Supervisory Highlights

Consumer Financial Protection Bureau

Spring 2014

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1. Introduction

The CFPB is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The supervision of companies offering financial products and services – both banks and nonbanks – is one of the tools available to the Bureau to help meet this goal. In *Supervisory Highlights*, the CFPB reports examination findings, such as regulatory violations or unfair, deceptive or abusive acts or practices (UDAAPs), in selected program areas so that industry participants can use the information to ensure their operations remain in compliance with Federal consumer financial law. In some cases, certain violations reported have been found at a small number of institutions; however, because similar practices may be occurring at other institutions, this report includes them so that entities may proactively make any necessary changes to prevent violations of law and consumer harm.

In this fourth edition of *Supervisory Highlights*, the CFPB reiterates the importance of robust compliance management systems and shares recent supervisory observations, which include short-term, small-dollar lending, consumer reporting, debt collection, and fair lending.

CFPB supervisory work contributed to a recent enforcement action against Bank of America and FIA Card Services, resulting in relief of approximately $727 million to consumers for illegal practices related to credit card add-on products. In addition to this public enforcement action, recent nonpublic supervisory actions and self-reported violations in a number of program areas have resulted in more than $70 million in remediation for approximately 775,000 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 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 the “larger participants” in other nonbank 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), consumer debt collection (effective January 2013), and student loan servicing (effective March 2014). In January 2014, the CFPB proposed a rule to define the larger participants in the international money transfer, or remittances, market.[1]

This report highlights supervision work completed between November 2013 and February 2014. Any questions or comments can be directed to CFPB_Supervision@cfpb.gov.

[1] Defining Larger Participants of the International Money Transfer Market, *available at:* https://www.federalregister.gov/articles/2014/01/31/2014-01606/defining-larger-participants-of-the-international-money-transfer-market.

2. Supervisory observations

The Bureau began its bank supervision operations on July 21, 2011, and on January 5, 2012, announced the launch of its nonbank supervision program. Since then, CFPB's supervisory program has grown steadily, and currently spans both bank and nonbank entities offering a variety of consumer financial products and services. In 2013, the CFPB conducted over one hundred supervisory activities – such as full scope reviews and subsequent follow-up examinations – and plans to conduct approximately 150 of these activities in 2014. As always, Supervision continues to prioritize examination resources according to the greatest risks of consumer harm.

A well-developed compliance management system, or CMS, lessens risks to consumers and reduces the potential for violations of Federal consumer financial law. Because of the importance of a robust CMS, every CFPB examination contains some level of CMS review. As CFPB has described in its *Supervision and Examination Manual*,[2] CMS is how an entity:

- Establishes its compliance responsibilities, by determining the regulatory requirements applicable to its business operations;
- Communicates those responsibilities to employees;
- Ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes;
- Reviews operations to ensure responsibilities are carried out and legal requirements are met;

[2] *See* Supervision and Examination Manual, Part II.A, for further discussion of the elements commonly observed in an effective CMS, *available at:* http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

- Takes corrective action; and
- Updates tools, systems, training, and materials, as necessary.

As discussed in a previous issue of *Supervisory Highlights*, the CFPB does not require a particular CMS structure.[3] However, supervisory experience has found that an effective CMS commonly has four interdependent control components:

1. Board of directors and management oversight;
2. A compliance program;
3. A consumer complaint management program; and
4. An independent compliance audit.

When all of these control components are strong and well-coordinated, a supervised entity is likely to be more successful at managing its compliance responsibilities and risks.

The leadership of a supervised entity, up to and including the board of directors, is expected to establish clear lines of accountability and provide oversight of its CMS, including the establishment of a comprehensive program commensurate with its size, consumer risk profile, and product offerings.

A strong compliance program consists of adequate policies and procedures, training, and monitoring and corrective action. Policies and procedures should include guidance to the company's personnel regarding how to carry out their responsibilities in compliance with applicable Federal consumer financial laws. These policies and procedures should be consistent with one another, and they should be written, followed, and board- or leadership-approved. Additionally, institutions need to implement training programs robust enough to provide effective and comprehensive instruction to personnel. With appropriate breadth and depth, training is expected to address all applicable Federal consumer financial laws, and a company's leadership is expected to ensure that its staff is trained regarding how to perform their jobs in a

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[3] *See* Supervisory Highlights: Summer 2013, *available at:* http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

compliant manner. Appropriate training programs typically include formal training schedules, attendance records, and written reference materials. Additionally, training programs should be responsive to new or changing regulatory requirements, new products and services, and product changes. Monitoring should, in an organized and risk-focused way, identify procedural or training weaknesses in an effort to provide for a high level of compliance by promptly identifying and correcting weaknesses.

Supervision expects entities to respond to their customers' complaints, not only to address potential consumer harm in a single instance, but to identify major issues and trends that may evidence broader concerns, including risk to consumers, gaps in compliance management, and potential violations of Federal consumer financial law.

Compliance audit programs should include an audit plan that takes consumer compliance risks into consideration. Moreover, compliance audits should include a process by which the institution reports its findings to appropriate leadership and managers, responds to exceptions, implements corrective action, and monitors the results of corrective action. Importantly, these audit programs should be independent of both the compliance program, including the monitoring function, and those business functions that include customer sales or service.

Finally, CFPB recognizes the importance of third-party service providers to the operations of many supervised entities. However, as the CFPB explained in Bulletin 2012-03,[4] it expects entities to select these service providers carefully, include compliance expectations in contracts, and monitor service providers' work and complaints about their work. If a third-party service provider fails to perform properly, a supervised entity is expected to require remediation and to take measures that may include, in appropriate circumstances, termination of the service provider's contract. The fact that a supervised entity enters into a business relationship with a service provider does not absolve the supervised entity of responsibility for complying with Federal consumer financial law and, depending on the circumstances, it may be held legally responsible for violations by the third party.

In the course of recent examinations, Supervision has identified CMS strengths as well as deficiencies in the various nonbank entities reviewed, including in the areas of consumer

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[4] CFPB Bulletin 2012-03 (April 12, 2013), *available at:* http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

reporting, debt collection, and payday lending. These and other findings – including findings of violations of law, such as unfair, deceptive, or abusive acts or practices (UDAAPs) in violation of the Dodd-Frank Act – are discussed in the sections that follow.

2.1 Consumer reporting

The Bureau's rule establishing its supervision program for larger participants of the consumer reporting market went into effect on September 30, 2012.[5] Shortly thereafter, the Bureau established a nationwide team of examiners to focus on consumer reporting agencies (CRAs). The reviews were initially limited to evaluations of the entities' CMS, although they were later expanded to encompass dispute-handling practices.

During reviews, examiners observed certain compliance management weaknesses with the potential to harm consumers. As an initial matter, CFPB examinations found that some CRAs had either no formal CMS or inadequate CMS. In these cases, Supervision directed the relevant entities to take a number of measures to establish and implement a documented, formalized, and effective CMS.

CFPB Supervision found that the board of directors and senior management at some CRAs exercised insufficient oversight of the entity's CMS. At least one of the CRAs lacked a chief compliance officer (CCO) or an official with comparable responsibility for company-wide compliance oversight. At one of the CRAs that did employ a CCO, examiners found little evidence that the CCO reported on compliance risks, issues, and resolutions to the board of directors or any of its committees. At least one CRA failed to obtain board approval of its compliance policies. As a result, Supervision directed the relevant entities to ensure a more active role for the board and senior management in compliance matters.

Supervision found that some CRAs had problems with the development and documentation of compliance policies and procedures addressing Federal consumer financial laws, and the Fair

[5] 12 CFR Part 1090.104.

Credit Reporting Act (FCRA)[6] in particular. Among the concerns identified was a failure to document policies and procedures, or if these procedures existed, there was no mechanism for reviewing them regularly, updating them as needed, and communicating changes to appropriate staff. In particular, one or more of the CRAs lacked policies and procedures that adequately addressed the entity's dispute-handling obligations under Section 611 of the FCRA,[7] or the prohibition on UDAAPs set forth in the Dodd-Frank Act.[8] Supervision directed the relevant entities to document their policies and procedures, draft new policies and procedures addressing the FCRA's dispute-handling requirements and the Dodd-Frank Act's prohibition on UDAAPs, and develop processes to review and update those policies and procedures as necessary.

In addition, CFPB examinations found that some CRAs failed to exercise adequate oversight of their business relationships with third-party service providers. Such third parties may operate call centers, handle consumer disputes, sell products to businesses and consumers, or perform other functions. Several CRAs lacked policies and procedures to verify that service providers understood their responsibilities under Federal consumer financial law, that the employees of service providers were appropriately trained, and that service providers and their employees in fact complied with Federal consumer financial law. Supervision directed the relevant entities to institute effective processes for managing the risks of service provider relationships, along the lines described in *Bulletin 2012-03*.

Supervision also found that one or more of the CRAs did not monitor and track consumer complaints.[9] Supervision directed the relevant entities to establish a comprehensive complaint-management process to monitor and track consumer complaints and litigation claims, and to use that information to identify and address areas of potential consumer risk.

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[6] 15 USC 1681-1681x.

[7] 15 USC 1681i.

[8] 12 USC 5531, 5536(a).

[9] Here, we mean that these CRAs were not tracking complaints about matters other than the completeness or accuracy of any item of information in a consumer report. The FCRA establishes specific obligations regarding disputes on those topics. 15 USC 1681i.

As noted previously, Section 611 of the FCRA provides that a consumer may dispute the completeness or accuracy of any information contained in the consumer's file at a CRA. Section 611 also imposes on CRAs certain obligations relating to the dispute-handling process, including the obligation to provide to the furnisher of the disputed information "all relevant information regarding the dispute that the [CRA] receives from the consumer."[10] During reviews, examiners found that many consumers supplied CRAs with relevant documents supporting their disputes – including, for example, cancelled checks, invoices, and correspondence – but that one or more CRAs failed to forward such documents to furnishers. Supervision directed the relevant entities to begin forwarding to furnishers all relevant documents submitted by consumers.

During its reviews, Supervision also found that one or more CRAs refused to accept disputes filed online or by telephone if the consumer had not recently received a consumer report or file disclosure from the CRA. The CRAs in question enforced this policy by assigning an identification number to each report they provided to a consumer, and requiring the consumer to supply the identification number before initiating a dispute via the CRA's online portal or by telephone. Although the CRAs did not require an identification number to file a dispute by U.S. mail, the CRAs did not inform consumers about this option. Taken together, these practices suggest to consumers that they must obtain a current report (often for a fee) to file a dispute with the CRAs in question. However, Section 611 of the FCRA – which requires a CRA, "free of charge," to investigate a dispute regarding "any item of information contained in a consumer's file" once a consumer "notifies the agency" of the dispute – contains no current-report precondition.[11] Supervision directed the relevant entities to eliminate any policy or practice that requires a consumer to obtain a current report or identification number before disputing the completeness or accuracy of information in his or her file.

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[10] 15 USC 1681i(a)(2).

[11] 15 USC 1681i(a)(1)(A).

2.2 Debt collection

In October 2012, the Bureau issued its rule defining larger participants in the debt collection market.[12] The Bureau began conducting supervisory examinations of those larger participants after the rule became effective in January 2013. Supervision has also examined financial institutions regarding their sales of debts to debt collectors. In each exam, CFPB teams review the adequacy of the entity's compliance management system (CMS), and in some of these examinations, Supervision identified significant CMS weaknesses.

In addition to assessing CMS, the examinations evaluate entities' compliance with Federal consumer financial laws that apply to debt collection. Examiners have identified a number of practices that violate the law, such as:

- Failure of debt collectors (and others) who furnish information to CRAs to investigate disputes regarding that information;
- Failure to obtain appropriate authorization prior to initiating a recurring electronic transfer of funds from a consumer's account; and
- Failure of debt collectors to comply with the Fair Debt Collection Practices Act's limitations on the use of phone calls and its prohibition on false and misleading statements.

2.2.1 Compliance management issues

Supervision observed significant weaknesses in the CMS of several debt collectors. In one debt collector examination, Supervision determined that the entity had inadequate written CMS policies and procedures, and lacked sufficient board and management oversight of CMS. The report also noted the entity's inadequate consumer complaint and dispute resolution processes, including the lack of processes for logging and tracking complaints and their resolutions. The entity also operated without any complaint analysis or compliance auditing. In another examination, Supervision determined that the entity had weak CMS policies and procedures, and failed to review and update those policies and procedures on a regular basis. At another

[12] 12 CFR Part 1090.105.

entity, the examination team observed that, although the entity had some elements of a CMS, it lacked certain critical components. In particular, it lacked adequate board and management oversight, sufficient policies and procedures, and an effective compliance audit function. During another examination, examiners learned that the entity had no CMS in place until nearly the end of the review period, and that the CMS it adopted was inadequate in several respects. In each instance, Supervision directed the entity to correct promptly the flaws in its CMS.

As noted, adequate CMS must encompass not only an entity's internal operations, but also its business relationships with other providers of financial services. For instance, in one examination, examiners observed that a creditor that relied on a network of debt buyers to collect its debts failed to adequately assess the debt buyers' compliance with Federal consumer financial law. Although the creditor ostensibly reviewed the debt buyers on a regular basis for compliance, the creditor lacked specific policies and procedures to guide the assessment process. The creditor documented its review in a cursory manner, and often failed to retain the review results. As a result, in many instances, examiners were unable to determine how the creditor had decided which debt buyers had complied with Federal consumer financial law. In response, Supervision directed this creditor to take steps to ensure that its business arrangements with the debt buyers would not expose consumers to unwarranted risks.

Similarly, the CFPB expects creditors and other debt sellers to employ adequate policies and procedures to ensure the accuracy of the data associated with any debts they sell. Examiners identified one instance in which a creditor had sold an account to a debt buyer after that creditor had issued the consumer an IRS Form 1099-C ("Cancellation of Debt" form), indicating that the debt had been cancelled and the consumer was no longer liable for it. After reviewing its own files, the creditor identified dozens of other instances where, because of a flaw in its record retention policy, it had sold cancelled debts. The creditor agreed to modify its procedures to prevent such accounts from being sold in the future. Supervision directed the creditor to provide a comprehensive report assessing the effectiveness of these procedural modifications. Supervision further directed the creditor to identify the consumers harmed from the sale of cancelled debts, and to remediate any harm that had been done to consumers.

2.2.2 Investigating disputes

The Fair Credit Reporting Act (FCRA)[13] and its implementing regulation, Regulation V,[14] impose certain requirements on those entities that furnish information regarding consumers to consumer reporting agencies.[15] When consumers dispute that information, those furnishers generally must conduct investigations of those disputes. In one review, CFPB examiners determined that a debt collector that furnished information to consumer reporting agencies failed to investigate disputes regarding the information, and instead only directed the consumer reporting agencies to delete the disputed accounts. Investigations of disputes provide a critical check on the accuracy of furnished items and can identify systematic problems with furnishers' data. Accordingly, Supervision directed that, going forward, the debt collector investigate disputes it receives regarding information that it has furnished.

2.2.3 Recurring electronic fund transfers

The Electronic Fund Transfer Act,[16] implemented by Regulation E,[17] requires written authorization before commencing recurring electronic fund transfers (EFTs) from a consumer's account. The written authorization must be "signed or similarly authenticated by the consumer." In several examinations, Supervision determined that supervised entities violated Regulation E by failing to secure a written authorization, either signed or similarly authenticated by the consumer, before initiating recurring electronic fund transfers from consumers' accounts. The CFPB expects supervised entities to comply fully with Regulation E when setting up payment plans and other arrangements with consumers.

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[13] 15 USC 1681-1681x.

[14] 12 CFR Part 1022.

[15] *See* Section 3.2.1, *infra*, for more information on CFPB's expectations regarding these requirements.

[16] 15 USC 1693 *et seq*.

[17] 12 CFR Part 1005.

2.2.4 Compliance with the Fair Debt Collection Practices Act

Telephone calls

The Fair Debt Collection Practices Act (FDCPA)[18] prohibits a number of abusive debt collection practices. In one examination, Supervision determined that a supervised entity had engaged in repeated violations of the FDCPA. During the review period, the entity had made approximately 17,000 calls to consumers outside of the appropriate calling hours set forth in the FDCPA. In addition, the entity also violated the FDCPA when it repeatedly contacted more than one thousand consumers, contacting some consumers as often as 20 times within two days.

Misleading representations in debt collection litigation

The FDCPA also prohibits entities from making false or misleading representations in connection with the collection of a debt. As part of a debt collector examination, Supervision reviewed collection lawsuits initiated by the entity. Examiners found that in 70% of the cases, when the consumer filed an answer, the entity would dismiss the suit because it was unable to locate documentation to support its claims. Despite the entity's express or implied representations to consumers that it intended to establish that consumers owed a debt in the amount claimed in court filings, in numerous instances, the entity misled consumers because it demonstrably had no such intention.

2.3 Short-term, small-dollar lending

The Dodd-Frank Act gave the CFPB supervisory and enforcement authority over payday lenders, which generally provide short-term, small-dollar loans directly to consumers. The CFPB officially launched its payday lending supervisory program in January 2012, marking the first time these lenders have been subject to Federal compliance examinations.

[18] 15 USC 1692-1692p.

The payday examination findings described below cover CMS shortcomings and illegal debt collection practices, as well as unfair, deceptive or abusive acts or practices in violation of the Dodd-Frank Act.

2.3.1 Compliance management issues

Though some lenders have demonstrated a commitment to building a strong compliance management system by dedicating increased staff and resources to compliance, CFPB examinations have found that a number of payday lenders have not implemented effective compliance management systems. Some payday lenders have been unable to fully respond to CFPB information requests or examiner inquiries on-site.[19] Generally, however, CMS concerns covered a range of issues, including lack of oversight of compliance management programs, ineffective oversight of third-party service providers, inadequate complaint management, failure to adopt appropriate written policies and procedures, failure to adequately train staff, and lack of effective compliance audit programs.

In a number of the institutions reviewed, the leadership did not hold personnel accountable for compliance or oversee the compliance program. Additionally, certain lenders failed to properly oversee third-party service providers, which contributed to violations of the Fair Debt Collections Practices Act and the Dodd-Frank Act prohibition of unfair, deceptive, or abusive acts or practices. Many contracts examined by CFPB examiners between payday lenders and third-party service providers contained no specific compliance-related expectations, and some did not include any reference at all to compliance responsibilities. Further, a number of lenders lacked adequate processes for analyzing the root causes of complaints and for monitoring the resolution of complaints.

[19] In one instance, a lender, Cash America, impeded an examination by failing to properly retain documents requested by the CFPB, destroying documents after being ordered to cease, removing materials from call centers regarding sales and collections metrics, and coaching call center employees to de-emphasize the sales aspect of their duties. These actions contributed to the CFPB's order in November 2013 that Cash America pay $5 million to the CFPB's Civil Penalty Fund, in addition to $14 million refunded to consumers harmed by Cash America's violations of Federal consumer financial law. The Cash America consent order can be found here: http://files.consumerfinance.gov/f/201311_cfpb_cashamerica_consent-order.pdf. *See also* Supervisory Highlights: Winter 2013, Section 2.2.1: Public Enforcement Actions, *available at:* http://files.consumerfinance.gov/f/201401_cfpb_supervision-highlights.pdf.

Examiners also identified weaknesses in policies and procedures, training programs, and compliance audit programs. While examinations have found lenders that regularly review and revise their policies and procedures, many examinations found multiple weaknesses in this area. For instance, one branch manager indicated that the branch received no policies regarding electronic payments, and therefore, branch employees created their own policies with no corporate oversight. More than one lender provided examiners with undated policies, or policies dated at or after the start of the CFPB examination, making it impossible to determine when they were drafted and/or updated, and leading examiners to believe that no such policies existed prior to the examination. At multiple lenders, policies and procedures for record retention either did not exist or were not followed, leading to incomplete record destruction logs and improperly destroyed records.[20]

As noted above, all entities should implement training programs that are robust enough to provide effective and comprehensive instruction to personnel. At multiple lenders, training programs were nonexistent or missing vital components, such as applicable Federal consumer financial laws and instruction on how to avoid unfair, deceptive, or abusive acts or practices.

Supervision did find some adequate compliance audit programs, including one that self-identified a violation and remediated the harm by providing customer refunds. However, many programs reviewed by the CFPB focused heavily on asset and site security and personnel safety and did not address, or only nominally addressed, compliance with Federal consumer financial law. For instance, despite documented compliance weaknesses in its collections activities, one lender did not add this area to the audit function until just prior to the CFPB's examination. Another lender did not have a policy in place to test loan files, and examiners discovered forged signatures in a loan file.

2.3.2 Debt collection issues

An important focus of the CFPB's short-term, small-dollar loan examination program is how lenders collect consumer debt. The CFPB's supervisory activities in this area cover both lenders' own collection practices and those of third-party debt collectors. Supervision pays close

[20] *See, e.g.*, Equal Credit Opportunity Act, as implemented by Regulation B, 12 CFR Part 1002.12; Truth in Lending Act, as implemented by Regulation Z, 12 CFR Part 1026.25.

attention to the way in which lenders oversee those debt collectors acting as their service providers.[21] When reviewing lender collection activities, Supervision primarily assesses whether these activities have been conducted free from unfair, deceptive, or abusive acts or practices. The CFPB also reviews lenders' compliance management systems with respect to collection activities to ensure that they can effectively prevent violations of Federal consumer financial law. When reviewing third party collection activities, examiners assess compliance with the Fair Debt Collection Practices (FDCPA) and the Dodd-Frank Act prohibition of UDAAPs.

At several short-term, small-dollar lenders, CFPB examiners found inadequate compliance management systems for collection activity. Lenders did not adequately monitor collections calls, attempt to understand the root causes of complaints arising from collections practices, provide training for collectors, and properly oversee third-party service providers.

Improper collections calls

Supervision has cited multiple lenders for unfair, deceptive, or abusive acts or practices, or risks of these acts or practices, for their policies of: repeatedly making unnecessary calls to third parties; improperly disclosing personal debt information; calling borrowers in violation of do-not-call requests; and making false claims during collections calls.

Every payday lender examined by the CFPB has policies in place to obtain additional contacts or references from borrowers. The loan applications typically suggest that this information will only be used for character or credit references; however, these contacts are sometimes called to ascertain a borrower's location upon default. Examiners found that employees of at least one lender called third parties even after the employees had already made contact with consumers. Moreover, an examiner's review of consumer complaints also showed that the lender continued to call customers and references after consumers had made verbal and written requests that they stop doing so. Multiple lenders contacted references and improperly disclosed personal debt information to these third parties, and others lacked sufficient procedures to verify that these in-house collection calls first confirmed the identity of the borrower before sharing personal debt information.

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[21] *See* CFPB Bulletin 2012-03, *supra* note 4.

Multiple lenders examined by the CFPB place a strong emphasis on collections activity. CFPB examination reports have noted the common practice of calling a borrower multiple times per day. At least one lender failed to properly log calls, leading borrowers to receive more calls than documented, and examiners observed practices and weaknesses in the monitoring and corrective action functions at other lenders that could lead to excessive daily calls. These deficiencies also resulted in collection calls being made after borrowers filed do-not-call requests. CFPB examinations reports have noted that these practices and CMS weaknesses pose a risk that lenders may engage in unfair acts or practices in violation of the Dodd-Frank Act.

Finally, Supervision cited deceptive acts or practices at multiple lenders for their false or misleading communications with borrowers. Examiners identified the following deceptive claims during collections activities:

- False threats to add additional fees;
- False threats to report to consumer reporting agencies (CRAs);
- False threats of legal action or referral to a non-existent in-house "legal department";
- False claims that the lender will debit the borrower's account at any time; and
- Deceptive messages regarding non-existent special promotions to induce borrowers to return calls.

Workplace collection visits

During some CFPB reviews, examiners identified complaints concerning visits by employees of payday lenders to consumer workplaces in attempts to collect debt. In some of these situations, consumers had asked the lender to cease the practice. Supervision has cited this practice as unfair in violation of the Dodd-Frank Act, and has directed at least one lender to cease these workplace collections visits.

Third-party collection calls

In several situations, examiners identified violations carried out by third-party debt collectors acting as service providers to creditors. The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt, and the Dodd-Frank Act prohibition on UDAAPs also applies to these activities. Examiners found a number of violations by third-party debt collection service providers in this area including:

- Claiming the account would be reported to a credit bureau when there was no such reporting;
- Making false threats of litigation and referral for criminal prosecution;
- Misrepresenting identity as an impartial mediator or attorney;
- Failing to disclose the identity of the caller or the purpose of the communication;
- Threatening to add unauthorized fees; and
- Making false claims that a borrower's bank account would be closed.

In addition to these specific violations, CFPB examinations found third-party collectors engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt in violation of the FDCPA.

Additionally, the FDCPA prohibits debt collectors from communicating with a consumer in connection with the collection of a debt at any unusual time or with any person other than a consumer, unless otherwise permitted by law. Examiners found that third-party debt collection service providers violated this prohibition by initiating phone calls prior to 8:00 a.m., by not verifying the identity of the person who answered the call, and by providing sensitive account information to a third party to whom the debt collector was not authorized to provide this information.

Finally, the FDCPA requires debt collectors to provide consumers who properly request it a validation of debt before continuing collection efforts. Examiners found situations in which a third-party debt collector tried to collect debts despite failing to provide this validation.

As indicated in *CFPB Bulletin 2012-03*, the CFPB expects supervised persons to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. In the payday lending market, third-party debt collection is an area where this guidance is particularly relevant, and it will remain a focus for CFPB examiners.

2.3.3 Concerns regarding ACH practices

CFPB examinations have found deceptive practices at one or more payday lenders. Upon a borrower's default, payday lenders frequently will initiate one or more preauthorized ACH[22] transactions pursuant to the loan agreement for repayment from the borrower's checking account. Lenders should ensure that communications with borrowers regarding these ACH practices are accurate. At one or more lenders, Supervision cited a deceptive practice when communications with borrowers threatened ACH transactions that were contrary to the agreement, and that the lender did not intend to initiate.

Examiners will continue to review payment practices at payday lenders for compliance with all applicable requirements, including the Dodd-Frank Act prohibition on UDAAPs.

2.4 Fair Lending: Documenting exceptions to credit standards to mitigate fair lending risk

CFPB examination teams have observed instances in which financial institutions lack adequate policies and procedures for managing the fair lending risk that may arise when a lender makes exceptions to its established credit standards. For example, a lender may decide not to apply certain credit standards to a borrower when there is a competing offer from another institution. Such decisions are appropriate where they are based on a legitimate justification, but it is important to maintain adequate documentation and oversight to avoid increasing fair lending

[22] ACH stands for Automated Clearing House, which is an electronic network for processing credit and debit transactions, such as direct deposits and consumer payments, such as those pre-authorized when a consumer applies for a payday loan.

risk under the Equal Credit Opportunity Act (ECOA)[23] and its implementing regulation, Regulation B.[24]

At the same time, the Bureau recognizes the purpose of Regulation B in promoting the availability of credit without regard to prohibited basis characteristics.[25] A lender may promote the availability of credit by providing credit to an applicant based on a lawful exception to the lender's credit standards when exceptions practices are complemented by an appropriate system of fair lending compliance management. A strong compliance management system can also mitigate fair lending risk related to credit exceptions by adequately documenting the basis for the credit exception, monitoring and tracking exceptions activity, and controlling any resulting fair lending risk.

A strong compliance management system often includes the following fair lending-related elements:

Policies and procedures

- Granting exceptions: policies and procedures that specifically define the circumstances when the institution allows exceptions to be made to its credit standards. For example, a lender may have policies that permit pricing exceptions so that the lender can meet the rate in a competing offer, in appropriate circumstances.
- Documenting exceptions: policies and procedures that require, for each applicant offered an underwriting, pricing or other exception, documentation appropriate to that specific exception that is, at a minimum, sufficient to effectively monitor compliance with the exceptions policies. Such documentation should be sufficient to explain and provide details regarding the basis for granting any underwriting or any other exception. As such, the lender's policy for documenting exceptions should require more than a records

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[23] 15 USC 1691-1691f.

[24] 12 CFR Part 1002.

[25] 12 CFR Part 1002.1(b).

notation that identifies or lists only the policy basis for the exception. Records should provide details and/or documentation of the particular circumstances of the exception.

- Record retention: document retention requirements should, at a minimum, correspond with the record retention obligations of Regulation B, which generally requires retention, for twenty-five months, of certain records related to a non-business credit application.[26]

Monitoring, audit, and corrective action

- Monitoring: ensure regular monitoring of compliance with all exceptions policies, including exceptions documentation.
- Audit: conduct periodic audits for compliance with all policies and procedures relevant to granting exceptions, and to test for and identify fair lending risk.
- Corrective action: take appropriate corrective action for noncompliance with exceptions policies or procedures, or if internal monitoring and audits identify areas of fair lending risk.

Training

- Provide training for all relevant individuals related to these policies and procedures.

Management participation

- Provide for management and/or board oversight, as appropriate, of relevant policies and procedures.

The Bureau recognizes that each lender is different and that an effective compliance management system may take different forms depending on many factors, including the size and complexity of the lender's business. However, the successful implementation of the recommendations identified above will assist lenders in mitigating fair lending risk when making exceptions to credit standards while also furthering the purposes of Regulation B in promoting the availability of credit.

[26] *Id*. at 1002.12(b).

2.5 Remedial actions

2.5.1 Public enforcement action

On April 9, 2014, the CFPB announced that it had ordered Bank of America, N.A. and FIA Card Services, N.A. to refund an estimated $727 million to consumers for illegal practices related to credit card add-on products and to pay a $20 million civil penalty. This marks the Bureau's fifth public enforcement action to address illegal practices with respect to credit card add-on products.[27]

From 2010 to 2012, Bank of America deceptively marketed two credit card payment protection products, misleading consumers about their costs and benefits, as well as the enrollment process. Over 1.4 million consumers were affected by this deceptive marketing.

Bank of America also enrolled consumers in identity protection credit card add-on products and billed consumers for these products without or before having the authorization necessary to perform the credit monitoring and credit report retrieval services. Bank of America illegally charged 1.9 million consumer accounts for services not fully received, leading consumers to believe that their credit was being monitored for fraud or identity theft when it may not have been.

Bank of America was ordered to provide relief to affected consumers, end the unfair billing practices, and pay a $20 million fine to the CFPB's Civil Penalty Fund. Additionally, the Bank will be barred from marketing any credit protection or credit monitoring add-on products until it submits a compliance plan to the CFPB.

2.5.2 Non-public supervisory actions

In addition to the public enforcement action and supervisory observations above, recent supervisory activities have resulted in more than $70 million in remediation to over 775,000

[27] These enforcement actions have been in conjunction with other Federal regulators. In this case, the Office of the Comptroller of the Currency (OCC) also ordered Bank of America to pay $25 million in civil penalties for its unfair billing practices. The full CFPB Consent Order can be found here: http://files.consumerfinance.gov/f/201404_cfpb_bankofamerica_consent-order.pdf.

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 deposits, consumer reporting, credit cards, mortgage origination, and mortgage servicing.

3. Supervision program developments

The Bureau continues to recruit talented and highly motivated staff, both in the field and at headquarters. As of May 1, 2014, Bureau examination staff numbers approximately 320 examiners supported by both regional management and headquarters staff. More than 100 of these examiners have been commissioned through the Bureau's internal process, or came to the CFPB with commissions from other regulators. At headquarters, recent staff and management hires will allow Supervision to further develop its policy and oversight functions, and complete the Bureau's internal training curriculum.

3.1 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.

The CFPB examination manual is generally organized both by statute and implementing regulation, as well as by product line. On January 10, 2014, the CFPB released updated modules for both mortgage origination and mortgage servicing.[28] These modules provide a single

[28] CFPB Examination Procedures: Mortgage Origination, *available at:* http://files.consumerfinance.gov/f/201401_cfpb_mortgage-origination-exam-procedures.pdf; *see also* CFPB

resource outlining the specific topics that may be the focus of a CFPB examination, such as underwriting, closing, servicing transfers, and loss mitigation.

Additionally, on December 3, 2013, the CFPB released examination procedures pertaining to education loans.[29] The procedures are sorted into modules, and provide guidance for the examination of all aspects of private education loans and examination of servicing practices in connection with all types of student loans.

3.2 Recent CFPB guidance

3.2.1 Fair Credit Reporting Act and Regulation V

On February 27, 2014, the CFPB issued a Bulletin to address certain provisions of the FCRA and Regulation V that apply to debt buyers, debt collectors, and others who furnish information to consumer reporting agencies (CRAs) for inclusion in credit reports.[30] When a consumer disputes the completeness or accuracy of information a furnisher has provided to a CRA, the furnisher is generally required to conduct a reasonable investigation with respect to the disputed information.[31] If the investigation reveals that an item of information is inaccurate or incomplete or cannot be verified, the furnisher must modify, delete, or permanently block the reporting of the item of information.

As noted above in *Supervisory Observations*, the CFPB is concerned that, instead of investigating disputed information, furnishers may simply direct the CRAs to delete the disputed information. Furnishers may do this because they believe that it satisfies the

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Examination Procedures: Mortgage Servicing, *available at:* http://files.consumerfinance.gov/f/201401_cfpb_mortgage-servicing-exam-procedures.pdf.

[29] CFPB Examination Procedures: Education Loans, *available at:* http://files.consumerfinance.gov/f/201312_cfpb_exam-procedures_education-loans.pdf.

[30] CFPB Bulletin 2014-01 (Feb. 27, 2014), *available at:* http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.

[31] Pursuant to Section 623 of the FCRA, when a consumer submits a dispute to the CRA, the CRA will ordinarily—except in certain circumstances—forward the dispute to the furnisher for reinvestigation. 15 USC 1681i; 15 USC 1681s02(a)(8)(E), (b)(1). Pursuant to Regulation V, when a consumer submits a dispute directly to a furnisher, the furnisher must—with certain exceptions—conduct its own investigation. 12 CFR Part 1022.43(e).

requirement to conduct a reasonable investigation or because they assume that once the furnished information is deleted, they are no longer furnishers with respect to the disputed information.

However, as the Bulletin explains, the investigation of disputes provides a critical check on the accuracy of furnished items and can identify systematic problems with furnishers' data. Whether an investigation is reasonable depends upon the circumstances. The Bureau will continue to monitor furnishers' compliance with their obligations under FCRA.

3.2.2 Social Media: Consumer Compliance Risk Management Guidance

On December 11, 2013, the Federal Financial Institutions Examination Council, on behalf of its members, including the CFPB, issued a guidance document pertaining to social media.[32] This guidance is designed to help financial institutions navigate the applicability of federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media. The guidance does not impose any new requirements, but offers considerations that financial institutions may find useful in conducting risk assessments and crafting and evaluating policies and procedures regarding social media.

3.3 Other developments

3.3.1 Larger participant rulemaking

On January 31, 2014, the CFPB issued a proposed rule to define the larger participants in the international money transfer market.[33] Under its existing authority, the CFPB may supervise large depository institutions and credit unions that provide these transfers, generally known as remittances. The proposed rule would extend the Bureau's supervisory authority to nonbank

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[32] Social Media: Consumer Compliance Risk Management Guidance, *available at:* http://files.consumerfinance.gov/f/201309_cfpb_social_media_guidance.pdf.

[33] *See supra* note 1.

providers that meet the threshold of a larger participant in the market. As proposed, providers that have at least one million aggregate international money transfers annually would be larger participants under the rule. Comments on the proposed rule were due on April 1, 2014. The CFPB is reviewing the comments and intends to issue a final rule.

The CFPB also anticipates moving forward with a proposal to expand its supervisory authority beyond the larger banks to include the larger indirect nonbank auto lenders. In so doing, the Bureau will be providing more complete oversight over the lender side of this marketplace.

4. Conclusion

Supervision is one of the CFPB's core functions, and allows the Bureau to assess compliance with the Federal consumer financial laws under its authority. The CFPB is committed to periodically publishing *Supervisory Highlights* to provide general information about its supervisory findings without identifying specific institutions (except for enforcement actions already made public), to share updates about operational changes to the Bureau's supervisory program, and to help communicate the standards of conduct expected of supervised entities.