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Supervisory Highlights

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1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. One of the tools the CFPB uses to further this goal is the supervision of bank and nonbank institutions that offer consumer financial products and services.¹ In this tenth edition of *Supervisory Highlights*, the CFPB shares recent supervisory observations in the areas of consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending. One of the Bureau's goals is to provide information that enables industry participants to ensure their operations remain in compliance with Federal consumer financial law. The findings reported here reflect information obtained from supervisory activities completed during the period under review as captured in examination reports or supervisory letters. In some instances, not all corrective actions, including through enforcement, have been completed at the time of this report's publication.

¹ The CFPB supervises depository institutions and credit unions with total assets of more than \$10 billion, and their affiliates. In addition, the CFPB has authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (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.

The CFPB may also supervise "larger participants" in other nonbank markets as the CFPB defines by rule. To date, the CFPB has issued five rules defining larger participants in the following markets: consumer reporting (effective September 2012), consumer debt collection (effective January 2013), student loan servicing (effective March 2014), international money transfers (effective December 2014) and automobile financing (effective August 2015).

The CFPB's supervisory activities have either led to or supported three recent public enforcement actions, resulting in \$52.75 million in consumer remediation and other payments and an additional \$8.5 million in civil money penalties.² The Bureau also imposed other corrective actions at these institutions, including requiring improved compliance management systems (CMS). In addition to these public enforcement actions, Supervision continues to resolve violations using non-public supervisory actions. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, including remediation of consumer harm when appropriate. Recent supervisory resolutions have resulted in restitution³ of approximately \$14.3 million to more than 228,000 consumers. Other corrective actions have included, for example, furnishing corrected information to consumer reporting agencies, improving training for employees to prevent various law violations, and establishing and maintaining required policies and procedures.

This report highlights supervision work generally completed between September 2015 and December 2015, though some completion dates may vary. Any questions or comments from supervised entities can be directed to CFPB_Supervision@cfpb.gov.

² The CFPB Office of Enforcement also brought other actions unrelated to supervisory activities.

³ Restitution used in this report points specifically to monetary relief (or redress) to consumers while remediation includes both monetary and non-monetary forms of relief.

2. Supervisory observations

Summarized below are some recent examination observations in consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending. As the CFPB's Supervision program progresses, we will continue to share positive practices found in the course of examinations (see sections 2.2.1, 2.4.4, and 2.5.1), as well as common opportunities for improvement.

One such common area for improvement is the accuracy of information about consumers that is supplied to consumer reporting agencies. As discussed in previous issues, credit reports are vital to a consumer's access to credit; they can be used to determine eligibility for credit, and how much consumers will pay for that credit. Given this, the accuracy of information furnished by financial institutions to consumer reporting agencies is of the utmost importance. As in the last issue of *Supervisory Highlights*, this issue shares observations regarding the furnishing of consumer information across a number of product areas (see sections 2.1.1, 2.1.2, 2.1.4, 2.2.1 and 2.5.5).

2.1 Consumer reporting

CFPB examiners conducted one or more reviews of compliance with furnisher obligations under the Fair Credit Reporting Act (FCRA)⁴ and its implementing regulation, Regulation V,⁵ at depository institutions. The reviews focused on (i) entities furnishing information (furnishers) to nationwide specialty consumer reporting agencies (NSCRAs) that specialize in reporting in connection with deposit accounts and (ii) NSCRAs themselves.

2.1.1 Furnisher failure to have reasonable policies and procedures regarding information furnished to NSCRAs

Regulation V requires companies that furnish information to consumer reporting companies to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information they furnish. Whether policies and procedures are reasonable depends on the nature, size, complexity, and scope of each furnisher's activities. Examiners found that while one or more furnishers had policies and procedures generally pertaining to FCRA furnishing obligations, they failed to have policies and procedures addressing the furnishing of information related to deposit accounts. One or more furnishers also lacked processes or policies to verify data furnished through automated internal systems. For example, one or more furnishers established automated systems to inform NSCRAs when an account was paid-in-full and when the account balance reached zero. But the furnishers did not have controls to check whether such information was actually furnished. To correct this deficiency, Supervision directed one or more furnishers to establish and implement policies and procedures to monitor the automated functions of its deposit furnishing processes.

⁴ 15 USC 1681-1681x.

⁵ 12 CFR part 1022.

2.1.2 Furnisher failure to promptly update outdated information

The FCRA requires furnishers that regularly and in the ordinary course of business furnish information to consumer reporting agencies to promptly update information they determine is incomplete or inaccurate. Examiners found that one or more such furnishers of deposit account information failed to correct and update the account information they had furnished to NSCRAs and/or did not institute reasonable policies and procedures regarding accuracy, including prompt updating of outdated information. When consumers paid charged-off accounts in full, one or more furnishers would update their systems of records to reflect the payment, but would not update the change in status from “charged-off” to “paid-in-full” and send the update to the NSCRAs. One or more furnishers also required consumers to call the entity to request updated furnishing information when they made final payments on settlement accounts. If a consumer did not call, furnishing on accounts settled-in-full were not updated to the NSCRAs. Not updating an account to paid-in-full or settled-in-full status could adversely affect consumers’ attempts to establish new deposit or checking accounts. Supervision directed one or more furnishers to update the furnishing for all impacted accounts.

2.1.3 NSCRAs ensuring data quality

Supervision conducted examinations of one or more NSCRAs to assess their efforts to ensure data quality in their consumer reports. Examiners noted that one or more NSCRAs had internal inconsistencies in linking certain identifying information (e.g., Social Security numbers and last names) to consumer records associated with negative involuntary account closures, such as checking account closures for fraud or account abuse. These inconsistencies in some cases resulted in incorrect information being placed in consumers’ files. Based on the weaknesses identified, Supervision directed one or more NSCRAs to develop and implement internal processes to monitor, detect, and prevent the association of account closures to incorrect consumer profiles, and to notify affected consumers.

2.1.4 NSCRA oversight of furnishers

Examiners reviewed one or more NSCRAs, focusing on their various systems and processes used to oversee and approve furnishers. They found that one or more NSCRAs had weaknesses in their systems and processes for credentialing of furnishers before the furnishers were allowed to

supply consumer information to an NSCRA. Specifically, examiners found that one or more NSCRAs did not always follow their own policies and procedures for issuing credentials to furnishers and did not implement a timeframe for furnishers to submit NSCRA-required documentation during the credentialing process. In addition, one or more NSCRAs failed to maintain documentation adequate under their policies and procedures to demonstrate the steps that were taken to approve a furnisher after the initial credentialing process. Supervision directed one or more NSCRAs to strengthen their oversight and establish documented policies and procedures for the timely tracking of credentialing and re-credentialing of furnishers.

2.2 Debt collection

The Supervision program covers certain bank and nonbank creditors who originate and collect their own debt, as well as the larger nonbank third-party debt collectors. During recent examinations, examiners observed a beneficial practice that involved using exception reports provided by consumer reporting agencies (CRAs) to improve the accuracy and integrity of information furnished to CRAs. However, examiners also identified several violations of the Fair Debt Collection Practices Act (FDCPA),⁶ including failing to honor consumers' requests to cease communication, and using false, deceptive or misleading representations or means regarding garnishment.

2.2.1 Use of exception reports by furnishers to reduce errors in furnished information

Banks and nonbanks that engage in collections activity and that furnish information about consumers' debts to CRAs must comply with the FCRA and Regulation V. As noted above, furnishers must establish and implement reasonable written policies and procedures regarding

⁶ 15 USC 1692-1692p.

the accuracy and integrity of the information that they furnish to a CRA.⁷ CRAs routinely provide or make available exception reports to furnishers. These exception reports identify for furnishers the specific information a CRA has rejected from the furnisher's data submission to the CRA, and thus has not been included in a consumer's credit file. The reports also provide information that a furnisher can use to understand why the furnished information was rejected. In some circumstances, these rejections may help identify mechanical problems in transmitting data or potential inaccuracies of the information the furnisher attempted to furnish.

In responding to a matter requiring attention requiring one or more entities engaging in collections activities to enhance policies and procedures to ensure proper and timely identification of information rejected by the CRAs, one or more entities enhanced its policies and procedures regarding the utilization of exception reports to resolve rejected information. Examiners found that the one or more entities reviewed and corrected rejections related to errors in consumer names, updated name and address information through customer outreach, and met regularly with the CRAs to discuss the exception reports and to identify patterns in rejections. As a result of these efforts, one or more entities had a significant reduction in errors and exceptions, which led to greater accuracy in the information furnished to CRAs.

2.2.2 Cease-communication requests

Under Section 805(c) of the FDCPA, when consumers notify a debt collector in writing that they refuse to pay a debt or that they wish the debt collector to cease further communication with them, the debt collector must, with certain exceptions, cease communication with the consumer with respect to the debt.⁸ Examiners determined that one or more debt collectors failed to honor some consumers' written requests to cease communication. The failures resulted from system

⁷ See 15 USC 1681s-2 (e) ("Accuracy Guidelines and Regulations Required"); 12 CFR 1022.42 ("Reasonable policies and procedures concerning the accuracy and integrity of furnished information").

⁸ 15 USC 1692c(c).

data migration errors and from mistakes during manual data entry. In some instances, the debt collectors had not properly coded the accounts to prevent further calls. In other instances, debt collectors changed the accounts back to “active” status, allowing further communications to be made. Supervision directed one or more debt collectors to improve training for their employees on how to identify and properly handle cease-communication requests.

2.2.3 False, deceptive or misleading representations regarding garnishment

Under Section 807 of the FDCPA, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.⁹ Examiners determined that one or more debt collectors used false, deceptive, or misleading representations or means regarding administrative wage garnishment when performing collection services of defaulted student loans for the Department of Education. The debt collectors threatened garnishment against certain borrowers who were not eligible for garnishment under the Department of Education’s guidelines. The debt collectors also gave borrowers inaccurate information about when garnishment would begin, creating a false sense of urgency. Supervision directed one or more debt collectors to conduct a root-cause analysis of what led their employees to make these statements and to improve training to prevent such statements in the future.

2.3 Mortgage origination

During the period covered by this report,¹⁰ the Title XIV rules were the focus of mortgage origination examinations.¹¹ In addition, these examinations evaluated compliance for other

⁹ 15 USC 1692e.

¹⁰ These mortgage origination exam findings are for a period preceding the effective date of the Know Before You Owe Disclosure Rule.

applicable Federal consumer financial laws as well as evaluating entities' compliance management systems. Findings from examinations within this period demonstrate, with some exceptions, general compliance with the Title XIV rules. Exceptions include, for example, the absence of written policies and procedures at depository institutions required under the loan originator rule.¹² Examiners also found certain deficiencies in compliance management systems, as discussed below.

2.3.1 Failure to maintain written policies and procedures required by the loan originator rule

The loan originator rule under Regulation Z requires depository institutions to establish and maintain written policies and procedures for loan originator activities, which specifically cover prohibited payments, steering, qualification requirements, and identification requirements.¹³ In one or more examinations, depository institutions violated this provision by failing to maintain such written policies and procedures. In most of these cases, examiners found violations of one or more related substantive provisions of the rule. For example, one or more institutions did not provide written policies and procedures – a violation itself – *and* violated the rule by failing to comply with the requirement to include the loan originator's name and Nationwide Multistate Licensing System and Registry identification on loan documents.¹⁴ In these instances, examiners determined that the failure to have written policies and procedures covering identification requirements was a violation of the rule and Supervision directed one or more institutions to establish and maintain the required written policies and procedures.

¹¹ The Title XIV rule changes cover loan originators (12 CFR 1026.36), the ability-to-repay (12 CFR 1026.43), appraisals and valuations (12 CFR 1002.14 and 12 CFR 1026.35), high-cost mortgages (12 CFR 1026.31 and 12 CFR 1024.20), and escrows for higher-priced mortgage loans (12 CFR 1026.35).

¹² 12 CFR 1026.36(j).

¹³ 12 CFR 1026.36(j).

¹⁴ 12 CFR 1026.36(g).

2.3.2 Deficiencies in compliance management systems

At one or more institutions, examiners concluded that a weak compliance management system allowed violations of Regulations X and Z to occur. For example, one or more supervised entities failed to allocate sufficient resources to ensure compliance with Federal consumer financial law. As a result, these entities were unable to institute timely corrective-action measures, failed to maintain adequate systems, and had insufficient preventive controls to ensure compliance and the correct implementation of established policies and procedures. Supervision notified the entities' management of these findings, and corrective action was taken to improve the entities' compliance management systems.

2.4 Remittances

The CFPB's amendments to Regulation E governing international money transfers (or remittances) became effective on October 28, 2013.¹⁵ Regulation E, Subpart B (or the Remittance Rule) provides new protections, including disclosure requirements, and error resolution and cancellation rights to consumers who send remittance transfers to other consumers or businesses in a foreign country.¹⁶ The amendments implement statutory requirements set forth in the Dodd-Frank Act.

The CFPB began examining large banks for compliance with the Remittance Rule after the effective date, and, in December 2014, the Bureau gained supervisory authority over certain nonbank remittance transfer providers pursuant to one of its larger participant rules.¹⁷ The

¹⁵ See 78 Fed. Reg. 30662 (May 22, 2013) (codified at 12 CFR Part 1005), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2013-05-22/pdf/2013-10604.pdf>.

¹⁶ Regulation E implements the Electronic Fund Transfer Act (EFTA).

¹⁷ The Bureau has had authority to examine large banks for compliance with the other provisions of EFTA and Regulation E, Subpart A, since it began to carry out its examination program in 2011. 12 CFR 1090.107; *see also* "Defining Larger Participants of the International Money Transfer Market," (Sept. 12, 2014), *available at*

CFPB's examination program for both bank and nonbank remittance providers assesses the adequacy of each entity's CMS for remittance transfers. These reviews also check for providers' compliance with the Remittance Rule and other applicable Federal consumer financial laws. Below are some recent findings from Supervision's remittance transfer examination program.

In all cases where examiners found violations of the Remittance Rule, Supervision directed entities to make appropriate changes to compliance management systems to prevent future violations and, where appropriate, to remediate consumers for harm they experienced.

2.4.1 Compliance management systems

Overall, remittance transfer providers examined by Supervision have implemented changes to their CMS to address compliance with the Remittance Rule. But for some providers, CMS is in the early stages of development and weaknesses were noted. At both bank and nonbank remittance transfer providers, boards of directors and management have dedicated some resources to comply with the Remittance Rule, and have updated policies and procedures, complaint management and training programs to cover this area. But some providers did not implement these changes until sometime after the effective date of the Remittance Rule. Moreover, examiners found implementation gaps or systems issues, some of which were not addressed by pre-implementation testing and post-implementation monitoring and audit. For example, examiners found that failure by one or more remittance transfer providers to conduct adequate testing of their systems led to consumers receiving inaccurate disclosures or, in some instances, no disclosures at all. At some nonbank remittance transfer providers, Supervision found weaknesses in the oversight of agents/service providers, consumer complaint response, and compliance audit.

http://files.consumerfinance.gov/f/201409_cfpb_final-rule_larger-participant-rule-international-money-transfer-market.pdf

2.4.2 Violations of the Remittance Rule

The Remittance Rule requires that providers of remittance transfers give their customers certain disclosures before (*i.e.*, a prepayment disclosure) and after (*i.e.*, a receipt) the customer pays for the remittance transfer. The prepayment disclosure must include, among other things, the amount to be transferred; front-end fees and taxes; the applicable exchange rate; covered third-party fees (if applicable); the total amount to be received by the designated recipient; and a disclaimer that the total amount received by the designated recipient may be less than disclosed due to recipient bank fees and foreign taxes. The receipt includes all the information on the prepayment disclosure and additional information, including the date the funds will be available, disclosures on cancellation, refund and error resolution rights, and whom to contact with issues related to the transfer. In lieu of separate disclosures, a provider can provide a combined disclosure when it would otherwise provide a prepayment disclosure and a proof of payment when it would otherwise provide a receipt.

Examiners noted the following violations at one or more providers:

- Providing incomplete, and in some instances, inaccurate disclosures;
- Failing to adhere to the regulatory timeframes (typically three business days) for refunding cancelled transactions;
- Failing to communicate the results of error investigations at all or within the required timeframes, or communicating the results to an unauthorized party instead of the sender; and
- Failing to promptly credit consumers' accounts (for amounts transferred and fees) when errors occurred.

The Remittance Rule requires that certain disclosures be given to consumers orally in transactions conducted orally and entirely by telephone. Examiners have also cited various violations of the rule related to oral disclosures. The Remittance Rule further requires disclosures in each of the foreign languages that providers principally use to advertise, solicit, or market remittance transfer services, or in the language primarily used by the sender to conduct the transaction, provided that the sender uses the language that is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services. Compliance with the Remittance Rule's foreign language requirements has generally been

adequate, though Supervision has cited one or more providers for failing to give oral disclosures and/or written results of investigations in the appropriate language.

2.4.3 Deceptive representations

One or more remittance providers made deceptive statements leaving consumers with a false impression regarding the conditions placed on designated recipients in order to access transmitted funds. Supervision directed one or more entities to review their marketing materials and make the necessary changes to cease these deceptive representations.

2.4.4 Zero-money-received transactions

At one or more remittance transfer providers, examiners observed transactions in which the provider disclosed to consumers that the recipients would receive zero dollars after fees were deducted. In some cases, consumers completed these transactions after receiving disclosures indicating that no funds would be received. When examiners informed providers of these transactions, multiple providers took voluntary proactive steps to alter their systems to either provide consumers with an added warning to ensure they understood the possible result of the transaction, or simply prevent these transactions from being completed. While not a violation of the Remittance Rule, the CFPB is continuing to gather information about transactions with this possible outcome.

2.5 Student loan servicing

In September of last year, the Bureau released joint principles of student loan servicing together with the Departments of Education and Treasury as a framework to improve student loan servicing practices, promote borrower success and minimize defaults. We are committed to

ensuring that student loan servicing is consistent, accurate and actionable, accountable, and transparent.¹⁸ The Bureau has made it a priority to take action against companies that are engaging in illegal servicing practices. To that end, supervising the student loan servicing market has therefore been a priority for the Supervision program. Our ongoing supervisory program has already touched a significant portion of the student loan servicing market, and industry members who service student loans would be well served by carefully reviewing the findings described below.

The CFPB continues to examine entities servicing both federal and private student loans, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. As in all applicable markets, Supervision also reviews student loan servicers' practices related to furnishing of consumer information to CRAs for compliance with the FCRA and its implementing regulation, Regulation V. In the Bureau's student loan servicing examinations, examiners have identified a number of positive practices, as well as several unfair acts or practices, and Regulation V violations.

2.5.1 Improved student loan payment allocation and loan modification practices at some servicers

As described in previous editions of *Supervisory Highlights*, examiners have found UDAAPs relating to payment allocation among multiple student loans in a borrower's account.¹⁹ However, examiners have also found that one or more servicers have adopted payment allocation policies for overpayments designed to be more beneficial to consumers by minimizing interest expense. For example, one or more servicers allocated payments exceeding the total

¹⁸ Consumer Financial Protection Bureau, Department of Education, Department of Treasury, Joint Statement of Principles on Student Loan Servicing (Sept. 2015),

http://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf.

¹⁹ See *Supervisory Highlights: Fall 2015*, Section 2.5.1, available at

http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

monthly payment on the account by allocating the excess funds to the loan with the highest interest rate. These servicers also clearly explained the allocation methodology to consumers, communicated that consumers can provide instructions on allocating overpayments, and provided mechanisms for providing these instructions, so that borrowers could choose to allocate excess funds in a different manner if they'd like.

Several reports of the CFPB Student Loan Ombudsman have noted that some private student loan borrowers have complained that they were not being offered repayment plans or loan modifications to assist them when they were struggling to make payments.²⁰ In light of that, Supervision notes that it has observed reasonable borrower work-out plans at some private student loan servicers, suggesting that providing this kind of assistance is feasible.

2.5.2 Auto-default

Some private student loan promissory notes contain “whole loan due” clauses. In general, these clauses provide that if certain events occur, such as a consumer’s bankruptcy or death, the loan will be accelerated and become immediately due. If the consumer does not satisfy the accelerated loan, the servicer will place the loan in default. This practice is sometimes referred to as an “auto-default.”

Examiners determined that one or more servicers engaged in an unfair practice in violation of the Dodd-Frank Act relating to auto-default. When a private student loan had a borrower and a cosigner, one or more servicers would auto-default both borrower and cosigner if either filed for bankruptcy. These auto-defaults were unfair where the whole loan due clause was ambiguous on this point because reasonable consumers would not likely interpret the promissory notes to allow their own default based on a co-debtor’s bankruptcy. Further, one or more servicers did not notify either co-debtor that the loan was placed in default. Some consumers only learned

²⁰ See, e.g., CFPB, Annual Report of the CFPB Student Loan Ombudsman (Oct. 16, 2014), *available at* http://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf.

that a servicer placed the loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector.

Supervision directed one or more servicers to immediately cease this practice. Additionally, since the CFPB's April 2014 report first highlighted auto-defaults as a concern, some companies have voluntarily ceased the practice.²¹

2.5.3 Failure to disclose impact of forbearance on cosigner release eligibility

In one or more examinations, examiners determined that servicers committed unfair practices by failing to disclose a significant adverse consequence of forbearance.²² For some private student loans, a borrower's use of forbearance can delay, or permanently foreclose, the cosigner release option agreed to in the contract. Examiners found that one or more servicers committed an unfair practice by not disclosing this potential consequence when borrowers applied for forbearance. Consumers are at risk of substantial injury when, as a result of forbearance, the ability to release a cosigner is delayed or foreclosed. As a result of these findings, examiners directed one or more servicers to improve the content of its communications regarding the impact that forbearance use has on the availability of cosigner release.

²¹ See, CFPB, Mid-year Update on Student Loan Complaints (June 2015), *available at* http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf. See also CFPB, Mid-year Update on Student Loan Complaints (April 2014), *available at* http://files.consumerfinance.gov/f/201404_cfpb_midyear-report_private-student-loans-2014.pdf.

²² A forbearance allows a borrower to temporarily postpone loan payments, though the interest typically accrues during forbearance period.

2.5.4 Servicing conversion errors costing borrowers money

Multiple loan owners have their loans serviced by student loan servicers. When ownership of student loans changes but the servicer continues to service the account, a servicer may need to “convert” the account to reflect the new loan owner. Similar conversions might be necessary when other major changes are made to the account (like the identity of the primary borrower). At one or more servicers, examiners found unfair practices connected to these conversions. Examiners found that, during a loan conversion process, one or more servicers used inaccurate interest rates that exceeded the rate for which the consumer was liable under the promissory note instead of using the correct interest rate information to update the relevant loan records. Examiners found this to be an unfair practice, and Supervision directed one or more servicers that committed this unfair practice to implement a plan to reimburse all affected consumers.

2.5.5 Furnishing and Regulation V

Compliance with the FCRA and Regulation V remains a top priority in the CFPB’s student loan servicing examinations.²³ Regulation V requires companies that furnish information on consumers to CRAs to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information they furnish. Whether policies and procedures are reasonable depends on the nature, size, complexity, and scope of the entity’s furnishing activities. Servicers and other furnishers must consider the guidelines in Appendix E to 12 CFR 1022 in developing their policies and procedures and incorporate those guidelines that are appropriate.

Many student loan servicers have extensive furnishing operations, sending information on millions of consumers to CRAs every month. During one or more student loan servicing examinations, examiners found one or more servicers that did not have any written policies and

²³ See *Supervisory Highlights: Fall 2015*, Section 2.5.6, available at http://files.consumerfinance.gov/f/201510_cfpb_supervisory_highlights.pdf.

procedures regarding the accuracy and integrity of information furnished to the CRAs. Examiners also found policies and procedures that were insufficient to meet the obligations imposed by Regulation V. For example, examiners found:

- Policies and procedures that do not reference one another so that it is difficult to determine which policy or procedure applies;
- Policies and procedures that do not contemplate record retention, internal controls, audits, testing, third party vendor oversight, or the technology used to furnish information to CRAs; and
- Policies and procedures that lack sufficient detail on employee training.

In light of the extensive nature, size, complexity, and scope of the furnishing activities, examiners found that these policies and procedures were not reasonable according to Regulation V. Supervision directed one or more servicers to enhance their policies and procedures regarding the accuracy and integrity of information furnished to CRAs, including by addressing the conduct described in the bullets listed above.

2.6 Fair lending

2.6.1 Updates: Fair lending enforcement settlement administration

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. This public enforcement action represented the federal government's largest auto loan discrimination settlement in history.

On January 29, 2016, harmed borrowers participating in the settlement were mailed checks by the Ally settlement administrator, totaling \$80 million, plus interest. The Bureau found that Ally had a policy of allowing dealers to increase or "mark up" consumers' risk-based interest rates, and paying dealers from those markups, and that the policy lacked adequate controls or monitoring. As a result, the Bureau found that between April 2011 and December 2013, this

markup policy resulted in African-American, Hispanic, Asian and Pacific Islander borrowers paying more for auto loans than similarly situated non-Hispanic white borrowers.

In the summer and fall of 2015, the Ally settlement administrator contacted potentially eligible borrowers to confirm their eligibility and participation in the settlement. To be eligible for a payment, a borrower must have:

- Obtained an auto loan from Ally between April 2011 and December 2013;
- Had at least one borrower on the loan who was African-American, Hispanic, Asian or Pacific Islander; and
- Been overcharged.

Through that process, the settlement administrator identified approximately 301,000 eligible, participating borrowers and co-borrowers who were overcharged as a result of Ally's discriminatory markup policy during the relevant time period, representing approximately 235,000 loans.

In addition to the \$80 million in settlement payments for consumers who were overcharged between April 2011 and December 2013, and pursuant to its continuing obligations under the terms of the orders, Ally recently paid approximately \$38.9 million to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014.

Additional information regarding this public enforcement action can be found in the Summer 2014 edition of *Supervisory Highlights*.²⁴

²⁴ See *Supervisory Highlights: Summer 2014*, available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

Synchrony Bank, formerly known as GE Capital Retail Bank

On June 19, 2014, the CFPB, as part of a joint enforcement action with the DOJ, ordered Synchrony Bank, formerly known as GE Capital, to provide \$169 million in relief to about 108,000 borrowers excluded from debt relief offers because of their national origin, in violation of ECOA.²⁵ This public enforcement action represented the federal government's largest credit card discrimination settlement in history.

In the course of administering the settlement, Synchrony Bank identified additional consumers who have a mailing address in Puerto Rico or who indicated a preference to communicate in Spanish and were excluded from these offers. Synchrony Bank provided a total of approximately \$201 million in redress including payments, credits, interest, and debt forgiveness to approximately 133,463 eligible consumers. This amount includes approximately \$4 million of additional redress based on the bank's identification of additional eligible consumers. Redress to consumers in the Synchrony matter was completed as of August 8, 2015. Additional information regarding this enforcement action can be found in the Fall 2014 edition of Supervisory Highlights.²⁶

²⁵ See re Synchrony Bank, f/k/a GE Capital Retail Bank, No. 2014-CFPB-0007 (June 19, 2014) (consent order), available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf. The Bureau did not assess penalties with respect to the illegal discrimination, based on a number of factors, including that the company self-reported the violation, self-initiated remediation for the harm done to affected consumers, and fully cooperated with the investigation, in accordance with CFPB Bulletin 2013-06, Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation (June 25, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

²⁶ See Supervisory Highlights: Fall 2014, available at http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf.

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 EZCORP, Inc.

On December 16, 2015, the CFPB announced a consent order with EZCORP, Inc., a short-term, small-dollar lender, for illegal debt collection practices, some of which were initially discovered during the course of a Bureau examination. These practices related to in-person collection visits at consumers' homes or workplaces, risking disclosing the existence of consumers' debt to unauthorized third parties, falsely threatening consumers with litigation for non-payment of debts, misrepresenting consumers' rights, and unfairly making multiple electronic withdrawal attempts from consumer accounts which caused mounting bank fees. EZCORP violated the Electronic Fund Transfer Act and the Dodd-Frank Act's prohibition against unfair or deceptive acts or practices.

EZCORP will refund \$7.5 million to 93,000 consumers, pay a \$3 million civil money penalty, and stop collection of remaining payday and installment loan debts owed by roughly 130,000

consumers. The consent order also bars EZCORP from future in-person debt collection. In addition, the CFPB issued an industry-wide warning about potentially unlawful conduct during in-person collections at homes or workplaces.²⁷

3.1.2 Fifth Third Bank

On September 28, 2015, the CFPB resolved an action with Fifth Third Bank (Fifth Third) that requires Fifth Third to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination.²⁸ On that same date, the DOJ filed a complaint and proposed consent order in the U.S. District Court for the Southern District of Ohio addressing the same conduct. That consent order was entered by the court on October 1, 2015. The CFPB found and the DOJ alleged that Fifth Third's past practices resulted in thousands of African-American and Hispanic borrowers paying higher interest rates than similarly-situated non-Hispanic white borrowers for their auto loans. The consent orders require Fifth Third to pay \$18 million in restitution to affected borrowers.²⁹

As of the second quarter of 2015, Fifth Third was the ninth largest depository auto loan lender in the United States and the seventeenth largest auto loan lender overall. As an indirect auto lender, Fifth Third sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Fifth Third then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. This is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Fifth Third's policy permitted dealers to mark up consumers' interest rates as much as 2.5% during the period under review.

²⁷ See Section 4.2.1, *infra*.

²⁸ On the same day, the Bureau also resolved a separate action with Fifth Third regarding illegal credit card practices. The credit card enforcement action was recapped in the Fall 2015 issue of *Supervisory Highlights*, available at http://files.consumerfinance.gov/f/201510_cfpb_supervisory_highlights.pdf.

²⁹ *In re, Fifth Third Bank*, No. 2015-CFPB-0024 (Sept. 28, 2015) (consent order), available at http://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf.

From January 2013 through May 2013, the Bureau conducted an examination that reviewed Fifth Third's indirect auto lending business for compliance with ECOA and Regulation B. On March 6, 2015, the Bureau referred the matter to the DOJ. The CFPB found and the DOJ alleged that Fifth Third's indirect lending policies resulted in minority borrowers paying higher discretionary markups, and that Fifth Third violated ECOA by charging African-American and Hispanic borrowers higher discretionary markups for their auto loans than non-Hispanic white borrowers without regard to the creditworthiness of the borrowers. The CFPB found and the DOJ alleged that Fifth Third's discriminatory pricing and compensation structure resulted in thousands of minority borrowers from January 2010 through September 2015 paying, on average, over \$200 more for their auto loans.

The CFPB's administrative consent order and the DOJ's consent order require Fifth Third to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Fifth Third is also required to pay \$18 million to affected African-American and Hispanic borrowers whose auto loans were financed by Fifth Third between January 2010 and September 2015. The Bureau did not assess penalties against Fifth Third because of the bank's responsible conduct, namely the proactive steps the bank is taking that directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether.³⁰ In addition, Fifth Third Bank must hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation. The CFPB will release a consumer advisory with contact information for the settlement administrator once a settlement administrator is named.

³⁰ See CFPB Bulletin 2013-06, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation*, available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

3.1.3 M&T Bank, as successor to Hudson City Savings Bank

On September 24, 2015, the CFPB and the DOJ filed a joint complaint against Hudson City Savings Bank (Hudson City) alleging discriminatory redlining practices in mortgage lending and a proposed consent order to resolve the complaint.³¹ The complaint alleges that from at least 2009 to 2013, Hudson City illegally redlined in violation of the Equal Credit Opportunity Act (ECOA) by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. The DOJ also alleged that Hudson violated the Fair Housing Act, which also prohibits discrimination in residential mortgage lending. Specifically, the complaint alleges that Hudson City structured its business to avoid and thereby discourage prospective borrowers in majority-Black-and-Hispanic neighborhoods from accessing mortgages. The consent order requires Hudson City to pay \$25 million in direct loan subsidies to qualified borrowers in the affected communities, \$2.25 million in community programs and outreach, and a \$5.5 million penalty. This represents the largest redlining settlement in history as measured by such direct subsidies. On November 1, 2015, Hudson City was acquired by M&T Bank Corporation, and Hudson City was merged into Manufacturers Banking and Trust Company (M&T Bank), with M&T Bank as the surviving institution. As the successor to Hudson City, M&T Bank is responsible for carrying out the terms of the Consent Order.

Hudson City was a federally-chartered savings association with 135 branches and assets of \$35.4 billion and focused its lending on the origination and purchase of mortgage loans secured by single-family properties. According to the complaint, Hudson City illegally avoided and thereby discouraged consumers in majority-Black-and-Hispanic neighborhoods from applying for credit by:

³¹ *Consumer Financial Protection Bureau v. Hudson City Savings Bank, F.S.B.*, No. 2:15-cv-07056-CCC-JBC (D.N.J. Sept. 24, 2015) (complaint), available at http://files.consumerfinance.gov/f/201509_cfpb_hudson-city-joint-complaint.pdf.

- Placing branches and loan officers principally outside of majority-Black-and-Hispanic communities;
- Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority-Black-and-Hispanic communities;
- Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
- Excluding majority-Black-and-Hispanic neighborhoods from its credit assessment areas.

The consent order which was entered by the court on November 4, 2015,³² requires Hudson City to pay \$25 million to a loan subsidy program that will offer residents in majority-Black-and-Hispanic neighborhoods in New Jersey, New York, Connecticut, and Pennsylvania mortgage loans on a more affordable basis than otherwise available from Hudson City; spend \$1 million on targeted advertising and outreach to generate applications for mortgage loans from qualified residents in the affected majority-Black-and-Hispanic neighborhoods; spend \$750,000 on local partnerships with community-based or governmental organizations that provide assistance to residents in majority-Black-and-Hispanic neighborhoods; and spend \$500,000 on consumer education, including credit counseling and financial literacy. In addition to the monetary requirements, the decree orders Hudson City to open two full-service branches in majority-Black-and-Hispanic neighborhoods, expand its assessment areas to include majority-Black-and-Hispanic communities, assess the credit needs of majority-Black-and-Hispanic communities, and develop a fair lending compliance and training program.

³² *Consumer Financial Protection Bureau v. Hudson City Savings Bank, F.S.B.*, No. 2:15-cv-07056-CCC-JBC (D.N.J. Sept. 24, 2015) (consent order), available at http://files.consumerfinance.gov/f/201511_cfpb_hudson-city-consent-order.pdf.

3.2 Non-public supervisory actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately \$14.3 million in restitution to more than 228,000 consumers. These non-public supervisory actions generally have been the product of CFPB ongoing supervision and/or targeted examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law. Recent non-public resolutions were reached in the areas of deposits, debt collection, and mortgage origination.

4. Supervision program developments

4.1 Examination procedures

4.1.1 Updated ECOA baseline review modules

On October 30, 2015, the CFPB published an update to the ECOA baseline review modules,³³ which are part of the *CFPB Supervision and Examination Manual*. Examination teams use the ECOA baseline review modules to evaluate how institutions' compliance management systems identify and manage fair lending risks under ECOA. The procedures have been reorganized into five modules: Fair Lending supervisory history; Fair Lending compliance management system; and modules on Fair Lending risks related to origination, servicing, and underwriting models. Examination teams will use the second module, "Fair Lending compliance management system," to evaluate compliance management as part of in-depth ECOA targeted reviews. The fifth module, "Fair Lending risks related to models," is a new addition that examiners will use to review models that supervised financial institutions may use. The ECOA baseline review modules are consistent with and cross-reference the FFIEC interagency Fair Lending

³³ See the updated review module, available at http://files.consumerfinance.gov/f/201510_cfpb_ecoa-baseline-review-modules.pdf.

examination procedures. They can be utilized to evaluate fair lending risk at any supervised institution and in any product line.

When using the modules to conduct an ECOA baseline review, CFPB examination teams review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other federal or state regulator. Examination teams collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, examination teams may also review other sources of information, including any publicly available information about the entity as well as information obtained through interviews with institution staff or supervisory meetings with an institution.

4.2 Recent CFPB guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public.³⁴

4.2.1 Bulletin on furnisher Fair Credit Reporting Act (FCRA) obligation to have reasonable written policies and procedures

On February 3, 2016, the CFPB issued a bulletin³⁵ to emphasize the obligation of furnishers under the FCRA and its implementing Regulation V to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to

³⁴ These guidance documents are published at <http://www.consumerfinance.gov/guidance/>.

³⁵ See CFPB, Compliance Bulletin 2016-01, available at http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf.

consumers that they furnish to CRAs. The supervisory experience of the Bureau suggests that some financial institutions are not compliant with their obligations under Regulation V with regard to furnishing to specialty CRAs. This obligation, which has been required under Regulation V since July 2010, applies to furnishing to all CRAs, including furnishing to specialty CRAs, such as the furnishing of deposit account information to CRAs. The bulletin emphasizes that furnishers must have policies and procedures that meet this requirement with respect to all CRAs to which they furnish.

4.2.2 Bulletin on in-person collection of consumer debt

Bulletin 2015-07,³⁶ released on December 16, 2015, notes that both first-party and third-party debt collectors may run a heightened risk of committing unfair acts or practices in violation of the Dodd-Frank Act when they conduct in-person debt collection visits, including to a consumer's workplace or home. An act or practice is unfair under the Dodd-Frank Act when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. With respect to substantial injury, the bulletin explains that depending on the facts and circumstances, these visits may cause or be likely to cause substantial injury to consumers. For example, in-person collection visits may result in third parties such as consumers' co-workers, supervisors, roommates, landlords, or neighbors learning that the consumers have debts in collection, which could harm the consumer's reputation and, with respect to in-person collection at a consumer's workplace, result in negative employment consequences.

In addition, depending on the facts and circumstances, in-person collection visits may result in substantial injury to consumers even when there is no risk that the existence of the debt in collections will be disclosed to third parties. For example, a consumer who is not allowed to have

³⁶ See CFPB, Compliance Bulletin 2015-07, available at http://files.consumerfinance.gov/f/201512_cfpb_compliance-bulletin-in-person-collection-of-consumer-debt.pdf.

visitors at work may suffer adverse employment consequences as a result of these visits, regardless of whether there is a risk of disclosure to third parties. Further, if the likely or actual consequence of the visits is to harass the consumer, an in-person collection visit may also be likely to cause substantial injury to the consumer.

Finally, the bulletin also notes that third-party debt collectors and others subject to the FDCPA engaging in in-person collection visits risk violating certain provisions of the FDCPA, such as Section 805(b) of the FDCPA's prohibition on communicating with third parties in connection with the collection of any debt (subject to certain exceptions).

4.2.3 Bulletin on requirements for consumer authorizations for preauthorized electronic fund transfers

On November 23, 2015, the CFPB released bulletin 2015-06,³⁷ which reminds entities of their obligations under the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, when obtaining consumer authorizations for preauthorized electronic fund transfers (EFTs) from a consumer's account. The bulletin explains that oral recordings obtained over the phone may authorize preauthorized EFTs under Regulation E provided that these recordings also comply with the E-Sign Act. Further, the bulletin outlines entities' obligations to provide a copy of the terms of preauthorized EFT authorizations to consumers, summarizes the current law, highlights relevant supervisory findings, and articulates the CFPB's expectations for entities obtaining consumer authorizations for preauthorized EFTs to help them ensure their compliance with Federal consumer financial law.

³⁷ See CFPB, Compliance Bulletin 2015-06, available at http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf.

5. Conclusion

The CFPB recognizes the value of communicating program findings to CFPB-supervised entities to aid them in their efforts to comply with Federal consumer financial law, and to other stakeholders to foster better understanding of the CFPB's work.

To this end, the Bureau remains committed to publishing its *Supervisory Highlights* report periodically in order to share information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), to communicate operational changes to the program, and to provide a convenient and easily accessible resource for information on the CFPB's guidance documents.