

CFPB Report Highlights Collection Practice Concerns, Contains Novel UDAAP Theories

July 9, 2024

On July 2, 2024, the Consumer Financial Protection Bureau (CFPB) released a new edition of [Supervisory Highlights](#), with a particular focus on account management and collection practices across auto loans, student loans and deposit accounts. In addition to highlighting actions examiners identified as unfair, deceptive, or abusive acts or practices (UDAAP), the report also focuses on a number of technical aspects of Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA).

Auto loan servicing

Examiners identified as “unfair” a process whereby borrowers enrolled in autopay were required to manually make their final payment and received inadequate notice of that requirement. The examiners determined that this was an unfair practice because borrowers incurred late fees for failing to manually remit the final payment, and that the fees were not reasonably avoidable, as borrowers had no control over the servicer’s system and could not reasonably anticipate the need to manually pay the last installment.

Student loan servicing

CFPB examinations of student loan servicing practices resulted in a number of findings that practices were unfair, abusive and in violation of Regulation E. Specifically, examiners found:

- Servicers engaged in an unfair and abusive practice when borrowers had an average hold time of 40 minutes over a six-month period and abandonment rates of around 50%. Examiners indicated the practice was abusive because – among other things – borrowers could not obtain account information or make payments, and servicers “gained an advantage by understaffing their call centers because they reduced their salary expenses.”
- Servicers engaged in a deceptive act when they provided inaccurate information regarding which forms a consumer should submit to qualify for benefit programs, including forbearance programs.
- Servicers failed to provide consumers signed up for preauthorized electronic fund transfers written notice before withdrawing an amount that exceeded that of the previous transfer in violation of Regulation E.

Debt collection

CFPB examinations of debt collectors focused in particular on technical violations of Regulation F. Here, examiners found that collectors:

- Failed to provide the requisite debt validation notice to consumers either orally or in writing within five days of the initial oral communication with consumers.
- Used false, deceptive or misleading means when they omitted required disclosures, concealed the identity of their business and misrepresented consumers’ rights under the FDCPA, including their right to dispute debt.

- Communicated with consumers at inconvenient or unusual times or places, including where consumers received payment reminder emails before 8:00 am in the consumer's time zone, or when consumers told the agent it was an inconvenient time to speak, but the agent continued the conversation.
- Failed to cease communicating through a specific medium upon consumer request.

Examiners also determined credit card issuers engaged in an unfair practice when they failed to properly calculate and document the debt collection statute of limitations for a given state and then sold the debt to a debt collector.

Service provider oversight

The CFPB's report highlights concerns with the manner in which at least one credit card issuer oversaw the sale and offering of financial products through third parties, including dentists and other healthcare providers. Although the examiners did not cite a specific violation, the report noted that consumers repeatedly complained to an issuer about the manner in which healthcare providers positioned "deferred interest" credit card promotions and felt pressured to open a credit card account while receiving treatment. The CFPB reiterated that it expects entities to manage the risks associated with service provider relationships effectively and found the issuer's oversight process of third parties lacking.

Deposit and prepaid accounts

With respect to the administration of deposit and prepaid accounts, examiners identified the following:

- It was an unfair practice to fail to affirmatively notify consumers when their accounts were blocked, or to give notice of the account block without providing clear guidance regarding the information they should submit to unfreeze their account.
- Institutions failed to send periodic statements to consumers with dormant allotment accounts – accounts for military and other federal employee payroll deductions – for an extended period of time.

The CFPB also provided an update on the implementation of its [Section 1034\(c\) advisory opinion](#), which cautioned banks against assessing fees for providing informational services to consumers. Here, the CFPB noted that some institutions responded to the advisory opinion by removing charges associated with customer requests for printed copies of check images and account statements, research and analysis associated with consumer accounts, and fees for balance inquiries at third-party ATMs.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

Key Contacts

| | |
|--------------------------------------|---------------------------------------|
| Michelle L. Rogers Washington, DC | mrogers@cooley.com +1 202 776 2227 |
|--------------------------------------|---------------------------------------|

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.