

CFPB Publishes Spring 2022 Supervisory Highlights

May 5, 2022

On May 2, 2022, the Consumer Financial Protection Bureau (CFPB or Bureau) published its [spring 2022 Supervisory Highlights report](#). As discussed in more detail below, the report addresses observations made in examinations completed by the CFPB between July 2021 and December 2021 (the relevant period) in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, prepaid accounts, remittances and student loan servicing.

The Supervisory Highlights report also touches on recent supervisory program developments, including announcements, examination manual updates and bulletins, and summarizes enforcement actions arising from supervisory activities.

Key findings by the CFPB

Auto servicing

Earlier this year, the CFPB announced that it intended to focus on “ensuring a fair, transparent, and competitive auto lending market” by [monitoring auto loan servicing and collection practices](#), and [heading off risks of wrongful repossessions](#). It is therefore unsurprising that auto servicing issues are featured in the [press release](#) published with the Supervisory Highlights and at the top of the actual report.

To that end, examiners found that auto loan servicers engaged in unfair acts or practices by:

- Repossessing vehicles after consumers took action that should have prevented the repossession.
- Failing to request refunds from third-party administrators for “unearned” fees related to guaranteed asset protection (GAP) products.
- Failing to apply GAP refunds to consumer accounts after repossession and cancellation of the contract, resulting in higher deficiency balances reported to third-party debt buyers for collection.

Additionally, examiners found that auto loan servicers engaged in deceptive acts or practices by sending consumers notices about the amount of their final loan payment after a deferral that used “imprecise conditional statements” – such as saying the final payment after a deferral “may be larger” – rather than language that clearly reflected a material increase in the final payment amount.

Consumer reporting

The Supervisory Highlights report is heavily focused on consumer reporting dispute investigation and notification issues identified in examinations of consumer reporting agencies (CRAs) and furnishers of information to CRAs, which also were called out in the accompanying press release.

Examiners found that CRAs failed to satisfy their Fair Credit Reporting Act (FCRA) obligations to conduct reasonable dispute investigations by:

- Deleting tradelines, rather than correcting information, where a dispute investigation revealed the information was reported incorrectly.
- Failing to review and consider all relevant information submitted by the consumer in connection with a dispute.

CRAs also failed to timely notify furnishers after receipt of a consumer or reseller dispute, and to timely and accurately notify consumers of the results of a dispute reinvestigation.

Likewise, furnishers failed to comply with applicable dispute investigation and notification requirements by:

- Erroneously applying Regulation V's "frivolous" designation to indirect disputes, notwithstanding that the FCRA does not allow furnishers to deem indirect disputes as "frivolous."
- Sending incorrect indirect dispute investigation results to CRAs.
- Failing to conduct any investigation of disputes received from specialty CRAs.
- Using ambiguous template letters to communicate the results of direct dispute investigations to consumers.

The Bureau made two additional observations with respect to furnishers. First, it highlighted furnishers' failure to correct and update information reported to CRAs after determining that it was either not complete or not accurate – for example, failing to update account status following a determination that the account status reported differed from those in the furnisher's system of record. Second, it identified violations of Regulation V's requirement that all furnishers establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information furnished to CRAs that consider and incorporate, as appropriate, the guidelines listed in Appendix E to Regulation V. In doing so, the CFPB reminded the industry that "[i]n previous issues of Supervisory Highlights, we described supervisory findings of furnishers that violated these requirements." The upshot of this statement is likely that the Bureau is continuing to take a hard look at furnishers policies and procedures and expects compliance.

Credit card account management

In its review of institutions' credit card management operations, the CFPB identified Regulation Z issues, as well as certain deceptive acts or practices.

Specifically, the Bureau found that institutions failed to comply with Regulation Z's billing error provisions, as well as its requirement that, after increasing the annual percentage rate (APR) on an account, a credit card issuer must "periodically assess whether it is appropriate to reduce the account's APR(s)" by reviewing either the factors on which the rate increase originally was based or the factors the issuer presently considers when determining the APR applicable to a similar new card account. On the latter issue, the Bureau highlighted that institutions:

- Failed to collect data that would allow them to perform compliant APR assessments as part of the acquisition of pre-existing card accounts.
- Failed to record dates within their systems of record that would flag accounts for periodic evaluation.
- Relied on factors formerly considered when determining the APR applicable to similar accounts, rather than those currently used.

The CFPB also uncovered deceptive acts or practices in credit card management, where institutions:

- Failed to disclose preconditions for obtaining interest-free financing, with the Bureau concluding that the "net impression" of advertisements misled consumers about those preconditions.
- Applied refunds to monthly installment balances that were interest-free for their duration, where there was a negative revolving balance with respect to the credit card account, given that under the account agreement, refunds and credits were to be applied to the revolving balance and alternate application would result in the interest-free installment balances being paid prematurely.

Debt collection

Given the financial challenges and vulnerabilities created by the COVID-19 pandemic, it is no surprise that the CFPB's examination activities continue to include Fair Debt Collection Practices Act (FDCPA) compliance.

During the relevant period, examiners identified violations of the FDCPA based on debt collectors' continued attempts to collect debts after they were informed – and provided with evidence – that the debts were the result of fraudulent activity. Further, examiners found that debt collectors committed unfair acts or practices by failing to timely refund overpayments and credit balances to consumers.

Deposits

Examiners primarily focused on observations concerning Regulation E with respect to entities' deposit account practices. In particular, the Bureau highlighted that institutions failed to:

- Honor stop payment requests.
- Investigate an error when the consumer did not submit an affidavit, which cannot be required as a condition of initiating or completing an error investigation.
- Provide consumers with proper notices of revocation of credit explaining that the entity would be debiting excess amounts provided as provision credit from consumers' accounts, the dates those debits would occur and that the entity would honor transactions for five days after the notification.

The CFPB also noted that technical limitations caused institutions involved in deposit activities to commit an unfair practice by placing multiple mobile check deposit holds on accounts, rather than a single hold as intended, thereby causing consumers to unfairly incur fees.

Mortgage origination

The CFPB identified Regulation Z issues in its examination of supervised entities with mortgage origination operations. For example, the Bureau concluded that lenders' violated Regulation Z's loan originator compensation rule by basing originator compensation on "credit product type," a finding that was included in the summer 2021 edition of the Supervisory Highlights.

The Bureau also found that institutions failed to retain sufficient documentation to support valid changed circumstances, under Regulation Z, after providing a loan estimate to the consumer. also Institutions also provided closing disclosures to consumers that failed to reflect the fully indexed rate and, thus, the legal obligation between parties, due to a software miscalculation of rates.

Prepaid accounts

As with deposits, examiners focused on Regulation E compliance in discussing their recent experiences examining institutions that issue prepaid accounts and prepaid account service providers. Examiners found that certain institutions failed, as required by Regulation E, to:

- Timely submit prepaid account agreements to the CFPB.
- Provide the Bureau with "the name of the program manager, if any, and the list of names of other relevant parties" in connection with any submission of such agreements.
- Disclose the consumer's right to request documentation that the institution relied on in completing its Regulation E error investigation, and fulfill requests for documentation relied on in determining that no error occurred.

Remittance

The CFPB identified a deceptive act or practice related to remittance transfers where providers represented to consumers that they offered "instant" or "30 second" transfers, even though the transfers may not have been completed in the articulated timeframe and could have been otherwise delayed.

Additionally, examiners found that remittance transfer agreements violated the Electronic Funds Transfer Act (EFTA) prohibition on waiver of rights conferred or causes of action created by the EFTA by including provisions waiving rights conferred by the EFTA, attempting to limit consumers' right to recover costs and attorney's fees, and stating that the entities "make "no representations or warranties regarding the time required to complete processing because the Service is dependent on many factors beyond our control."

The Bureau also noted that institutions failed to include the date funds are available to designated recipients on receipts for remittance transfers, provide that receipt in a timely fashion, and maintain written policies and procedures designed to ensure compliance with error resolution requirements applicable to remittance transfers as required under Regulation E.

According to the Bureau, absence of adequate policies and procedures resulted in further issues, such as failure to provide notice of the results of error investigations, and to refund fees, and do so in a timely manner consistent with the requirements of Regulation E.

Student loan servicing

Examiners identified unfair acts or practices in examinations of student loan servicers, including private student

loan services, where entities failed to:

- Make incentive payments that were offered in advertisements, and agreed to in contracts with consumers, because of system errors or policies that conditioned such payments on maintaining a deposit account with the institution, even though such condition was not disclosed in the consumer contract.
- Issue timely refunds where consumers made payments that were not yet due under the repayment schedule set forth as part of a modification agreement.

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