1.1 Regions Bank

On September 28, 2022, the CFPB ordered Regions Bank to pay \$50 million into the CFPB's victims relief fund and to refund at least \$141 million to consumers harmed by its illegal surprise overdraft fees.<sup>72</sup> Until July 2021, Regions charged customers surprise overdraft fees on certain ATM withdrawals and debit card purchases. The bank charged overdraft fees even after telling consumers they had sufficient funds at the time of the transactions. The CFPB also found that Regions Bank leadership knew about and could have discontinued its surprise overdraft fee practices years earlier, but they chose to wait while Regions pursued changes that would generate new fee revenue to make up for ending the illegal fees.

This is not the first time Regions Bank has been caught engaging in illegal overdraft abuses. In 2015, the CFPB found that Regions had charged \$49 million in unlawful overdraft fees and ordered Regions to make sure that the fees had been fully refunded and pay a \$7.5 million penalty for charging overdraft fees to consumers who had not opted into overdraft protection and to consumers who had been told they would not be charged overdraft fees.<sup>73</sup>

#### 4.1.2 Trident Mortgage Company, LP

On July 27, 2022, the CFPB and U.S. Department of Justice (DOJ) took action to end Trident Mortgage Company's intentional discrimination against families living in majority-minority neighborhoods in the greater Philadelphia area. The CFPB and DOJ allege Trident redlined majority-minority neighborhoods through its marketing, sales, and hiring actions. Specifically, Trident's actions discouraged prospective applicants from applying for mortgage and refinance loans in the greater Philadelphia area's majority-minority neighborhoods. On September 14,

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<sup>72</sup> The consent order is available at:

[https://files.consumerfinance.gov/f/documents/cfpb\\_Regions\\_Bank-Consent-Order\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-Consent-Order_2022-09.pdf).

<sup>73</sup> The consent order is available at: [https://files.consumerfinance.gov/f/201504\\_cfpb\\_consent-order\\_regions-bank.pdf](https://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf).

2022, the court entered the consent order <sup>74</sup> that, among other things, requires Trident to pay a \$4 million civil penalty to the CFPB to use for the CFPB's victims' relief fund. The Attorneys General of Pennsylvania, New Jersey, and Delaware also finalized concurrent actions.

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<sup>74</sup> The consent order is available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_trident-consent-order\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_trident-consent-order_2022-09.pdf).