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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights: Fall 2016

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights; notice.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is issuing its thirteenth edition of its Supervisory Highlights. In this issue of *Supervisory Highlights*, we report examination findings in the areas of auto originations, automobile loan servicing, debt collection, mortgage origination, student loan servicing, and fair lending. As in past editions, this report includes information about a recent public enforcement action that was a result, at least in part, of our supervisory work. The report also includes information on recently released examination procedures and Bureau guidance.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on October 31, 2016.

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SUPPLEMENTARY INFORMATION:

1. Introduction

In this thirteenth edition of *Supervisory Highlights*, the Consumer Financial Protection Bureau (CFPB) shares recent supervisory observations in the areas of automobile loan origination, automobile loan servicing, debt collection, mortgage origination, mortgage servicing, student loan servicing and fair lending. The findings reported here reflect information obtained from supervisory activities completed during the period under review. Corrective actions regarding certain matters remain in process at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance with Federal consumer financial laws. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, such as refunding moneys, paying of restitution, or taking other remedial actions. Recent supervisory resolutions have resulted in total restitution payments of approximately $11.3 million to more than 225,000 consumers during the review period. Additionally, CFPB's supervisory activities have either led to or supported two recent public enforcement actions, resulting in over $28 million in consumer remediation and an additional $8 million in civil money penalties.

This report highlights supervision-related work generally completed between May 2016 and August 2016 (unless otherwise stated), though some completion dates may vary. Please submit any questions or comments to CFPB_Supervision@cfpb.gov

2. Supervisory Observations

Recent supervisory observations are reported in the areas of automobile loan origination, automobile loan servicing, debt collection, mortgage origination, mortgage servicing and student loan servicing. Worthy of note are the beneficial practices centered on good compliance management systems (CMS) found during the period under review in the areas of automobile loan origination (2.1.1), debt collection (2.3.7), and mortgage origination (2.4.1).

2.1 Automobile origination

The Bureau's rule defining larger participants in the auto loan market went into effect in August 2015.[1] The consequence was that the Bureau now has supervisory authority over auto lending not only by the largest banks, but also by various other large financial companies. Examinations completed in the period under review focused on assessing CMS and automobile financing practices to determine whether entities are complying with applicable Federal consumer financial laws.

2.1.1 CMS Strengths

During the period under review at one or more entities, examiners determined that the overall CMS of their automobile loan origination business was strong for its size, risk profile, and operational complexity. These institutions effectively identified inherent risks to consumers and managed consumer compliance responsibilities. They maintained: strong board and management oversight; policies and procedures to address compliance with all applicable Federal consumer financial laws relating to automobile loan origination; current and complete compliance training designed to reinforce policies and procedures; adequate internal controls and monitoring processes with timely corrective actions where appropriate; and processes for appropriately escalating and resolving consumer complaints and analyzing them for root causes, patterns or trends.

These entities also showed strength in their oversight programs for service providers. In particular, they defined processes that outlined the steps to assess due diligence information, and their oversight programs varied commensurate with the risk and complexity of the processes or services provided by the relevant service providers.

2.1.2 CMS deficiencies

[1] 12 CFR 1090.108.

Despite improvements at a number of other entities, examiners found that the overall CMS at one or more entities remained weak. These weaknesses included failure to: create and implement consumer compliance-related policies and procedures; develop and implement compliance training; perform adequate root cause analysis of consumer complaints to address underlying issues identified through complaints; and adequately oversee service providers.

Also, the board of directors and management failed to: demonstrate clear expectations about compliance; have an adequate compliance audit program; adopt clear policy statements regarding consumer compliance; and ensure that compliance-related issues are raised to the entity's board of directors or other principals.

The relevant financial institutions have undertaken remedial and corrective actions regarding these weaknesses, which are under review by the Bureau.

2.2 Automobile Loan Servicing

The Bureau began supervising nonbank auto loan servicing companies after the rule defining larger participants came into effect in August 2015. In addition to automobile loan originations, the Bureau is examining auto loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] As in all applicable markets, Supervision also reviews practices related to furnishing of consumer information to consumer reporting agencies for compliance with the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V. In the Bureau's recent auto servicing examinations, examiners have identified unfair practices relating to repossession fees.

2.2.1 Repossession Fees and Refusal to Return Property

[2] 12 USC 5514(a)(1)(B).

To secure an auto loan, a borrower gives a creditor a security interest in his or her vehicle. When a borrower defaults, the creditor can exercise its right under the contract and repossess the secured vehicle. Depending upon state law and the contract with the consumer, auto loan servicers may in certain cases charge the borrower for the cost of repossessing the vehicle.

Borrowers often have personal property and belongings in vehicles that are repossessed. These items often are not merely incidental, but can be of substantial emotional attachment or practical importance to borrowers, which are not appropriate matters for the creditor to decide for itself. State law typically requires auto loan servicers and repossession companies to maintain borrowers' property so that it may be returned upon request. Some companies charge borrowers for the cost of retaining the property.

In one or more recent exams, Supervision found that companies were holding borrowers' personal belongings and refusing to return the property to borrowers until after the borrower paid a fee for storing the property. If borrowers did not pay the fee before the company was no longer obligated to hold on to the property under state law (often 30-45 days), the companies would dispose of the property instead of returning it to the borrower and add the fee to the borrowers' balance.

CFPB examiners concluded that it was an unfair practice to detain or refuse to return personal property found in a repossessed vehicle until the consumer paid a fee or where the consumer requested return of the property, regardless of what the consumer agreed to in the contract. Even when the consumer agreements and state law may have supported the lawfulness of charging the fee, examiners concluded there were no circumstances in which it was lawful to refuse to return property until after the fee was paid, instead of simply adding the fee to the borrower’s balance as companies do with other repossession fees. Examiners observed circumstances in which this tactic of leveraging personal situations for collection purposes was extreme, including retention of tools essential to the consumer’s livelihood and retention of personal possessions of negligible market value but of substantial emotional attachment or practical importance for the consumer.

Examiners also found that in some instances, one or more companies were engaging in the unfair practice of charging a borrower for storing personal property found in a repossessed vehicle when the consumer agreement disclosed that the property would be stored, but not that the borrower would need to pay for the storage. In these instances, based on the consumer contracts, it was unfair to charge these undisclosed fees at all.

In response to examiners’ findings, one or more companies informed Supervision that it ceased charging borrowers to store personal property found in repossessed vehicles. In Supervision’s upcoming auto loan servicing exams, examiners will be looking closely at how companies engage in repossession activities, including whether property is being improperly withheld from consumers, what fees are charged, how they are charged, and the context of how consumers are being treated to determine whether the practices were lawful.

2.3 Debt Collection

The Bureau examines certain bank creditors that originate and collect their own debt, as well as nonbanks that are larger participants in the debt collection market. During recent examinations, the Bureau’s examiners have identified several violations of the Fair Debt Collection Practices Act (FDCPA), including charging consumers unlawful convenience fees, making several false representations to consumers, and unlawfully communicating with third parties in connection with the collection of a debt. Additionally, examiners have identified several violations of the FCRA, including failing to investigate indirect disputes, and having inadequate furnishing policies and procedures. Examiners also observed a beneficial practice that involved using collections scripts and guides to improve compliance when communicating with consumers.

2.3.1 Unlawful fees

Prior editions of *Supervisory Highlights* noted that the FDCPA limits situations where a debt collector may impose convenience fees.[3] Under Section 808(1) of the FDCPA,[4] a debt collector may not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. In one or more exams, examiners observed that one or more debt collectors charged consumers a "convenience fee" to process payments by phone and online. Examiners determined that this convenience fee violated Section 808(1) where the consumer's contract does not expressly permit convenience fees and the applicable state's law was silent on whether such fees are permissible. Additionally, under section 807(2)(B) of the FDCPA,[5] a debt collector may not make false representations of compensation which may be lawfully received by the debt collector. Examiners determined that collectors who demanded these unlawful fees, stated that the fees were "nonnegotiable," or withheld information from consumers about other avenues to make payments that would not incur the fee after the consumer requested such information violated section 807(2)(B) of the FDCPA.

Supervision also found that one or more debt collectors violated section 808(1) of the FDCPA by charging collection fees in states where collection fees were prohibited or in states

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[3] CFPB, *Supervisory Highlights*, 2.2.1 (Fall 2014).

[4] 15 USC 1692f(1).

[5] 15 USC 1692e(2)(B).

that capped collection fees at a threshold lower than the fees that were charged. Examiners also observed a CMS weakness at one or more collectors that had not maintained any records showing the relationship between the amount of the collection fee and the cost of collection.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.2 False representations

Section 807(10) of the FDCPA[6] prohibits debt collectors from using any false representation or deceptive means to collect a debt or obtain information concerning a consumer. At one or more debt collectors, examiners identified collection calls where employees purported to assess consumers' creditworthiness, credit scores, or credit reports, which were misleading because collectors could not assess overall borrower creditworthiness. Collectors also misled consumers by representing that an immediate payment would need to be made in order to prevent a negative impact on consumers' credit.

In one or more instances, examiners observed that collectors had impersonated consumers while using the relevant creditors' consumer-facing automated telephone system to obtain information about the consumer's debt. Examiners concluded that this constituted a false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

On one or more collection calls, examiners heard collectors tell consumers that the ability to settle the collection account was revoked or would expire. Examiners determined that these statements were false or were a deceptive means to collect a debt because the consumers still had

[6] 15 USC 1692e(10).

the ability to settle. The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.3 Communication with third parties

Section 805 of the FDCPA[7] prohibits debt collectors from communicating in connection with the collection of a debt with persons other than the consumer, unless the purpose is to acquire information about the consumer's location. Under section 804 of the FDCPA,[8] when communicating with third parties to acquire information about the consumer's location, a collector is prohibited from disclosing the name of the debt collection company unless the third party expressly requests it.

At one or more debt collectors, examiners identified several instances where collectors disclosed the debt owed by the consumer to a third party. These third-party communications were often caused by inadequate identity verification during telephone calls. Additionally, examiners observed several instances where collectors identified their employers to third parties without first being asked for that information by the third party.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.4 Furnishing policies and procedures

Regulation V[9] requires a furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished to consumer

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[7] 15 USC 1692c(b).

[8] 15 USC 1692b(1).

[9] 12 CFR 1022.42(a).

reporting agencies. Furnishers must consider the guidelines in Appendix E to Regulation V[10] in developing their policies and procedures and incorporate those guidelines that are appropriate. Examiners observed that one or more entities failed to provide adequate guidance and training to staff regarding differentiating FCRA disputes from general customer inquiries, complaints, or FDCPA debt validation requests. As a result, employees could not review the historic records of FCRA disputes or perform effective root cause analyses of disputes.

Supervision directed one or more entities to develop and implement reasonable policies and procedures to ensure that direct and indirect disputes are appropriately logged, categorized, and resolved. In addition, Supervision directed one or more entities to develop and implement a training program appropriately tailored to employees responsible for logging, categorizing, and handling FCRA direct and indirect disputes.

2.3.5 FCRA Dispute Handling

Section 623(b)(1) of the FCRA[11] requires furnishers to conduct investigations and report the results after receiving notice of a dispute from a consumer reporting agency. Examiners determined that one or more debt collectors never investigated indirect disputes that lacked detail or were not accompanied by attachments with relevant information from the consumer, in violation of Section 623(b)(1) of the FCRA.

For disputes that consumers make directly with furnishers under Section 1022.43(f)(3) of Regulation V, furnishers are required to provide the consumer with a notice of determination if a direct dispute is determined to be frivolous. The notice of determination must include the reasons for such determination and identify any information required to investigate the disputed

[10] 12 CFR 1022, App. E.

[11] 15 USC 1681s-2(b)(1).

information. At one or more debt collectors, examiners observed that for disputes categorized as frivolous, the notices did not say what the consumer needed to provide in order for the collector to complete the investigation. The relevant entities have undertaken remedial and corrective actions regarding these violations; the matters are under review by the Bureau.

2.3.6 Regulation E authorization for preauthorized electronic fund transfers

Regulation E[12] requires companies to provide consumers with a copy of the authorization for preauthorized electronic fund transfers.[13] Examiners found that one or more debt collectors failed to provide consumers with a copy of the terms of the authorization, either electronically or in paper form. Some of the debt collectors instead sent consumers a payment confirmation notice before each electronic fund transfer. This notice did not describe the recurring nature of the preauthorized transfers from the consumer's account, such as by describing the timing and amount of the recurring transfers. Examiners found that the payment confirmation notices did not meet Regulation E's requirement to send consumers a written copy of the terms of the authorization.

Supervision directed one or more entities to revise their policies and procedures to ensure compliance with the requirement to provide consumers with a copy of the authorization as required by Regulation E. Supervision also directed the debt collectors to modify their training and monitoring to reflect this change and to prevent future violations of Regulation E.

2.3.7 Effective and beneficial use of scripts and guides in compliance with FDCPA

Debt collection calls must comply with the FDCPA and any applicable state laws and regulations. At one or more entities, exam teams observed a well-established,

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[12] 12 CFR 1005.10(b).

[13] *See* CFPB Compliance Bulletin 2015-06, *available at* http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-consumer-authorizations-preauthorized-EFT/.

formal compliance program that met CFPB's supervisory expectations. In particular, agents were supplied with guides and scripts to improve adherence to compliance policies. Script adherence was regularly monitored and infractions led to salary/bonus reductions. Additionally, compliance personnel analyzed trends of violations, conducted root cause analyses, and escalated identified violation trends to management for proposed changes to policies and procedures. Examiners found that, as a result, collection agents at one or more entities consistently followed collection scripts which led to greater compliance.

2.4 Mortgage origination

The Bureau continues to examine entities' compliance with provisions of the CFPB's Title XIV rules,[14] existing Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA)[15] disclosure provisions,[16] and other applicable Federal consumer financial laws. Examiners also evaluate entities' CMS.

2.4.1 CMS Strengths

During the period under review at one or more institutions, examiners determined that the overall CMS was strong for the size, risk profile, and operational complexity of their mortgage origination business. Board and management took an active role in reviewing and approving policies and procedures; the compliance program addressed compliance with applicable Federal consumer financial laws; training was tailored to the institutions' job functions and was updated

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[14] These Title XIV rules include the Loan Originator Rule (12 CFR 1026.36), the Ability to Repay rule (12 CFR 1026.43), and rules reflecting amendments to the Equal Credit Opportunity Act and Truth in Lending Act regarding appraisals and valuations (12 CFR 1002.14 and 12 CFR 1026.35).

[15] TILA is implemented by Regulation Z and RESPA by Regulation X.

[16] These mortgage origination examination findings cover a period preceding the effective date of the Know Before You Owe Integrated Disclosure Rule. The disclosures reviewed in these exams are the Good Faith Estimate (GFE), the Truth in Lending disclosure, and the HUD-1 form.

and delivered annually; the monitoring function adapted to changes and took corrective action to address deficiencies; institutions had policies and procedures that established clear expectations for timely handling and resolution of complaints and analyzed the root causes of complaints; and audit programs that were comprehensive and independent of the compliance program and business functions.

2.4.2 CMS deficiencies

Despite the identified strengths at one or more institutions, examiners concluded that the overall mortgage origination CMS at one or more other institutions was weak because it allowed violations of Regulations G, N, X, and Z to occur. For example, one or more institutions did not conduct compliance audits of mortgage origination activities, had weak oversight of service providers, and had not implemented procedures for establishing clear expectations to adequately mitigate the risk of harm arising from third-party relationships. Supervision directed the entities' management to take corrective action.

2.4.3 Failure to verify total monthly income in determining ability to repay

Regulation Z requires creditors to make a reasonable and good faith determination of a consumer's ability to repay (ATR) at or before consummation.[17] Accordingly, Regulation Z sets forth eight factors a creditor must consider[18] when making the required ATR determination.[19] A creditor must verify the information that will be relied upon in determining the consumer's

[17] 12 CFR 1026.43(c)(1).

[18] One of the eight factors, the consumer's current employment status under 12 CFR 1026.43(c)(2)(ii), is conditional and considered if the creditor relies on income from the consumer's employment.

[19] 12 CFR 1026.43(c)(2)(i)-(c)(2)(viii).

repayment ability and this verification must be specific to the individual consumer.[20] One factor Regulation Z requires a creditor to consider is the consumer's current or reasonably expected income or assets.[21] Another factor a creditor must consider is the consumer's monthly debt-to-income (DTI) ratio or residual income. Regulation Z outlines how to calculate the monthly DTI ratio, residual income, and the total monthly income.[22] Total monthly income [23] used to calculate the consumer's monthly debt-to-income ratio or residual income must be verified using third-party records that provide reasonably reliable evidence of the consumer's income or assets, specific to the individual consumer.[24] Whether the creditor considers the consumer's current or reasonably expected income or the consumer's assets, a creditor remains obligated to consider the consumer's monthly DTI ratio or residual income in accordance with Regulation Z. This means that a creditor must verify the income that it relies on in considering the monthly DTI ratio or residual income.[25]

In one or more instances, supervised entities offered mortgage loan programs that accepted alternative income documentation for salaried consumers as part of their underwriting requirements. According to the supervised entities, they relied primarily on the assets of each consumer when making an ATR determination, but also established a maximum monthly DTI

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[20] 12 CFR 1026.43(c)(3); Official Interpretation to 43(c)(3)-1 [Verification Using Third-Party Records – Records Specific to the Individual Consumer]. Records a creditor uses for verification under § 1026.43(c)(3) and (4) must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average wages paid by the consumer's employer, for example, are not specific to the individual consumer and are not sufficient for verification.

[21] 12 CFR 1026.43(c)(2)(i).

[22] 12 CFR 1026.43(c)(2)(vii); (c)(7).

[23] 12 CFR 1026.43(c)(7)(i)(B).

[24] 12 CFR 1026.43(c)(3); (c)(4); Official Interpretations to 43(c)(3)-1 and 43(c)(4)-1.

[25] 12 CFR 1026.43(c)(2)(i),(vii).

ratio in their underwriting policies and procedures.[26] For these loans, examiners confirmed the assets were verified using reasonably reliable third-party records such as financial institution records. However, examiners found that the income disclosed on the application to calculate the consumer's monthly DTI ratio was not verified, but instead was tested for reasonableness using an internet-based tool that aggregates employer data and estimates income based upon each consumer's residence zip code address, job title, and years in their current occupation.

Supervision concluded that this practice of failing to properly verify the consumer's income relied upon in considering and calculating the consumer's monthly DTI ratio violated ATR requirements.[27] Supervision directed these supervised entities to revise their underwriting policies and procedures in order to comply with the consideration, calculation, and verification of income requirements concerning the consumer's monthly DTI ratio or residual income when making the consumer's repayment ability determination.

2.4.4 Failure to provide timely disclosures

Creditors are required to provide several disclosures to consumers no later than three business days after receiving a consumer's application for a close-end loan secured by a first lien on a dwelling. For examinations covering the period prior to the October 3, 2015, effective date for the Know Before You Owe mortgage disclosure rule, these disclosures included a written notice of the consumer's right to receive a copy of all written appraisals developed in connection with the application,[28] and a good faith estimate (GFE) of settlement costs.[29] Creditors were also required to provide a clear and conspicuous written list of homeownership counseling

[26] The originated loans in these programs were not designated by the supervised entities as qualified mortgage loans.

[27] 12 CFR 1026.43(c)(2)(vii), (c)(4), and (c)(7).

[28] 12 CFR 1002.14(a)(2).

[29] 12 CFR 1024.7(a)(1).

organizations.[30] One or more institutions failed to provide these disclosures within three business days after receiving the consumer's application. The institutions agreed to strengthen their monitoring and corrective action functions to address the timeliness of disclosures.

2.4.5 Failure to ensure that loan originators are properly licensed or registered under the applicable SAFE Act regulation

Regulation Z requires that loan originator organizations ensure that, before individuals who work for them act as loan originators in consumer credit transactions, they must be licensed or registered as required by the SAFE Act, its implementing Regulations G and H, and state SAFE Act implementing law.[31] One or more Federally-regulated depository institutions used employees of a staffing agency to originate loans on their behalf. These employees were improperly registered in the National Multistate Licensing System and Registry (NMLSR) as employees of the depository institutions. The staffing agency was not a Federally-regulated depository, and its employees were not eligible to register under Regulation G; instead, their eligibility was governed by Regulation H and applicable state law. Supervision directed the institutions to discontinue the practice of using employees of third parties who are not properly registered or licensed.

2.5 Student loan servicing

The Bureau continues to examine Federal and private student loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. In the Bureau's recent student loan servicing examinations, examiners identified a number of unfair or deceptive acts or practices.

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

[31] 12 CFR 1026.36(f)(2).

2.5.1 Income-driven repayment plan applications

Borrowers with Federal loans are eligible for specific income-driven repayment (IDR) plans that allow them to lower their monthly payments to an affordable amount based on their monthly income.[32] In response to a request for information last year, the Bureau heard from a significant number of consumers and commenters that borrowers are encountering problems when attempting to enroll and apply for IDR plans.[33] In August of this year, the Bureau issued a midyear update on student loan complaints. The report notes that the Bureau has received complaints on issues relating to enrollment in IDR plans since the Bureau began accepting Federal student loan servicing complaints.[34]

During one or more recent exams of student loan servicers, examiners determined that servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis. When servicers fail to approve valid IDR applications, borrowers can be injured by having to make higher payments, losing months that would count towards loan forgiveness, or being subjected to unnecessary interest capitalization.

In light of this unfair practice, Supervision has directed one or more servicers to remedy borrowers who were improperly denied, and significantly enhance policies and procedures to promptly follow up with consumers who submit applications that are incomplete, prioritize applications that are approaching recertification deadlines, and implement a monitoring program to rigorously verify the accuracy of IDR application decisions. Servicers seeking guidance on

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[32] *See* https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven.

[33] *See* Consumer Financial Protection Bureau, Student Loan Servicing: Analysis of public input and recommendations for reform, pg. 27-38 (September 2015), *available at* http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[34] Consumer Financial Protection Bureau, Midyear update on student loan complaints: Income-driven repayment plan application issues (Aug. 2016), *available at* http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

how to improve IDR application processing may wish to refer to the policy memo published by the Department of Education on July 20, 2016.[35]

2.5.2 Borrower choice for payment allocation

Supervision has continued to identify unfair practices relating to how servicers provide borrower choice on allocating payments among multiple loans.[36] Borrowers often have to take out multiple student loans to pay for school, and servicers usually manage multiple student loans by compiling them into one account, billing statement, and/or consumer profile. But borrowers generally retain the right to choose how their payments are allocated among the discrete student loan obligations.

In one or more recent exams, Bureau examiners cited servicers for the unfair practice of failing to provide an effective choice on how payments should be allocated among multiple loans where the lack of choice can cause a financial detriment to consumers. One or more servicers failed to provide an effective choice by, for example, not giving borrowers the ability to allocate payments to individual loans in certain circumstances, not effectively disclosing that borrowers have the ability to provide payment instructions, or not effectively disclosing important information (like the allocation methodology used when instructions are not provided).

Examiners have found that failing to provide borrowers with an effective choice on how to allocate payments can result in financial detriment when a servicer allocates payments proportionally among all loans absent payment instructions from the borrower. For payments that exceed a borrower's monthly payment, borrowers may wish to allocate funds to loans with

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[35] Under Secretary Ted Mitchell, POLICY DIRECTION ON STUDENT LOAN SERVICING, pg. 20-22 (July 20, 2016), *available at* http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

[36] *See* CFPB, *Supervisory Highlights*, 2.5.1 (Fall 2014), *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf; CFPB, *Supervisory Highlights*, 2.5.1 (Fall 2015), *available at* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

higher interest rates instead of a default proportional allocation. For payments that are lower than a borrower's monthly payment, borrowers may wish to allocate funds in a manner that minimizes late fees, interest accrual, or the severity of delinquency, or in other manners, rather than proportionally allocating the underpayment.

After finding this unfair practice, the Bureau directed one or more servicers to hire an independent consultant to conduct user testing of servicer communications in order to improve how the communications describe the basic principles of the servicer's payment allocation methodologies, as well as the consumer's ability to provide payment instructions. Servicers seeking guidance on how to improve their billing statements, websites, or allocation methodologies may wish to consider the applicable content in the Department of Education's recent policy memo.[37]

2.5.3 Communications relating to paid-ahead status

When borrowers submit a payment in an amount that would cover the current month's payment and at least another monthly payment, servicers apply the excess funds immediately to accrued interest and principal. Unless borrowers choose otherwise, servicers also typically advance the due date such that $0 is billed in the months that were covered by the extra funds from the overpayment.[38] These loans are considered to be "paid ahead," and borrowers don't have to make payments when they are billed $0. However, a significant amount of accrued interest can accumulate during a paid ahead period, depending on how long the borrower doesn't pay, because interest continues to accrue. When borrowers resume making monthly payments

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[37] Under Secretary Ted Mitchell, POLICY DIRECTION ON STUDENT LOAN SERVICING, pg. 27-36 (July 20, 2016), *available at* http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

[38] Regulation requires servicers to advance the due date, unless the borrower instructs otherwise, for Federal loans. 34 CFR 682.209(b); 34 CFR 685.211(a).

on a loan, their payments must be applied to that accumulated interest before any money is used to pay down principal on that loan.

On one or more occasions, Supervision cited a student loan servicer for a deceptive practice relating to how the servicer describes what the consumer owes and when. Supervision concluded that one or more servicers' billing statements could have misled reasonable borrowers to believe additional payments during *or after* a paid-ahead period would be applied largely to principal. The bills noted that $0.00 was due in months that the borrower was paid ahead, but misled consumers as to how much interest would accrue or had accrued, and how that would affect the application of consumers' payments when the borrower began making payments again.

After finding this deceptive practice, the Bureau directed one or more servicers to hire an independent consultant to conduct user testing of servicer communications to improve how the servicer communicates about these concepts. Servicers seeking guidance on what to include in their billing statements may wish to consider the applicable content in the Department of Education's recent policy memo.[39]

2.5.4 System errors

Supervision continues to identify systems errors impacting student loan borrowers.[40] For example, examiners found a data error affecting thousands of Federal loan accounts that caused borrowers' next-to-last payment to be significantly smaller, contrary to consumers' repayment plans. Because borrowers were not billed amounts that would add up to cover the whole balance in accordance with the borrower's repayment plan, the borrower continued to be billed small

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[39] Under Secretary Ted Mitchell, POLICY DIRECTION ON STUDENT LOAN SERVICING, pg. 35-36 (July 20, 2016), *available at* http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

[40] *See* CFPB, *Supervisory Highlights*, 2.5.2 (Fall 2015), *available at* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

amounts for months or years, increasing the total amount of interest that accrued. On one or more occasions, examiners cited this practice as unfair, and directed the servicer to remediate consumers and fix the data corruption for borrowers who had not yet reached the next-to-last payment.

3. Fair lending

3.1 Provision of language services to limited English proficient (LEP) consumers

The Dodd-Frank Act, the Equal Credit Opportunity Act (ECOA),[41] and Regulation B mandate that the Office of Fair Lending and Equal Opportunity (Office of Fair Lending) "ensure the fair, equitable, and nondiscriminatory access to credit"[42] and "promote the availability of credit."[43] Consistent with that mandate, the CFPB, including through its Office of Fair Lending, continues to encourage lenders to provide assistance to consumers with limited English proficiency (LEP consumers).[44] Financial institutions may provide access to credit in languages other than English in a manner that is beneficial to consumers as well as the institution, while taking steps to ensure their actions are compliant with ECOA and other applicable laws.

3.1.1 Supervisory observations

In the course of conducting supervisory activity, examiners have observed one or more financial institutions providing services in languages other than English, including to consumers

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[41] 12 USC 1691 *et seq.*

[42] 12 USC 5493(c)(2)(A).

[43] 12 CFR 1002.1(b).

[44] According to recent American Community Survey estimates, there are approximately 25 million people in the United States who speak English less than "very well." 2010-2014 American Community Survey 5-Year Estimates, Language Spoken at Home, *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1601&prodType=table.

with limited English proficiency,[45] in a manner that did not result in any adverse supervisory or enforcement action under the facts and circumstances of the reviews. Specifically, examiners observed:

- Marketing and servicing of loans in languages other than English;
- Collection of customer language information to facilitate communication with LEP consumers in a language other than English;
- Translation of certain financial institution documents sent to borrowers, including monthly statements and payment assistance forms, into languages other than English;
- Use of bilingual and/or multilingual customer service agents, including single points of contact,[46] and other forms of oral customer assistance in languages other than English; and
- Quality assurance testing and monitoring of customer assistance provided in languages other than English.

Examiners have observed a number of factors that financial institutions consider in determining whether to provide services in languages other than English and the extent of those services, some of which include: Census Bureau data on the demographics or prevalence of non-English languages within the financial institution's footprint; communications and activities that most significantly impact consumers (e.g., loss mitigation and/or default servicing); and compliance with Federal, state, and other regulatory provisions that address obligations

[45] The Bureau recently updated its ECOA baseline review modules. *See* Supervisory Highlights: Winter 2016 4.1.1, *available at* http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf. Among other updates, the modules include new questions related to the provision of language services, including to LEP consumers, in the context of origination and servicing. *See* ECOA Baseline Review Module 13, 21-22 (Oct. 2015), *available at* http://files.consumerfinance.gov/f/201510_cfpb_ecoa-baseline-review-modules.pdf. These modules are "used by examiners during ECOA baseline reviews to identify and analyze risks of ECOA violations, to facilitate the identification of certain types of ECOA and Regulation B violations, and to inform fair lending prioritization decisions for future CFPB reviews." *Id.* at 1.

[46] *See* 12 CFR 1024.40(a)(1) and (2) (requiring mortgage servicers to assign personnel to a delinquent borrower within a certain time after delinquency and make assigned personnel available by phone in order to respond to borrower inquiries and assist with loss mitigation options, as applicable).

pertaining to languages other than English.[47] Factors relevant in the compliance context may vary depending on the institution and circumstances.

3.1.2 Observations

Examiners also have observed situations in which financial institutions' treatment of LEP and non-English-speaking consumers posed fair lending risk. For example, examiners observed one or more institutions marketing only some of their available credit card products to Spanish-speaking consumers, while marketing several additional credit card products to English-speaking consumers. One or more such institutions also lacked documentation describing how they decided to exclude those products from Spanish language marketing, raising questions about the adequacy of their compliance management systems related to fair lending. To mitigate any compliance risks related to these practices, one or more financial institutions revised their marketing materials to notify consumers in Spanish of the availability of other credit card products and included clear and timely disclosures to prospective consumers describing the extent and limits of any language services provided throughout the product lifecycle. Institutions were not required to provide Spanish language services to address this risk beyond the Spanish language services they were already providing.

3.1.3 Supervisory activity resulting in Enforcement actions

[47] *See*, *e.g.*, 12 CFR 1005.31(g)(1)(i) (requiring disclosures in languages other than English in certain circumstances involving remittance transfers); 12 CFR 1026.24(i)(7) (addressing obligations relating to advertising and disclosures in languages other than English for closed-end credit); 12 CFR 1002.4(e) (providing that disclosures made in languages other than English must be available in English upon request); Cal Civ Code 1632(b) (requiring that certain agreements "primarily" negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean must be translated to the language of the negotiation under certain circumstances); Or Rev Stat § 86A.198 (requiring a mortgage banker, broker, or originator to provide translations of certain notices related to the mortgage transaction if the banker, broker, or originator advertises and negotiates in a language other than English under certain circumstances); Tex Fin Code Ann 341.502(a-1) (providing that for certain loan contracts negotiated in Spanish, a summary of the loan terms must be made available to the debtor in Spanish in a form identical to required TILA disclosures for closed-end credit).

Bureau supervisory activity has also revealed violations of Federal consumer financial law related to treatment of LEP and non-English-speaking consumers. In June 2014, the Bureau and the Department of Justice announced an enforcement action against Synchrony Bank, formerly known as GE Capital Retail Bank, to address violations of ECOA based on, among other things, the exclusion of consumers who had indicated that they preferred to communicate in Spanish from two different promotions about beneficial debt-relief offers. For as long as three years, the bank did not provide the offers to these consumers, in *any* language, including English, even if the consumer otherwise met the promotion's qualifications.[48] In addition to requiring remediation to affected consumers, the bank was ordered to ensure that consumers who had expressed a preference for communicating in Spanish were not excluded from receiving credit offers.

In December 2013, the Bureau announced an enforcement action against American Express Centurion Bank addressing, among other violations of law, deceptive acts or practices in telemarketing of a credit card add-on product to Spanish-speaking customers in Puerto Rico. The vast majority of consumers enrolled in this product enrolled via telemarking calls conducted in Spanish. Yet American Express did not provide uniform Spanish language scripts for these enrollment calls, and all written materials provided to consumers were in English. As a result, American Express did not adequately alert consumers enrolled via telemarketing calls conducted in Spanish about the steps necessary to receive and access the full product benefits. The statements and omissions by American Express were likely to affect a consumer's choice or conduct regarding the product and were likely to mislead consumers acting reasonably under the

[48] *See* Supervisory Highlights: Fall 2014 Section 2.7.1, *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf. *See also In re Synchrony Bank*, No. 2014-CFPB-0007 (June 19, 2014), *available at* http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

circumstances.[49] In addition to requiring remediation to affected consumers, the bank was ordered to, among other things, eliminate all deceptive acts and practices, including deceptive representations, statements, or omissions in its add-on product marketing materials and telemarketing scripts.

3.1.4 Compliance management

As with any consumer-facing program, financial institutions can mitigate fair lending and other risks associated with providing services in languages other than English by implementing a strong CMS that considers treatment of LEP and non-English-speaking consumers. Although the appropriate scope of an institution's fair lending CMS will vary based on its size, complexity, and risk profile, common features of a well-developed CMS include:

- An up-to-date fair lending policy statement, documenting the policies, procedures, and decision-making related to the institution's provision of language services;
- Regular fair lending training for all officers and board members as well as all employees involved with any aspect of the institution's credit transactions, including the provision of language services;
- Review of lending policies for potential fair lending risk;
- Ongoing monitoring for compliance with fair lending policies and procedures, and appropriate corrective action if necessary;
- Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion), and appropriate corrective action if necessary;
- Depending on the size and complexity of the financial institution, regular statistical analysis (as appropriate) of loan-level data for potential disparities on a prohibited basis in underwriting, pricing, or other aspects of the credit transaction, including both

[49] *See In re American Express Centurion Bank*, No. 2013-CFPB-0011 (Dec. 24, 2013), *available at* http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_centurion_011.pdf.

mortgage and non-mortgage products such as credit cards, auto lending, and student lending;

- Regular assessment of the marketing of loan products. For example, institutions may elect to monitor language services for risk of steering, exclusion of LEP and non-English-speaking consumers from certain offers, or any other fair lending risk, and for risk of unfair, deceptive, or abusive acts or practices; and
- Meaningful oversight of fair lending compliance by management and, where appropriate, the financial institution's board of directors.[50]

While many CFPB-supervised institutions face similar fair lending risks, they may differ in how they manage those risks. The CFPB understands that compliance management will be handled differently by large, complex financial organizations at one end of the spectrum, and small entities that offer a narrow range of financial products and services at the other end. While the characteristics and manner of organization will vary from entity to entity, the CFPB expects compliance management activities to be a priority and to be appropriate for the nature, size, and complexity of the financial institution's consumer business.

The Bureau remains interested in understanding how institutions provide products and services in languages other than English in a way that promotes access to responsible credit and services. The Bureau welcomes engagement with institutions on how to promote access for LEP and non-English-speaking consumers.

3.2 HMDA data collection and reporting reminders for 2017

Beginning with Home Mortgage Disclosure Act (HMDA) data collected in 2017 and submitted in 2018, responsibility to receive and process HMDA data will transfer from the

[50] For additional information regarding strong CMS for managing fair lending risks, see *Supervisory Highlights*, section II, C (Fall 2012) *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf and *Supervisory Highlights*, section3.2.1 (Summer 2014) *available at* http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

Federal Reserve Board (FRB) to the CFPB. The HMDA agencies have agreed that a covered institution filing HMDA data collected in or after 2017 with the CFPB will be deemed to have submitted the HMDA data to the appropriate Federal agency.[51]

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

The following information is from the Bureau's HMDA Filing Instructions Guide (FIG). Additional information about HMDA, the FIG and other data submission resources is located at: http://www.consumerfinance.gov/data-research/hmda/.

3.2.1 New HMDA platform

Beginning with data collected in 2017, filers will submit their HMDA data using a web interface referred to as the "HMDA Platform." The following submission methods will ***not*** be permitted for data collected in or after 2017:

- PC Diskette and CD-ROM
- Submission via Web (from the Data Entry Software (DES))
- E-mail to HMDASUB@FRB.GOV
- Paper Submissions

Also, beginning with the data collected in 2017, as part of the submission process, a HMDA reporter's authorized representative with knowledge of the data submitted shall certify to

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

the accuracy and completeness of the data submitted. Filers will not fax or e-mail the signed certification.

3.2.2 Loan/Application Register format

Beginning with data collected in 2017, HMDA data loan/application registers (LAR) will be submitted in a pipe (also referred to as vertical bar) delimited text file format (.txt). This means that:

- Each data field within each row will be separated with a pipe character, "|".
- Zeros do not need to be added for the sole purpose of making a data field a specific number of characters.[52]
- Filler data fields will no longer be used in the file.
- The loan/application register will be a text file with a .txt file format extension.

Text entries in alphanumeric fields do not need to use all uppercase letters with the exception of:

- NA" used when the reporting requirement is not applicable.
- Two letter state codes.

As with previous submissions:

- The first row of the HMDA LAR will begin with the number one (1) to indicate that the data fields in row one contain data fields for the transmittal sheet, with information relating to your institution.
- All subsequent rows of HMDA LAR will begin with the number two (2) to indicate that the data fields beginning in row two contain data fields for LAR, with information relating to the reported loan or application.
- Each row will end with a carriage return.

[52] The one exception to this instruction is for rate spreads collected in 2017; rate spread is entered to two decimal places using a leading zero, for example, 03.29.

3.3 Redlining

The Office of Fair Lending has identified redlining as a priority area in the Bureau's supervisory work. Redlining is a form of unlawful lending discrimination under ECOA. Historically, actual red lines were drawn on maps around neighborhoods to which credit would not be provided, giving this practice its name.

The Federal prudential banking regulators have collectively defined redlining as "a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located."[53]

The Bureau considers various factors, as appropriate, in assessing redlining risk in its supervisory activity. These factors, and the scoping process, are described in detail in the Interagency Fair Lending Examination Procedures (IFLEP). These factors generally include (but are not limited to):

- Strength of an institution's CMS, including underwriting guidelines and policies;
- Unique attributes of relevant geographic areas (population demographics, credit profiles, housing market);
- Lending patterns (applications and originations, with and without purchased loans);
- Peer and market comparisons;

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[53] FFIEC Interagency Fair Lending Examination Procedures (IFLEP) Manual, *available at* https://www.ffiec.gov/pdf/fairlend.pdf.
CFPB Supervision and Examination Manual, *available at* http://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations.

- Physical presence (full service branches, ATM-only branches, brokers, correspondents, loan production offices), including consideration of services offered;
- Marketing;
- Mapping;
- Community Reinvestment Act (CRA) assessment area and market area more generally;
- An institution's lending policies and procedures record;
- Additional evidence (whistleblower tips, loan officer diversity, testing evidence, comparative file reviews); and
- An institution's explanations for apparent differences in treatment.

The Bureau has observed that institutions with strong compliance programs examine lending patterns regularly, look for any statistically-significant disparities, evaluate physical presence, monitor marketing campaigns and programs, and assess CRA assessment areas and market areas more generally. Our supervisory experience reveals that institutions may reduce fair lending risk by documenting risks they identify and by taking appropriate steps in response to identified risks, as components of their fair lending compliance management programs.

Examination teams typically assess redlining risk, at the initial phase, at the Metropolitan Statistical Area (MSA) level for each supervised entity, and consider the unique characteristics of each MSA (population demographics, etc.).

To conduct the initial analysis, examination teams use HMDA data and census data[54] to assess the lending patterns at institutions subject to the Bureau's supervisory authority. To date, examination teams have used these publicly-available data to conduct this initial risk assessment. These initial analyses typically compare a given institution's lending patterns to other lenders in the same MSA to determine whether the institution received significantly fewer applications from minority[55] areas[56] relative to other lenders in the MSA.

Examination teams may consider the difference between the subject institution and other lenders in the percentage of their applications or originations that come from minority areas, both in absolute terms (for example, 10% vs. 20%) and relative terms (for example, the subject institution is half as likely to have applications or originations in minority areas as other lenders).[57]

Examination teams may also compare an institution to other more refined groups of peer institutions. Refined peers can be defined in a number of ways, and past Bureau redlining

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[54] The Bureau uses the most current United States national census data that apply to the HMDA data – for example, to date it has used 2010 census data for HMDA data 2011 and later. Specifically, the "Demographic Profiles" are used.

[55] For these purposes, the term "minority" ordinarily refers to anyone who identifies with any combination of race or ethnicity other than non-Hispanic White. Examination teams have also focused on African-American and Hispanic consumers, and could foreseeably focus on other more specific minority communities such as Asian, Native Hawaiian, or Native Alaskan populations, if appropriate for the specific geography. In one examination that escalated to an enforcement matter, the statistical evidence presented focused on African-American and Hispanic census tracts, rather than all minority consumers, because the harmed consumers were primarily African-American and Hispanic.

[56] Examination teams typically look at majority minority areas (>50% minority) and high minority areas (>80% minority), although sometimes one metric is more appropriate than another, and sometimes other metrics need to be used to account for the population demographics of the specific MSA.

[57] This relative analysis may be expressed as an odds ratio: the given lender's odds of receiving an application or originating a loan in a minority area divided by other lenders' comparable odds. An odds ratio greater than one means that the institution is **more** likely to receive applications or originate loans in minority areas than other lenders; an odds ratio lower than one means that the institution is **less** likely do so. Odds ratios show greater risk as they approach zero.

examinations and enforcement matters have relied on multiple peer comparisons. The examination team often starts by compiling a refined set of peer institutions to find lenders of a similar size – for example, lenders that received a similar number of applications or originated a similar number of loans in the MSA. The examination team may also consider an institution's mix of lending products. For example, if an institution participates in the Federal Housing Administration (FHA) loan program, it may be compared to other institutions that also originate FHA loans; if not, it may be compared to other lenders that do not offer FHA loans. Additional refinements may incorporate loan purpose (for example, focusing only on home purchase loans) or action taken (for example, incorporating purchased loans into the analysis). Examination teams have also taken suggestions, as appropriate, from institutions about appropriate peers in specific markets.

In considering lending patterns, examination teams also generally consider marketing activities and physical presence, including locations of branches, loan production offices, ATMs, brokers, or correspondents. In one or more supervisory matters, the institutions concentrated marketing in majority-White suburban counties of an MSA and avoided a more urban county with the greatest minority population in the MSA. In one or more other exams, examiners observed that, although there were disparities in branch locations, the location of branches did not affect access to credit in that case because, among other things, the branches did not accept "walk-in" traffic and all applications were submitted online. The results of the examinations were also dependent on other factors that showed equitable access to credit, and there could be cases in which branch locations in combination with other risk-based factors escalate redlining risk.

For redlining analyses, examination teams generally map information, including data on lending patterns (applications and originations), marketing, and physical presence, against census data to see if there are differences based on the predominant race/ethnicity of the census tract, county, or other geographic designation. Additionally, examination teams will consider any other available evidence about the nature of the lender's business that might help explain the observed lending patterns.

Examination teams have considered numerous factors in each redlining examination, and have invited institutions to identify explanations for any apparent differences in treatment. Although redlining examinations are generally scheduled at institutions where the Bureau has identified statistical disparities, statistics are never considered in a vacuum. The Bureau will always work with institutions to understand their markets, business models, and other information that could provide nondiscriminatory explanations for lending patterns that would otherwise raise a fair lending risk of redlining.

3.4 Consent Order Update: Ally Financial Inc. and Ally Bank

On December 19, 2013, working in close coordination with the DOJ, the CFPB ordered Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and/or Pacific Islander borrowers. The DOJ simultaneously filed a consent order in the United States District Court for the Eastern District of Michigan, which was entered by the court on December 23, 2013. This public enforcement action represented the federal government's largest auto loan discrimination settlement in history.

On January 29, 2016, approximately 301,000 harmed borrowers participating in the settlement—representing approximately 235,000 loans—were mailed checks by the Ally settlement administrator, totaling $80 million plus interest. In addition, and pursuant to its continuing obligations under the terms of the orders, Ally has also made ongoing payments to consumers affected after the consent orders were entered. Specifically, Ally paid approximately $38.9 million in September 2015 and an additional $51.5 million in May 2016, to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014 and 2015, respectively.[58]

4. Remedial Actions

4.1.1. Public enforcement Actions

The following public enforcement actions resulted, at least in part, from examination work.

First National Bank of Omaha

On August 25, the CFPB announced an enforcement action against First National Bank of Omaha for its deceptive marketing practices and illegal billing of customers of add-on products. The bank used deceptive marketing to lure consumers into debt cancellation add-on products and it charged consumers for credit monitoring services they did not receive. Among other things, the bank disguised the fact that it was selling consumers a product, distracted consumers into making a purchase, made cancellation of debt cancellation products difficult, and billed for credit monitoring services not provided.

The Bureau's order required First National Bank of Omaha to end unfair billing and other illegal practices, provide $27.75 million in relief to roughly 257,000 consumers harmed by its illegal practices, and pay a $4.5 million civil money penalty.

Wells Fargo Bank, N.A

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58 Additional information regarding this public enforcement action can be found in Supervisory Highlights, 2.6.1 (Winter 2016), available at http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf *and Supervisory Highlights* (Summer 2014), *available at* http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf .

On August 22, the CFPB took action against Wells Fargo Bank for illegal private student loan servicing practices that increased costs and unfairly penalized certain student loan borrowers. The Bureau identified breakdowns throughout Wells Fargo's loan servicing process, including failing to provide important payment information to consumers, charging consumers illegal fees, and failing to update inaccurate credit report information. The order requires Wells Fargo to improve its consumer billing and student loan payment processing practices, provide $410,000 in relief to borrowers, and pay a $3.6 million civil money penalty.

4.1.2 Non-public supervisory actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately $11.3 million in restitution to more than 225,000 consumers. These non-public supervisory actions generally have been the product of CFPB ongoing supervision and/or targeted examinations, involving either examiner findings or self-reported violations of Federal consumer financial law. Recent non-public resolutions were reached in the areas of deposits, mortgage servicing, and credit cards.

5. Supervision program developments

5.1 Examination procedures

5.1.1 Reverse mortgage servicing examination procedures

Today, the CFPB is publishing procedures for examining reverse mortgage servicers.[59] A reverse mortgage allows older homeowners to borrow against the equity in their homes. Unlike a traditional home equity loan, instead of making payments to the servicer, the borrower receives payments from the lender. Over time, the loan amount grows, and must be repaid when the borrower dies or an event of default occurs. The Bureau has received complaints from

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[59] *See* the reverse mortgage servicing procedures, *available at* files.consumerfinance.gov/f/documents/102016_cfpb_ReverseMortgageServicingExaminationProcedures.pdf.

consumers relating to the servicing of reverse mortgages. The procedures detail how examiners will review a reverse mortgage servicer's compliance with applicable regulations and assess other risks to consumers. The publication of these procedures precedes supervision of reverse mortgage servicers.

5.1.2 Student loan servicing examination procedures

The Bureau is also publishing today new procedures for examining student loan servicers,[60] the entities that take payments and manage borrower accounts for consumers of Federal and private education loans. For the last few years, the Bureau has been examining student loan servicers using exam procedures released in 2013. The new procedures reflect the Bureau's new priorities based on experience in the market over those years. For example, we enhanced the sections related to servicer communications about income-driven repayment (IDR) plans, and relating to the IDR application process. We also enhanced the procedures relating to payment processing, and other communications with consumers like billing statements. The procedures detail how examiners in future student loan servicing exams will review student loan servicers' compliance with Federal consumer financial law, including the prohibition against unfair, deceptive, or abusive acts or practices.

5.1.3 Military Lending Act examination procedures

On September 30, 2016, the CFPB issued the procedures its examiners will use in identifying consumer harm and risks related to the Military Lending Act (MLA) rule.[61] The MLA rule was updated by the Department of the Defense in July 2015, and these exam

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[60] *See* the student loan servicing procedures, *available at* files.consumerfinance.gov/f/documents/102016_cfpb_EducationLoanServicingExamManualUpdate.pdf.

[61] *See* the MLA examination procedures, *available at* http://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/military-lending-act-examination-procedures/.

procedures are based on the approved Federal Financial Institutions Examination Council (FFIEC) procedures. The exam procedures provide guidance to industry on what the CFPB will be looking for during reviews covering the amended regulation.

For most forms of credit subject to the updated MLA rule, creditors were required to comply with the amended regulation as of Oct. 3, 2016; credit card providers must comply with the new rule as of Oct. 3, 2017.

5.2 Recent CFPB Guidance

5.2.1 Amendment to the service provider bulletin

Today, the CFPB is amending and reissuing its service provider bulletin as CFPB Compliance Bulletin and Policy Guidance 2016-02, Service Providers.[62] The amendment clarifies that the Bureau expects that "the depth and formality of the entity's risk management program for service providers may vary depending upon the service being performed – its size, scope, complexity, importance, and potential for consumer harm – and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. While due diligence does not provide a shield against liability for actions by the service provider, using appropriate due diligence can reduce the risk that the service provider will commit violations for which the supervised entity may be responsible."

Some entities may have interpreted the Bureau's 2012 bulletin to mean they had to use the same due diligence requirements for all service providers no matter the risk for consumer harm. As a result, some small service providers have reported that entities have imposed the same due diligence requirements on them as for the largest service providers. The amendment

[62] *See* CFPB, Compliance Bulletin 2016-02, *available at* files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.

clarifies that the risk management program may be tailored very appropriately to the size, market, and level of risk for consumer harm presented by the service provider.

This change is consistent with the guidance of the Federal prudential regulators and aligns the bulletin with the Bureau's approach that a risk management program should take into account the risk of consumer harm presented by the service being provided and supervised entities may tailor their due diligence based on the risk of consumer harm. Appropriate risk management programs would further the goal of ensuring that entities comply with Federal consumer financial laws and avoid consumer harm, including when using service providers.

6. Conclusion

The Bureau expects that regular publication of *Supervisory Highlights* will continue to aid CFPB-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily accessible resource for information on the CFPB's guidance documents.

Dated: October _31__, 2016.

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Richard Cordray,

Director, *Bureau of Consumer Financial Protection*.

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