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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights, Issue 18 (Winter 2019)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory highlights.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau) is issuing its eighteenth edition of its Supervisory Highlights. In this issue of Supervisory Highlights, we report examination findings in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances that were generally completed between June 2018 and November 2018. The report does not impose any new or different legal requirements, and all violations described in the report are based only on those specific facts and circumstances noted during those examinations. As in past editions, this report includes information about recent public enforcement actions that were a result, at least in part, of our supervisory work.

DATES: The Bureau released this edition of the Supervisory Highlights on its web site on March 1, 2019.

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SUPPLEMENTARY INFORMATION:

1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the

products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances that were generally completed between June and November 2018 (unless otherwise stated).

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

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

2. Supervisory Observations

Recent supervisory observations are reported in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances.

2.1 Automobile loan servicing

The Bureau continues to examine auto loan servicing activities, primarily to assess whether servicers have engaged in unfair, deceptive, or abusive acts or practices (UDAAPs)

prohibited by the Consumer Financial Protection Act of 2010 (CFPA). Recent auto loan servicing examinations identified unfair acts or practices related to collecting incorrectly calculated deficiency balances. Recent examinations have also identified deceptive acts or practices related to representations on deficiency balance notices.

2.1.1 Unfair and deceptive practices regarding rebates for certain ancillary products

Examiners reviewed the servicing operations of one or more captive auto finance companies. A captive auto finance company is a finance company that is owned by an auto manufacturer that finances retail purchases of autos from that manufacturer. Borrowers financing a car sometimes purchased ancillary products such as an extended warranty and financed the products through the same loan. If the borrower later experiences a total loss or repossession, the servicer or borrower may cancel such ancillary products in order to obtain pro-rated rebates of the premium amounts for the unused portion of the products. In these situations, the rebate is payable first to the servicer to cover any deficiency balance and then to the borrower. Generally, the servicer contractually reserves the right to request the rebate without the borrower's participation, although it does not obligate itself to do so. The borrower also retains a right to request the rebate.

In the extended warranty products reviewed during the examination(s), the amount of potential rebates for the products depended on the number of miles driven. Examiners observed instances where one or more servicers used the wrong mileage amounts to calculate the rebate for extended-warranty cancellations. For some borrowers who financed used vehicles, the servicers applied the total number of miles the car had been driven to calculate rebates. However, the servicer(s) should have applied the net number of miles driven since the borrower purchased the automobile. The miscalculation reduced the rebate available to certain borrowers

and led to deficiency balances that were higher by hundreds of dollars. The servicer(s) then attempted to collect the deficiency balances.

One or more examinations found that servicer attempts to collect miscalculated deficiency balances were unfair. Collecting inaccurately inflated deficiency balances caused or was likely to cause substantial injury to consumers. And these borrowers could not reasonably have avoided collection attempts on inaccurate balances because they were uninvolved in the servicer's calculation process. The injury of this activity is not outweighed by the countervailing benefits to consumers or competition. For example, the additional expense the servicers would incur to train staff or service providers to ensure that refund calculations are correct would not outweigh the substantial injury to consumers. In response to these findings, the servicer(s) conducted reviews to identify and remediate affected borrowers based on the mileage they drove before the repossession or total loss of their vehicles. The servicer(s) also began to verify mileage calculations directly with the issuers of the products subject to rebate.

Additionally, examiners observed instances where one or more servicers did not request rebates for eligible ancillary products after a repossession or a total loss. The servicer(s) then sent these borrowers deficiency notices listing a final deficiency balance purporting to net out available "total credits/rebates" including insurance and other rebates. The notices also stated that future additional rebates may affect the amount of the surplus or deficiency, but that "[a]t this time, we are not aware of any such charges." However, the servicers' records contained information that it had not sought the eligible rebates. The examination(s) showed that the average unclaimed rebate was roughly \$1,700.

One or more examinations identified these communications as a deceptive act or practice. The deficiency notice misled borrowers because it created the net impression that the deficiency

balance reflected a setoff of all eligible ancillary-product rebates, when in fact, the servicer(s)' systems showed that it had not sought one or more eligible rebates. It was reasonable for consumers to interpret this deficiency balance as reflecting any eligible rebates because the servicer(s) were both contractually entitled and financially incentivized to seek and apply eligible rebates to the deficiency balance. And the misrepresentation was material to consumers because they may have pursued rebates on their own had the servicer(s) not represented that there were not additional rebates available.

In response to these findings, the servicer(s) conducted reviews to identify and remediate affected borrowers. The servicer(s) also changed deficiency notices to clarify the status of eligible ancillary product rebates.

2.2 *Deposits*

The CFPB continues to review the deposits operations of the entities under its supervisory authority for compliance with relevant statutes and regulations, including the CFPA's prohibition on UDAAPs.

2.2.1 *Deceptive representations about bill-pay debited date*

Examiners found that one or more institutions engaged in a deceptive act or practice by representing that payments made through an institution's online bill-pay service would be debited on the date selected by the consumer or a few days after the selected date, while failing to disclose or failing to disclose adequately that, in instances where a payee accepts only a paper check, the debit may occur earlier than the selected date. These paper bill-pay checks were sent several days prior to the consumer-designated payment date, at the discretion of the institution(s). The payment would be debited from the consumer's account when the payee presented and cashed the check, which may have occurred earlier or later than the date selected

by the consumer. The failure to notify consumers that their bill-pay payments, if made by paper check, may be debited on a date sooner than the date selected as part of the transaction caused some consumers to pay overdraft fees.

The failure by the institution(s) to disclose or failure to disclose adequately the possible earlier debit date in light of online bill-pay service representations created the net impression that payments made through the online bill-pay service would be withdrawn no earlier than the payment date designated by the consumer. It would be reasonable for consumers to understand that the payment date they designated would be the earliest date that the payment would be withdrawn from their account. Consumers' understanding of when funds will be withdrawn is material to consumers' decisions regarding which payment date to designate in the first instance and then how to manage funds in the accounts on a going-forward basis, to ensure there is a sufficient balance to cover the anticipated withdrawals.

In response to the examination findings, the institution(s) undertook a revision of consumer-facing online bill-pay materials to disclose paper checks will be mailed before the payment date selected by the consumer and that the payment would be debited from the consumer's account when the payee presented the check. The institution(s) also undertook a plan to remediate consumers charged an overdraft fee as a result of a paper check being negotiated before the payment date selected by the consumer through the online bill-pay system.

2.3 Mortgage Servicing

The Bureau continues to examine mortgage servicers, including servicers of manufactured home loans and reverse mortgage loans, for compliance with Federal consumer financial laws. Recent examinations identified unfair acts or practices for charging consumers unauthorized amounts, deceptive acts or practices for misrepresenting aspects of private

mortgage insurance cancellation, violation(s) of Regulation X loss mitigation requirements, and potentially misleading statements to successors-in-interest on reverse mortgages.

2.3.1 Charging consumers unauthorized amounts

One or more examinations observed that servicers charged consumers late fees greater than the amount permitted by mortgage notes. Examiners identified several types of affected mortgage notes. For example, certain Federal Housing Authority (FHA) mortgage notes permit servicers to collect late fees in the amount of 4.00% of the overdue principal and interest. However, on large numbers of loans, the servicer(s) charged late fees on 4.00% of the overdue principal, interest, taxes and insurance, rather than on only the principal and interest. Examiners also identified mortgage notes containing provisions that limit the late fee amount. For example, certain West Virginia mortgage notes permit servicers to collect “5.00% of that portion of the installment of principal and interest that is overdue, but not more than U.S. \$15.00.” However, on large numbers of loans, the servicer(s) charged a late fee greater than \$15.

Programming errors in the servicing platform and lapses in service provider oversight caused the overcharges. The examination(s) found that the servicer(s) engaged in an unfair practice. The conduct caused a substantial injury to consumers because they paid more in late fees than required by their mortgage notes. The conduct of the servicer(s) affected thousands of consumers, making the aggregate injury substantial. Consumers could not reasonably avoid this injury since the servicer(s) automatically imposed the late fees. And since the servicer(s) were not contractually permitted to collect the excessive late charges, the practice had no countervailing benefits. In response to the examination findings, the servicer(s) conducted a review to identify and remediate affected borrowers. The servicer(s) also changed policies and procedures to assist in charging the late fee amount authorized by the mortgage note.

2.3.2 *Misrepresenting private mortgage insurance cancellation denial reasons*

In relevant part, the Homeowners Protection Act (HPA) requires servicers to cancel private mortgage insurance (PMI) in connection with a residential mortgage transaction if certain conditions are met. Among other conditions, the consumer must request the cancellation in writing, and the principal balance of the mortgage must have: (1) reached 80% of the original value (LTV) of the property based solely on actual payments; or (2) reached the date on which it was first scheduled to fall to 80% of the original value of the property, based solely on the amortization schedule in effect at a particular point in time depending on the loan type regardless of the outstanding balance.¹

At one or more servicers, borrowers who verbally requested PMI cancellation were informed that they were declined because they had not reached 80% LTV. Although the relevant amortization schedules did not yet provide for 80% LTV, examiners found that these borrowers had in fact reached 80% LTV based on actual payments because they had made extra principal payments. Although the borrowers did not satisfy other criteria necessary to trigger borrower-initiated cancellation rights under the HPA, such as certifying that the property is unencumbered by subordinate liens or submitting the requests in writing, the servicer(s) did not provide these as reasons to borrowers for denying the requests.

One or more examinations identified servicer representations as deceptive because they misrepresented the conditions for PMI removal.² The servicer communications would likely mislead consumers about whether and when the HPA entitled them to request that the servicer cancel PMI, and about the actual reasons the borrowers were not eligible for PMI cancellation. It would be reasonable for consumers to believe that they were not eligible for PMI cancellation for

¹ 12 U.S.C. 4901(2).

² The HPA does not require servicers to respond to verbal requests to eliminate PMI and therefore the servicer(s) did not violate the HPA.

the reasons stated in the letters because most consumers would not have a basis to question the misrepresentations. A consumer might think that she had miscalculated payments such that she had not yet reached 80% LTV, or had misunderstood some other aspect of meeting the LTV requirement. Lastly, the servicers' misrepresentations were material because they were likely to affect a borrower's choice as to whether to continue to request PMI cancellation, including whether to address the actual, uncommunicated reasons for ineligibility. For instance, borrowers receiving the incorrect denial reason may fail to address other eligibility requirements to obtain PMI cancellation. They may also be discouraged from requesting PMI cancellation in some circumstances in which Federal law or the servicer's policies would give them a right to cancel PMI. In response to examiners' findings, the servicer(s) changed templates, as well as policies and procedures, to ensure that PMI cancellation notices state accurate denial reasons.

2.3.3 Failing to exercise reasonable diligence to complete loss mitigation applications

Regulation X requires servicers to exercise "reasonable diligence" in obtaining documents and information to complete a loss mitigation application.³ The actions that would satisfy this requirement depend on the facts and circumstances at hand.⁴

In examination(s) covering 2016 activity, examiners found one or more servicers did not meet the Regulation X "reasonable diligence" requirements. These servicer(s) offered short-term payment forbearance programs during collection calls to delinquent borrowers who expressed interest in loss mitigation and submitted financial information that the servicer would consider in evaluating them for loss mitigation. The short-term payment forbearance programs deferred

³ 12 CFR 1024.41(b)(1).

⁴ Comment 41(b)(1)-4.i-iii. For example, reasonable diligence might include promptly contacting the applicant to obtain the missing information; or, if the servicer has offered a short-term payment forbearance program based upon an evaluation of an incomplete application, actions like notifying the borrower about the option to complete the application to receive a full evaluation and, if necessary, contacting the borrower near the end of the forbearance period and prior to the end of the forbearance period to determine if the borrower wishes to complete the application and proceed with a full evaluation.

some or all of the borrower's past due payments to the end of the loan, thereby extending its maturity. However, the servicer(s) did not notify the borrowers that such short-term payment forbearance programs were based on an incomplete application evaluation. And near the end of the forbearance period, the servicer(s) did not contact the borrowers as to whether they wished to complete the applications to receive a full loss mitigation evaluation. As a result, one or more examinations found that the servicer(s) violated 1024.41(b)(1) requirements to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. The examination(s) did not review currently applicable 1024.41(c)(2) requirements, as those requirements went into effect on October 19, 2017. In response to these findings, the servicer(s) used enhanced processes, such as a centralized queue, to track borrowers receiving short-term forbearance programs and subsequently notify them that additional loss mitigation options may be available and that they could apply for such options over the phone or in writing.

2.3.4 Representing the requirements for foreclosure timeline extensions in Home Equity

Conversion Mortgages

One or more examinations reviewed servicing of Home Equity Conversion Mortgage (HECM) loans, a type of reverse mortgage insured by the United States Department of Housing and Urban Development (HUD). Under the terms of such mortgages, the death of the borrower on the loan constitutes default, and HUD generally requires HECM servicers to refer such loans to foreclosure within six months of the death of the borrower to be eligible for HUD insurance. HUD also allows servicers to request up to two 90-day extensions to enable successors to purchase the property or market the property for sale without losing the benefit of HUD insurance.

One or more servicers sent a notice to successors-in-interest after the borrower on the loan died. The notice stated that the loan balance was due and payable, but that the successor could qualify for an extension of time to delay or avoid foreclosure. The notice directed the successor to return an enclosed form stating the intentions for the property within thirty days. The notice also listed several documents that may be applicable to the successor's evaluation, but did not direct the successor to submit any of the documents within a certain timeframe to be eligible for an extension.

Examiners found that some successors did not receive a complete list of all the documents needed to evaluate them for an extension. Some of these successors returned the form indicating their intentions to purchase the property or market the property for sale, but did not return all the documents that were needed for the evaluation. As a result, the servicer(s) did not seek an extension for these successors. Instead, the servicer(s) assessed foreclosure fees and in some instances foreclosed on the property. The examination(s) did not find that this conduct amounted to a legal violation but observed that it could pose a risk of a deceptive act or practice by giving the net impression that the statement of intent was all that was needed, until further notice, to delay foreclosure, when in fact that was insufficient to delay foreclosure. In response to the examiner observations, the servicer(s) planned to improve communications with successors, including specifying the documents successors needed for an extension and the relevant deadlines.

2.4 Remittances

The Bureau continues to examine banks and nonbanks under its supervisory authority for compliance with Regulation E, Subpart B (Remittance Rule).⁵ The Bureau also reviews for any UDAAPs in connection with remittance transfers.

2.4.1 Failure to refund fees and taxes upon delayed availability of remitted funds

Examiners found that one or more supervised entities violated the error resolution provisions of the Remittance Rule by failing to refund fees and, as allowed by law, taxes, to consumers when remitted funds were made available to designated recipients later than the date of availability stated in the institution's remittance disclosures and the delay was not due to one of the four exceptions specified in the Rule.

A remittance transfer provider's failure to make funds available to a designated recipient by the date of availability stated in the disclosures constitutes an error under the Remittance Rule, unless the delay was of the result of one of the four exceptions described in 12 CFR 1005.33(a)(1)(iv).⁶ Upon notice from a consumer of the delayed availability of funds, a remittance transfer provider must either refund the sender the amount of funds provided by the sender in connection with the remittance transfer which was not properly transmitted or the amount appropriate to resolve the error, or make available to the designated recipient the amount appropriate to resolve the error at no additional cost to the sender or the designated recipient.⁷ In addition, the remittance transfer provider must refund to the sender any fees imposed in

⁵ See 78 FR 30662 (May 22, 2013) (codified at 12 CFR 1005), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-22/pdf/2013-10604.pdf>.

⁶ The four events are: (A) extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated; (B) delays related to a necessary investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*, Office of Foreign Assets Control requirements, or similar laws or requirements; (C) the remittance transfer being made with fraudulent intent by the sender or any person acting in concert with the sender; and (D) the sender having provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient's account or institution, provided that the remittance transfer provider meets certain other conditions.

⁷ 12 CFR 1005.33(c)(2)(ii)(A).

connection with the transfer by any party, and, to the extent not prohibited by law, any taxes collected on the remittance transfer.⁸

Examiners observed that one or more entities failed to refund to consumers fees and, as allowed by law, taxes, when funds were not made available to the designated recipients by the date disclosed by the institution due to a mistake on the part of a non-agent foreign payer institution. Because the delayed availability of funds did not result from one of the exceptions listed in 12 CFR 1005.33(a)(1)(iv), the senders were entitled to the remedies described in 12 CFR 1005.33(c)(2)(ii). Neither the relationship between a remittance transfer provider and the institution disbursing the funds to the designated recipient, nor the particular entity that is at fault for the delayed receipt of funds, is relevant to whether the remittance transfer provider must refund fees and taxes to the consumer. In response to examination findings, institutions are refunding any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer to the sender, where applicable.

3. Remedial Actions

3.1 Public enforcement actions

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

3.1.1 Cash Tyme

On February 5, 2019, the CFPB announced a settlement with Cash Tyme, a payday retail lender with outlets in seven States.⁹ The Bureau found that Cash Tyme violated the CFPB by:

- Failing to take adequate steps to prevent unauthorized charges;
- Failing to promptly monitor, identify, correct, and refund overpayments by consumers;

⁸ 12 CFR 1005.33(c)(2)(ii)(B).

⁹ See Cash Tyme Consent Order, available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-cash-tyme/>.

- Making collection calls to third parties named as references on borrowers' loan applications that disclosed or risked disclosing the debts to those third parties, including to borrowers' places of employment as well as to third parties who were themselves harassed by such calls;
- Misrepresenting that it collected third-party references from borrowers on loan applications for verification purposes, when in fact it was using that information to make marketing calls to the references; and
- Advertising unavailable services, including check cashing, phone reconnections, and home telephone connections, on the storefronts' outdoor signage where such advertisements contained information that was likely to be deemed important by consumers and likely to affect their conduct or decision regarding visiting a Cash Tyme store.

The Bureau also found that Cash Tyme violated the Gramm-Leach-Bliley Act and Regulation P by failing to provide initial privacy notices to borrowers, and, as to customers in Kentucky, violated the Truth in Lending Act and Regulation Z when calculating and advertising annual percentage rates. Cash Tyme must, among other provisions, pay a \$100,000 civil money penalty.

3.1.2 Enova International, Inc.

On January 25, 2019, the Bureau announced a settlement with Enova International, Inc., an online lender based in Chicago, Illinois, that extends unsecured payday and installment loans, and lines of credit.¹⁰

The Bureau found that Enova violated the CFPA by debiting consumers' bank accounts without authorization. While consumers authorized Enova to deduct payments from certain

¹⁰ See Enova International, Inc. Consent Order, available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-reaches-settlement-enova-international-inc/>.

accounts, the company in many instances debited different accounts that the consumers had not authorized it to use. The Bureau also found that Enova failed to honor loan extensions it granted to consumers.

Under the terms of the consent order, Enova is, among other things, barred from making or initiating electronic fund transfers without valid authorization and must pay a \$3.2 million civil money penalty.

3.1.3 State Farm Bank, FSB

On December 6, 2018, the Bureau announced a settlement with State Farm Bank, FSB, a Federal savings association headquartered in Bloomington, Illinois.¹¹

The Bureau found that State Farm Bank violated the Fair Credit Reporting Act, Regulation V, and the CFPA by obtaining consumer reports without a permissible purpose; furnishing to credit-reporting agencies (CRAs) information about consumers' credit that the bank knew or had reasonable cause to believe was inaccurate; failing to promptly update or correct information furnished to CRAs; furnishing information to CRAs without providing notice that the information was disputed by the consumer; and failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information provided to CRAs.

Under the terms of the consent order, State Farm Bank must not violate the Fair Credit Reporting Act or Regulation V and must implement and maintain reasonable written policies, procedures, and processes to address the practices at issue in the consent order and prevent future violations.

3.1.4 Santander Consumer USA, LLC

¹¹ See State Farm Bank, FSB Consent Order, available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-state-farm-bank/>.

On November 20, 2018, the Bureau announced a settlement with Santander Consumer USA Inc., a consumer financial services company based in Dallas, Texas.¹²

The Bureau found that Santander violated the CFPA by not properly describing the benefits and limitations of its S-GUARD GAP product, which it offered as an add-on to its auto loan products. Santander also failed to properly disclose the impact on consumers of obtaining a loan extension, including by not clearly and prominently disclosing that the additional interest accrued during the extension period would be paid before any payments to principal when the consumer resumed making payments.

Under the terms of the consent order, Santander must, among other provisions, provide approximately \$9.29 million in restitution to certain consumers who purchased the add-on product, clearly and prominently disclose the terms of its loan extensions and the add-on product, and pay a \$2.5 million civil money penalty.

3.1.5 Cash Express, LLC

On October 24, 2018, the Bureau announced a settlement with Cash Express, LLC, a small-dollar lender based in Cookeville, Tennessee, that offers high-cost, short-term loans, such as payday and title loans, as well as check-cashing services.¹³

As described in the consent order, the Bureau found that Cash Express violated the CFPA's prohibition on deceptive acts or practices by threatening in collection letters that it would take legal action against consumers, even though the debts were past the date for suing on legal claims, and it was not Cash Express's practice to file lawsuits against these consumers. The Bureau also found that Cash Express violated the CFPA by misrepresenting that it might

¹² See Santander Consumer USA, LLC Consent Order, available at <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/santander-consumer-usa-inc/>.

¹³ See Cash Express, LLC Consent Order, available at <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/cash-express-llc/>.

report negative credit information to consumer reporting agencies for late or missed payments, when the company did not actually report this information. The Bureau also found that Cash Express engaged in an abusive practice in violation of the CFPA by withholding funds during check-cashing transactions to satisfy outstanding amounts on prior loans, without disclosing this practice to the consumer during the initiation of the transaction.

The order requires Cash Express to pay approximately \$32,000 in restitution to consumers, and pay a \$200,000 civil money penalty.

4. Supervision program developments

4.1 Recent Bureau rules and guidance

4.1.1 Bulletin 2018-01: Changes to types of supervisory communications

On September 25, 2018, the Bureau issued a bulletin¹⁴ to announce changes to how it articulates supervisory expectations to institutions in connection with supervisory events. The bulletin notes that the Bureau will continue to communicate findings to institutions in writing by way of examination reports and supervisory letters. However, effective immediately, those reports and letters will include two categories of findings that convey supervisory expectations.

Matters Requiring Attention (MRAs) will continue to be used by the Bureau to communicate to an institution's Board of Directors, senior management, or both, specific goals to be accomplished in order to correct violations of Federal consumer financial law, remediate harmed consumers, and address weaknesses in the compliance management system (CMS) that the examiners found are directly related to violations of Federal consumer financial law.

A new findings category – Supervisory Recommendations (SRs) – will be used by the Bureau to recommend actions for management to consider taking if it chooses to address the

¹⁴ The bulletin can be found at: https://www.consumerfinance.gov/documents/6848/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.

Bureau's supervisory concerns related to CMS. SRs will be used when the Bureau has not identified a violation of Federal consumer financial law, but has observed weaknesses in CMS. Neither MRAs nor SRs have been or are legally enforceable. The Bureau will, however, consider an institution's response in addressing identified violations of Federal consumer financial law, weaknesses in CMS, or other noted concerns when assessing an institution's compliance rating, or otherwise considering the risks that an institution poses to consumers and to markets. These risk considerations may be used by the Bureau when prioritizing future supervisory work or assessing the need for potential enforcement action.

4.1.2 Statement on supervisory practices regarding financial institutions and consumers affected by a major disaster or emergency

On September 14, 2018, the Bureau issued a statement¹⁵ highlighting the existing laws and regulations that can provide supervised entities regulatory flexibility to take certain actions that can benefit consumers in communities under stress and hasten recovery in light of major disasters or emergencies. In the statement, the Bureau also noted that it will consider the impact of major disasters or emergencies on supervised entities themselves when conducting supervisory activities.

4.1.3 Interagency Statement on the Role of Supervisory Guidance

On September 11, 2018, the Bureau, along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency issued a joint statement¹⁶ explaining the role of supervisory guidance and describing the agencies' approach to supervisory

¹⁵ The full statement can be found at: https://www.consumerfinance.gov/documents/6837/bcfp_statement-on-supervisory-practices_disaster-emergency.pdf.

¹⁶ The Interagency Statement can be found at: https://www.consumerfinance.gov/documents/6830/interagency-statement_role-of-supervisory-guidance.pdf.

guidance. Among other things, the joint statement confirms that supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. The joint statement also explains that supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area.

4.1.4 Updates to HMDA Small Entity Compliance Guide

On October 30, 2018, the Bureau updated the HMDA Small Entity Compliance Guide to reflect changes made by section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (signed into law on May 24, 2018) to the Home Mortgage Disclosure Act (HMDA). More details, including an executive summary of a recent Bureau HMDA rulemaking and other resources for compliance, can be found at:

<https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/hmda-implementation/>.¹⁷

5. Conclusion

The Bureau will continue to publish Supervisory Highlights to aid Bureau-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 Bureau's guidance documents.

6. Regulatory Requirements

¹⁷ On August 31, 2018, the Bureau issued an interpretive and procedural rule to implement and clarify changes made by the Act. The full text of the Rule can be found at: *<https://www.federalregister.gov/documents/2018/09/07/2018-19244/partial-exemptions-from-the-requirements-of-the-home-mortgage-disclosure-act-under-the-economic>*.

This Supervisory Highlights summarizes existing requirements under the law, summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority, and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Supervisory Highlights does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: February 25, 2019.

Kathleen L. Kraninger,

Director,

Bureau of Consumer Financial Protection.

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