Supervisory Highlights

Winter 2013

Consumer Financial
Protection Bureau

Table of Contents

1. Introduction

The CFPB remains committed to transparency in its supervisory program by sharing key findings in order to help industry limit risks to consumers and comply with Federal consumer financial law. To that end, the Bureau is releasing its third edition of *Supervisory Highlights* in order to share its latest observations.

Since the last issue of *Supervisory Highlights*, CFPB supervisory activities have uncovered unfair and deceptive practices in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in markets supervised by the Bureau, such as the mortgage servicing industry. CFPB examination teams have continued to encounter weaknesses in compliance management systems (CMS) and where necessary, have directed institutions to implement changes to prevent violations and reduce risks to consumers in various markets.

CFPB's supervisory activities either led to or supported six recent public enforcement actions.[1] As a result of a recent enforcement action against JP Morgan Chase and Chase Bank, 2.1 million consumers will receive over $309 million in refunds related to credit card add-on products. Chase will also pay $20 million in civil money penalties. Also related to credit card add-on products, more than 335,000 customers of American Express have received, or will shortly, approximately $59.5 million in refunds as a result of supervision and enforcement action. American Express will pay $9.6 million in civil money penalties to the CFPB. In the Bureau's first enforcement action against a payday lender, Cash America will pay $14 million in refunds related to illegal collections activities. It will also pay $5 million in civil money penalties as a result of these violations and for violating the Military Lending Act and for destroying records in advance of the CFPB examination. Enforcement actions against Mortgage Master, Inc. and

[1] The CFPB Office of Enforcement also brought other actions unrelated to supervisory activities.

Washington Federal, N.A. resulted in over $450,000 in civil money penalties related to the accuracy of data reported pursuant to the Home Mortgage Disclosure Act (HMDA): $425,000 against Mortgage Master and $34,000 against Washington Federal. Finally, an enforcement action against Ally Financial Inc. and Ally Bank resulted in the federal government's largest auto loan discrimination settlement in history, with expected compensation totaling $80 million to more than 235,000 African-American, Hispanic, and Asian and Pacific Islander borrowers; and payment of $18 million in civil money penalties.

In addition to these public enforcement actions, recent nonpublic supervisory actions and self-reported violations have resulted in at least $2.6 million in remediation to consumers.

The CFPB supervises depository institutions and credit unions with total assets of more than $10 billion, and their affiliates. The Bureau also has authority under the Dodd-Frank Act to supervise nonbanks, regardless of size, in certain specific markets: mortgage companies (originators, brokers, servicers, and providers of loan modification or foreclosure relief services); payday lenders; and private education lenders.[2]

The CFPB may also supervise nonbank "larger participants" in other markets as the Bureau defines by rule. To date, the Bureau has issued three rules defining larger participants in the following markets: consumer reporting (effective September 2012), debt collection (effective January 2013), and student loan servicing (effective March 2014).

This report highlights supervision work completed between July and October 2013, and related enforcement actions announced before publication. Any questions or comments can be directed to CFPB_Supervision@cfpb.gov.

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[2] Banks, saving associations and credit unions with assets over $10 billion and their affiliates are generally referred to as "depository institutions" or "banks." Other companies that provide consumer financial products and services, but are not affiliates of large depository institutions, are referred to as "non-depository institutions" or "nonbanks." The term "financial institution" refers to both depository and non-depository institutions collectively.

2. Supervisory Observations

2.1 Mortgage Servicing

As the CFPB reported in the last edition of *Supervisory Highlights*, CFPB examiners have uncovered practices at mortgage servicers that can harm consumers. The CFPB has continued to focus on a wide spectrum of supervisory concerns at bank and nonbank mortgage servicers. In particular, CFPB examiners identified law violations relating to:

- Servicing transfers;
- Waivers of rights in loss mitigation agreements;
- Payment processing;
- Furnishing information to consumer reporting agencies; and
- Other issues arising in servicing of defaulted loans.

New mortgage servicing rules took effect on January 10, 2014. The issues discussed in this edition of Supervisory Highlights relate to practices under pre-existing law, before the effective date of the new rules. In particular, the prohibition on engaging in unfair, deceptive, or abusive acts or practices (UDAAPs) provided -- and continues to provide -- important protections for consumers.

2.1.1 Servicing Transfers

The new mortgage servicing rules that took effect on January 10, 2014, have specific provisions addressing servicing transfers. However, pre-existing law prohibits servicers from engaging in acts or practices that are unfair, deceptive, or abusive, including in the course of servicing transfers.

CFPB examiners found that two servicers had engaged in unfair practices in connection with servicing transfers. Specifically, these servicers failed to honor existing permanent or trial loan modifications after a servicing transfer. In many instances, they failed to honor the trial modifications unless they were able to independently confirm that the prior servicer properly offered a trial modification, even if the investor had previously approved the trial modification. In other instances, the servicer did not identify a permanent or trial loan modification in the records that the prior servicer transferred. Often the servicers required borrowers to submit additional paperwork or subjected the borrowers to significant delay while re-underwriting the loan modifications. These servicers also engaged in deception in connection with this practice by communicating to borrowers that they should have made the payments required by the original note, instead of acknowledging that the borrowers were to make reduced payments set by their trial modification agreements with the prior servicer.

For example, one servicer conducted collection activities, sent default letters to borrowers performing under loss mitigation agreements, attempted to collect the contractual monthly payment amount (rather than the lower trial modification amount), and called borrowers repeatedly to represent that they should have paid amounts exceeding those required by their modification agreements. To remedy these violations, Supervision directed the servicers to cease the practices and implement revised policies and procedures regarding transferred trial modifications to identify all transferred trial modifications and secure all documentation related to a transferred trial modification at the time of transfer. Supervision also directed the servicers to take remedial measures to address consumer harm.

Additionally, CFPB examiners detected other risks and law violations as a result of servicing transfers. In one examination, a servicer failed to provide notices of transfer to consumers with newly transferred loans within 15 days of the transfer as required by RESPA. Supervision directed the servicer to develop policies and procedures to ensure the timely issuance of notices of transfer.

2.1.2 Waivers of Rights in Loss Mitigation Agreements

At two servicers, Supervision cited the unfair practice of requiring all borrowers, regardless of individual circumstance, to enter into across-the-board waivers of existing claims in order to obtain a forbearance or loan modification agreement. As these servicers presented these clauses in a “take it or leave it” fashion in the ordinary course of offering loss mitigation agreements, rather than in the context of resolution of a contested claim or another individualized analysis of the servicer’s risks and the consumer’s potential claims, Supervision determined that these servicers had engaged in unfair practices. As a result, Supervision directed these servicers to cease using broad waiver clauses like those identified in these examinations in loss mitigation agreements in the ordinary course of business, without regard to individual circumstances. Supervision also directed them to cease enforcing the existing unfair waiver clauses and to provide notice to the borrowers that it would not enforce these waivers in the future.

2.1.3 Payment Processing

Some servicers market bi-weekly payment programs to borrowers, and one servicing examination identified deceptive marketing of such a program. Examiners found that the solicitations for the program misrepresented to borrowers when the payment program would apply the payments and the source of the savings resulting from the program. The overall net impression of the solicitation was that, if a consumer signed up for the program, the servicer would be crediting payments biweekly, when in fact the program submitted payments monthly as usual and retained the extra money to make a 13th annual payment. Consumers would expect to save mortgage interest as a result of the biweekly crediting, and the communications failed to disclose adequately that the 13th extra payment was the sole source of savings under the program.

As part of the escrow function, servicers send annual notices to borrowers regarding the escrow account balances, and to correct any shortage or surplus. Examiners identified a deceptive practice at one servicer, where the escrow statements to delinquent borrowers stated that the consumer would receive a refund of escrow surplus, when in fact the account was delinquent and the consumer would not be receiving a refund. Supervision directed the servicer to cease the practice of stating that the consumer would receive a refund of a surplus, and to implement monitoring procedures to ensure that this practice did not reoccur.

Additionally, examiners identified violations of the Homeowners Protection Act (HPA) at servicers, including failure to automatically terminate private mortgage insurance (PMI) on the date that the principal balance reaches 78 percent of the original value of the property. For example, a servicer imposed an additional requirement that the loan had been originated at least two years ago, when the HPA does not permit such a requirement. Examiners also identified HPA violations where the servicer failed to return premium amounts to the borrower within the 45 days that HPA requires for return of funds after the borrower appropriately requested PMI cancellation.

2.1.4 Furnishing of Information to Consumer Reporting Agencies

Mortgage servicers generally furnish data to consumer reporting agencies. In one examination, Supervision cited Fair Credit Reporting Act violations as a result of the servicer's failure to comply with the Furnisher Rule,[3] which imposes specific obligations on entities that provide information to consumer reporting agencies. In one matter, the servicer engaged in a significant number of short sales, and then it reported the short sales using the credit reporting "code" for foreclosure. Incorrectly identified short sales on a person's credit report can impede the person's ability to obtain conventional home financing because common underwriting standards treat short sales and foreclosures much differently. This servicer self-identified the issue through internal audits and reported it to the CFPB; it also began working to remedy the inaccurate reporting.

At another examination, examiners found that the servicer had identified through internal audits that it had misreported certain information to consumer reporting agencies. Specifically, the servicer misreported borrowers who had trial loan modifications as being in the foreclosure process and inaccurately reported whether certain loan modifications were made under governmental or proprietary programs. These audit findings raised concerns about the servicer's compliance with the Furnisher Rule. The examiners subsequently found that the servicer implemented new procedures to correct the mistakes identified in its internal audits in a timely manner and the servicer otherwise maintained acceptable procedures. To address the consumer risks, Supervision directed the servicer to strengthen credit reporting practices to ensure that it reports accurate information to consumer reporting agencies, including monitoring and tracking exceptions to identify and correct the root causes of any inaccurate reporting, and improve training and other processes.

2.1.5 Other Default Servicing Issues

At another servicer, examiners identified loss mitigation costs that the servicer charged to certain borrowers in error. The servicer promptly worked to correct the underlying software coding mistake and will reverse the fees. Supervision directed the servicer to complete its

[3] 12 CFR 1022.42 and Appendix E.

analysis to identify any erroneously charged fees, reverse the fees, and report to the CFPB on the status of affected loans.

The CFPB has a particular interest in protecting consumers serving in the military, and military consumers have certain supplemental protections relating to consumer financial products. Examiners noted that two servicers were at risk of committing legal violations and creating consumer harm for failing to conduct applicable checks and document the results regarding a borrower's military status prior to referring the borrower to foreclosure.

Additionally, examiners identified an unfair act relating to the treatment of a military borrower who received a deferred payment plan under state law while on active military duty. Despite written confirmation of the deferred payment plan, the servicer failed to properly code the account to reflect the deferral. The borrower began receiving collection calls and letters indicating the account was past due, and that the loan would be referred to foreclosure if it was not brought current. The servicer did not correct the mistake promptly when the borrower complained, and it charged improper late fees to the borrower and reported the loan to the credit bureaus as delinquent during the deferral period. In this instance, the servicer ultimately removed the late fees and corrected the credit reporting on the account, and Supervision directed the servicer to revise policies and procedures to ensure that any such payment plans are honored, and to train employees to prevent future violations.

In one examination, Supervision cited a deceptive practice in connection with short sale conditional approval letters. As a general matter, servicers send these letters when they are willing to approve a short sale for less than the amount owed on the mortgage if certain conditions are met. In this instance, Supervision determined that short sale conditional approval letters that state the borrower must "close" by a specific sale date, when in fact the servicer also required that it (1) receive the funds by that date and (2) conduct a review of the file to ensure the loan is paid off according to investor guidelines by that date, were deceptive. A consumer could reasonably interpret "closing" to mean when the buyer, seller and settlement agent execute the closing documents, exchange funds, and transfer title to the property if the document does not say otherwise. The misrepresentation would be material, for example, because a consumer would likely select an earlier date for closing if he or she knew the servicer required receipt of the funds before the prescribed date. To remedy these violations, Supervision directed the servicers to clearly and prominently disclose all material terms of the conditional approval and conduct a review to address past consumer harm resulting from this practice.

Mortgage servicers sometimes undertake collection activities, including attempts to contact the borrower and collect on an outstanding amount due. Examiners noted an issue at one servicer, where collection agents failed to honor existing requests from consumers directing the servicer to contact their attorneys for all communications. The servicer continued to contact the consumers in violation of the Fair Debt Collection Practices Act (which was applicable to the particular activities of the servicer at issue). Supervision directed the servicer to implement training and monitoring to prevent future violations.

2.2 Remedial Actions

2.2.1 Public Enforcement Actions

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

CHASE AND JP MORGAN CHASE

On September 19, 2013, CFPB ordered Chase Bank USA, N.A. and JPMorgan Chase Bank, N.A. to refund an estimated $309 million to more than 2.1 million customers for illegal credit card practices. This enforcement action was the result of work started by the Office of the Comptroller of the Currency (OCC), which the CFPB joined last year. The agencies found that Chase engaged in unfair billing practices for certain credit card "add-on products" by charging consumers for credit monitoring services that they did not receive. Consumers unfairly incurred charges for interest and fees, and failed to receive the benefits of the products. In addition to providing refunds, Chase has agreed to end the unfair billing practices, submit to an independent audit, improve its oversight of third-party service providers, and pay $20 million to the CFPB's Civil Penalty Fund.

MORTGAGE MASTER AND WASHINGTON FEDERAL

The Home Mortgage Disclosure Act (HMDA) is intended to provide the public with loan data that can be used: (i) to help determine whether financial institutions are serving the housing needs of their communities, (ii) to assist public officials in distributing public-sector investment to help attract private investment to areas where it is needed, and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, such as the Equal Credit Opportunity Act (ECOA).

The CFPB considers accurate HMDA data and effective HMDA compliance management systems to be of great importance. The CFPB routinely reviews HMDA data and assesses compliance programs as part of its supervision of both banks and nonbanks. To date, the CFPB has conducted HMDA reviews at dozens of financial institutions, both bank and nonbank, and has found that many lenders have adequate HMDA data compliance management systems, resulting in HMDA data with no errors or errors falling under the resubmission thresholds.[4]

However, several HMDA reviews at financial institutions found error rates over the resubmission thresholds and Supervision directed the financial institutions to resubmit their HMDA data and improve their HMDA compliance systems. In October, the CFPB entered into Consent Orders with two lenders to address violations of HMDA. One entity, Mortgage Master, Inc., is a nonbank headquartered in Walpole, Massachusetts. The other entity, Washington Federal, is a bank headquartered in Seattle, Washington. During examinations at these institutions, Supervision found patterns of HMDA non-compliance and severely compromised mortgage lending data. The entities were required to improve their HMDA compliance management systems, resubmit their HMDA data, and pay civil money penalties. Mortgage Master paid $425,000 in penalties and Washington Federal paid $34,000 in penalties, which reflects the relative gravity of the violations in each instance.

CASH AMERICA

On November 20, 2013, the CFPB announced an enforcement action against Cash America International, Inc., a payday lender, for robo- signing court documents in debt collection lawsuits. The CFPB also found that Cash America – one of the largest short-term, small-dollar lenders in the country – violated the Military Lending Act by illegally overcharging servicemembers and their families. Cash America will pay up to $14 million in refunds to consumers who were victimized by these practices. This enforcement action arose from a CFPB examination, and the consent order includes a $5 million fine for these violations and for destroying records in advance of the Bureau's examination. This was the Bureau's first public enforcement action against a payday lender, its first public action under the Military Lending

[4] A resubmission threshold is the data accuracy standard that the Bureau uses in its examinations. If an institution's data errors exceed the resubmission threshold, Supervision may direct the institution to correct and resubmit its HMDA Loan Application Register (LAR). For more guidance on these thresholds, see http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf.

Act, and its first public action involving a company's failure to comply fully with a CFPB examination.

ALLY FINANCIAL INC. AND ALLY BANK

On December 19, 2013, the CFPB, in partnership with the Department of Justice (DOJ), ordered Ally Financial Inc. and Ally Bank to pay $80 million to more than 235,000 minority customers who paid higher interest rates on their auto loans because of Ally's discriminatory pricing system. The CFPB and DOJ's actions marked the federal government's largest auto loan discrimination settlement in history. The CFPB, acting jointly with the DOJ, found that Ally through its indirect auto financing program sets a minimum interest rate that a dealer charges a borrower. Ally's policy then allows the dealer to increase – or mark up – the interest rate and shares the profit made from the markup with the dealer. As a result of this policy, the CFPB and DOJ found that African-American, Hispanic, and Asian and Pacific Islander borrowers paid more for auto loans than did similarly-situated non-Hispanic white borrowers. In addition to providing consumer remuneration, Ally has agreed to establish an enhanced compliance framework. Ally will monitor dealer markup in order to prevent or redress future discrimination or can decide to eliminate dealer markups altogether. Within this framework, Ally will be able to exercise its business judgment about how to achieve compliance with fair lending law. Finally, Ally agreed to pay $18 million in penalties to the CFPB's Civil Penalty Fund.

AMERICAN EXPRESS

On December 23, 2013, in coordination with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), the CFPB ordered American Express Centurion Bank, American Express Bank, FSB, and American Express Travel Related Services (American Express) to pay $59.5 million to more than 335,000 consumers for unfair billing practices and deceptive marketing of credit card add-on products. In addition to consumer restitution, American Express agreed to eliminate all deceptive or unfair practices and violations of other laws relating to the sale, marketing, and administration of these products; hire an independent third party to review other credit card add-on products for compliance with federal consumer financial laws, and address any compliance issues, including remediation if necessary to correct any legal violations; and improve its oversight of third-party vendors. Finally, American Express will pay an additional $9.6 million in civil money penalties to the CFPB; American Express Centurion Bank will pay $3.6 million to the FDIC; and American Express

Bank, FSB will pay $3 million to the OCC. This is the fourth action with respect to credit card add-on products taken in coordination with other regulators.

2.2.2 Non-Public Supervisory Actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in at least $2.6 million in remediation to consumers. These non-public supervisory actions generally have been the product of CFPB examinations, either through examiner findings or self-reported violations of Federal consumer financial law during an exam. Recent non-public supervisory actions have occurred in areas such as mortgage origination and mortgage servicing.

3. Supervision Program Developments

As its supervision program enters its third year, the Bureau continues to refine its operations and strive for greater efficiency in its supervision activities. The CFPB continues to recruit highly qualified examination staff in order to reach a steady state. As of January 2, 2014, Bureau examination staff numbered approximately 320 examiners, and 108 of the CFPB's examiners are commissioned through the Bureau's internal process, or came to the CFPB with commissions from other regulators. Developing and implementing training opportunities, especially for the CFPB mortgage rules effective in January 2014, remains a top Bureau priority.

3.1 Changes to Examination Reports and Supervisory Letters

Beginning in January 2014 we are changing the format of the Examination Reports and Supervisory Letters (collectively referred to as reports) that we send supervised entities after our reviews of their compliance with Federal consumer financial laws. The changes to our report templates aim to:

- facilitate drafting by examiners;
- simplify reports and reduce repetition; and
- facilitate follow-up reporting by supervised entities about actions they take to address compliance management weaknesses or legal violations found at CFPB reviews.

We anticipate that these changes will reduce the amount of time necessary to finalize reports, thus enabling us to more efficiently provide the reports to supervised entities.

The main changes to the templates are:

- Elimination of Recommendations. Any recommendations for improving currently satisfactory processes will be provided orally when examiners are on-site.
- Elimination of the list of CFPB team members participating in a review. Reports will continue to be signed by the Examiner in Charge and provide regional management contact information.
- Creation of a single section in the report that includes all of the items that we expect the entity to address when the review identifies violations of law or weaknesses in compliance management. This entire section will be referred to as "Matters Requiring Attention," regardless of whether the CFPB is requiring specific attention by an entity's Board of Directors. We will no longer include additional "Required Corrective Actions." The entity receiving the report will be expected to furnish periodic progress reports to the CFPB about all Matters Requiring Attention. The frequency of reporting will be tailored to the specific Matters in a report.

Examiners will begin using the new report format for reviews with an on-site review start dates of January 2, 2014 or later. Examiners also may use the new format for reviews that started before January 2, 2014, but for which report drafting started after that date. The new templates will be available on Consumerfinance.gov on the same page as the Supervision and Examination Manual.

3.2 Examination Procedures

The CFPB is committed to publishing, in their entirety, the procedures its examiners use to assess compliance with all Federal consumer financial laws relevant to a particular product or market. All of the Bureau's examination procedures can be found at: http://www.consumerfinance.gov/guidance/supervision/manual/, and are updated as regulatory changes warrant.

3.2.1 Mortgage Rules Examination Procedures

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB issued new mortgage rules in January 2013. The majority of the rules went into effect in January 2014 (some provisions were previously in effect), and the CFPB released examination procedures well in advance of the effective date to help industry better understand their compliance responsibilities.[5]

On June 4, 2013, the CFPB published interim examination procedures for the Truth in Lending Act (TILA) and the Equal Credit Opportunity Act (ECOA), and on August 15, 2013, the Bureau released interim procedures for the Real Estate Settlement Procedures Act (RESPA). On November 27, 2013, the CFPB finalized all three sets of procedures to reflect technical changes to the Bureau's rules.

In addition to publishing these examination procedures, the CFPB maintains a webpage dedicated to helping industry come into compliance with the rules at http://www.consumerfinance.gov/regulatory-implementation/.

3.2.2 Remittances Examination Procedures

On October 22, 2013, the CFPB published examination procedures that will be used to supervise financial institutions that provide remittances in the normal course of their business.[6] The CFPB's remittance transfer rule is an amendment to Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The rule is principally contained in three *Federal Register* notices published in February 2012, August 2012, and May 2013.[7] It became effective on October 28, 2013. The examination procedures will guide CFPB examiners as they determine

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[5] The CFPB's examination procedures are based on the Federal Financial Institutions Examination Council examination procedures, which were approved on an interagency basis.

[6] A "remittance transfer" is an electronic transfer of money from a consumer in the U.S. to a person or business in a foreign country that is sent by a remittance transfer provider. It can include transfers from retail non-depository "money transmitters" as well as banks and credit unions that transfer funds through wire transfers, automated clearing house transactions, or other methods.

[7] Additionally, a technical correction and clarifying amendment were published on August 14, 2013, and a technical correction was published on July 10, 2012.

the applicability of the rule to CFPB-supervised entities and evaluate compliance with its requirements.

3.2.3 Short-Term, Small-Dollar Loan Examination Procedures Updates

On September 17, 2013, the CFPB released an important update to its Short-Term, Small-Dollar Loan examination procedures to include guidance on how to identify Military Lending Act (MLA) violations. In 2006, Congress passed the MLA to address lending practices directed toward military personnel and their families by granting broad protections, such as a military annual percentage rate cap of 36 percent and bans on the "roll over" of payday loans and the requirement to repay by military allotment.

In 2013, amendments to the MLA gave the CFPB authority to enforce the MLA. Through our supervisory and enforcement work, we will be ensuring that lenders are adhering to MLA requirements when they make short-term, small-dollar loans to servicemembers and their dependents. The updates to the examination procedures also include guidance for CFPB examiners to consider expanding the scope of examinations to cover any other consumer financial product or service offered by the lender that may pose risks to consumers, such as title loans and check cashing.

3.3 CFPB Guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public. These guidance documents are published at http://www.consumerfinance.gov/guidance/, and highlights from some of those published from July through October are below.

3.3.1 Representations Regarding Effect of Debt Payments on Credit Reports and Scores

On July 10, 2013, the CFPB released a bulletin providing guidance to creditors, debt buyers, and third-party collectors about compliance with the Fair Debt Collection Practices Act (FDCPA) and sections 1031 and 1036 of the Dodd-Frank Act when making representations about the impact that payments on debts in collection may have on credit reports and credit scores. Based on its supervisory, enforcement, and other work, CFPB became aware that some of these entities are making representations that paying debts in collection may yield improvements in a consumer's credit report, credit score, creditworthiness, or likelihood of receiving credit or favorable credit terms. The Bureau is concerned that some of these representations may be deceptive under the FDCPA and/or the Dodd-Frank Act, as applicable.

Though not exhaustive, the bulletin gives specific examples of statements that may be deceptive under the FDCPA and/or the Dodd-Frank Act, and encourages debt-owners and third-party debt collectors to take appropriate steps in managing their collection activities. CFPB plans to use its supervision and enforcement tools to review relevant documentation to assess whether owners of debts and third-party debt collectors are making these types of claims and the factual bases for them, and to take any corrective action deemed necessary.

3.3.2 Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts

Also on July 10, 2013, CFPB released a bulletin explaining that certain acts or practices related to the collection of consumer debt could constitute unfair, deceptive, or abusive acts or practices (UDAAPs) prohibited by the Dodd-Frank Act. While a UDAAP determination is dependent on the facts and circumstances, and case-by-case analysis, the bulletin gives ten examples of practices that could constitute UDAAPs. The list is not exhaustive, but the CFPB will monitor the specific practices listed particularly closely in its supervision and enforcement activities. Finally, the bulletin reiterates that the obligation to avoid UDAAPs under the Dodd-Frank Act is in addition to any obligations that may arise under the FDCPA, and applies even with respect to first-party creditors and others who may not be subject to the FDCPA.

3.3.3 Fair Credit Reporting Act (FCRA) and Furnisher Obligations

On September 4, 2013, the CFPB published a bulletin outlining its expectations for furnishers under the Fair Credit Reporting Act (FCRA). When a consumer disputes the accuracy or completeness of information supplied by a furnisher to a consumer reporting agency (CRA), the FCRA generally requires the CRA to provide the furnisher with all relevant information timely submitted by the consumer.

The furnisher, in turn, must "conduct an investigation with respect to the disputed information," "review all relevant information" provided by the CRA, and respond appropriately based on the result of the investigation.[8] The CFPB expects CRAs and furnishers to comply fully with these FCRA requirements, thereby promoting the accuracy and completeness of information in the consumer reporting system. Specifically, the CFPB expects furnishers to have reasonable systems and technology in place to receive and process notices of disputes and information regarding disputes, including relevant documentation, forwarded to them by CRAs. Finally, the bulletin reminds supervised entities that the CFPB monitors consumer complaints received and prioritizes examinations and other activities on the basis of risks posed to consumers.

3.3.4 Payroll Card Bulletin

On September 12, 2013, the CFPB issued a bulletin to reiterate the application of the Electronic Fund Transfer Act (EFTA) and Regulation E, which implements the EFTA, to payroll card accounts.[9] Employees who receive their wages via payroll cards are entitled to certain Regulation E protections, including clear and readily understandable initial disclosures, access to account history, limited liability for unauthorized transfers, and error resolution rights.

Additionally, the bulletin reminds employers and others that Regulation E prohibits employers from mandating that employees receive wages only on a payroll card of the employer's choosing. An employer may, however, offer employees the choice of receiving their wages on a payroll card or receiving it by some other means. Permissible alternative wage payment methods are governed by state law, but may include direct deposit to an account of the employee's choosing, a paper check, cash, or other evidence of indebtedness.

The CFPB has the authority to examine supervised entities' use of third-party service providers, to assess both the supervised entity's and the service provider's compliance with federal consumer financial laws, including the EFTA and Regulation E. Finally, the bulletin notes that

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[8] 15 USC 1681s-2(b)(1).

[9] Payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis. *See* 12 CFR 1005.02(b)(2).

the Bureau is also authorized, subject to certain exceptions, to enforce the EFTA and Regulation E against any person subject to the Regulation, including financial institutions and employers.[10]

3.3.5 Elder Financial Abuse Bulletin

In conjunction with various Federal regulators,[11] the CFPB released guidance on September 24, 2013, pertaining to the reporting by financial institutions of suspected elder financial abuse and the requirements of the Gramm-Leach-Bliley Act (GLBA). In response to concerns about whether this reporting could violate the GLBA, the guidance clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the GLBA or its implementing regulations. The guidance points to various sections of the GLBA that could permit the sharing of nonpublic personal information about consumers with the proper agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization and without violating the GLBA.

The guidance shares common signs of elder financial exploitation, and encourages interested financial institutions to refer to *Money Smart for Older Adults*, a joint publication of the CFPB and FDIC, for training and further information.

3.3.6 Home Mortgage Disclosure Act (HMDA) and Regulation C Bulletin

On October 9, 2013, the CFPB published a bulletin reiterating the importance of accurate HMDA data and effective HMDA compliance management systems. This bulletin, released simultaneously with the CFPB's HMDA enforcement actions described above, provides further clarity to the Bureau's approach to enforcing HMDA.

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[10] EFTA 918(a)(5), 15 USC 1693o(a)(5).

[11] Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and Securities and Exchange Commission.

Specifically, the bulletin discusses components of an effective HMDA compliance management system. The bulletin suggests that common elements of an effective compliance system include employee training, internal audits to test and evaluate information accuracy, and assigning responsibility for timely and accurate reporting of the data. The bulletin also details factors the CFPB may consider when evaluating whether to pursue a public enforcement action for HMDA violations. Additionally, the bulletin announces the release of the CFPB's HMDA Resubmission Schedule and Guidelines, which lists the error thresholds that CFPB examination teams will use to determine when institutions should correct and resubmit their HMDA data, and are effective for examinations that begin on or after January 18, 2014.

3.4 Other Developments

3.4.1 Larger Participant Rulemaking

The Bureau issued a rule on December 3, 2013, that allows the CFPB to supervise for the first time nonbanks that are larger participants in the student loan servicing market. The Bureau already had authority to supervise student loan servicing at the largest banks and their affiliates before the rule was issued, and this rule expands that supervision authority to any nonbank student loan servicer that handles more than one million borrower accounts, regardless of whether they service federal or private loans. Under the rule, those servicers will be considered "larger participants," and the Bureau may examine their activity to assess their compliance with Federal consumer financial laws. To coincide with this new authority, the Bureau also updated its Supervision and Examination Manual to provide guidance on how the Bureau will monitor bank and nonbank servicers of private and federal student loans.

3.4.2 Qualified Mortgage and Fair Lending

The CFPB's Ability-to-Repay Rule implements provisions of the Dodd-Frank Act that require creditors to make a reasonable, good faith determination that a consumer has the ability to repay a mortgage loan before extending credit to the consumer. Lenders are presumed to have complied with the Ability-to-Repay Rule if they issue Qualified Mortgages, which must satisfy requirements that prohibit or limit risky features that harmed consumers in the recent financial crisis. In response to industry questions about fair lending risk, including possible disparate impact, the CFPB, the Board of Governors of the Federal Reserve System, the Federal Deposit

Insurance Corporation, the National Credit Union Administration, and the Office of Comptroller of the Currency issued guidance addressing the choice to offer only Qualified Mortgages.

The CFPB and these other federal regulators do not anticipate that a creditor's decision to offer only Qualified Mortgages would, absent other factors, elevate a supervised institution's fair lending risk. Creditors should continue to evaluate fair lending risk as they would for other types of product selection decisions, including by carefully monitoring policies and practices and implementing effective compliance management systems.

4. Conclusion

The Dodd-Frank Act gave the CFPB various tools to promote a financial services marketplace that operates in accordance with Federal consumer financial law and works well for both consumers and the businesses that serve them. Through one of these tools – its supervisory program – the CFPB examines financial institutions to assess their compliance with Federal consumer financial law and directs institutions to improve their practices and remediate harm to consumers where appropriate. The CFPB plans to periodically publish *Supervisory Highlights* to provide general information about its supervision program without identifying specific institutions (except for enforcement actions already made public) and to help communicate the standards of conduct expected of supervised entities.