Supervisory Highlights

Consumer Financial Protection Bureau

Summer 2015

Table of contents

1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) remains committed to transparency in its supervisory program by sharing key findings in order to help industry limit risks to consumers and comply with Federal consumer financial law. In this eighth edition of *Supervisory Highlights*, the Bureau shares recent supervisory observations in the areas of consumer reporting, debt collection, student loan servicing, mortgage origination, mortgage servicing, and fair lending. The findings reported here reflect information obtained by Supervision[1] at the time of issuance of an examination report or supervisory letter.

Supervision continues to resolve violations using non-public supervisory actions, sometimes including those initiated by entities self-reporting violations to Supervision staff. Recent supervisory resolutions have resulted in remediation of approximately $11.6 million to more than 80,000 consumers.[2] When examinations determine violations occurred, supervised entities are directed to implement appropriate corrective measures, including remediation to consumers as appropriate.

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

[1] Supervision includes CFPB's examiners and regional and headquarters members of the Office of Supervision Examinations and the Office of Supervision Policy. Members of the Office of Fair Lending and Equal Opportunity participate in the supervision process.

[2] Remediation numbers generally represent remedial actions that have been completed since the publication of the last issue of *Supervisory Highlights* and during the period under review.

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 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 most recently, the nonbank automobile market. In September 2014, the Bureau proposed a rule defining larger participants in the nonbank automobile market. The comment period for the proposed rule ended on December 8, 2014, and the CFPB issued a final rule in June this year.

This report highlights supervision work generally completed between January 2015 and April 2015. Any questions or comments can be directed to CFPB_Supervision@cfpb.gov.

2. Supervisory observations

Below are some recent examination observations in consumer reporting, debt collection, student loan servicing, mortgage origination, mortgage serving and fair lending.

2.1 Consumer reporting

The Fair Credit Reporting Act (FCRA) requires consumer reporting agencies (CRAs) that create a consumer report[3] to "follow reasonable procedures to assure maximum possible accuracy of information" in the report. CFPB examiners conducted reviews of the reasonableness of methods and processes used by certain CRAs to assure maximum possible accuracy of consumer reports they produce.

The reviews evaluated the CRAs' procedures and related compliance management systems for assuring accuracy of the information the CRAs collect, maintain, and use to prepare consumer reports. Examiners reviewed management processes for information collection, oversight of furnishers, monitoring of data, oversight of public records providers, and consumer report compilation, including quality control of the accuracy of consumer reports produced.

Some CRAs retain highly knowledgeable staff and management that oversee complex processes for maintaining consumer credit data. However, the reviews found weaknesses with the methods and processes for assuring maximum possible accuracy in consumer reports.

[3] Consumer reports used for credit eligibility are also commonly referred to as credit reports.

2.1.1 Information collection

Oversight of furnishers

Examiners reviewed the policies and procedures at one or more CRAs for vetting and overseeing new furnishers and found several weaknesses. One or more CRAs' policies and procedures were not updated to describe actual practices. In some instances, the policies and procedures included outdated information. Examiners further found that one or more CRAs did not conduct regular monitoring to ensure that furnishers adhere to the CRAs' vetting requirements. Supervision directed one or more CRAs to correct these weaknesses by revising their policies related to their oversight of furnishers and compliance with membership requirements.

Monitoring of data

The reviews included assessments of data management and oversight programs at one or more CRAs. Examiners found in reviews that one or more CRAs lacked formal programs to oversee and manage data supplied by furnishers. Examiners also found that one or more CRAs lacked systematic or consistent policies and procedures to provide feedback to furnishers regarding the quality of the data furnished. Even when one or more CRAs generated reports identifying specific quality issues with the furnisher data, there were CRAs that relied on requests from furnishers or, in some cases, imposed a fee before the reports were provided to the furnishers. Supervision directed the CRAs to improve the monitoring and feedback they provide to furnishers.

Oversight of public records providers

Examiners found that the oversight of public records providers by one or more CRAs was weak and required corrective action. For example, one or more CRAs had never conducted a formal audit of their public records providers. In addition, one or more CRAs did not have defined processes to verify the accuracy of public record information provided by their public records providers. In light of such weaknesses, Supervision directed one or more CRAs to establish and implement suitable and effective oversight of public records providers.

2.1.2 Quality control

Examiners reviewed quality control processes with respect to the accuracy of consumer reports produced by one or more CRAs and found that, with certain exceptions, there were no quality control policies and procedures to test compiled consumer reports for accuracy. While processes existed to analyze and improve the quality of incoming data, there was no post-compilation report review or sampling to test the accuracy of consumer reports. In light of these weaknesses, Supervision directed one or more CRAs to develop a plan with implementation timelines to establish quality controls that regularly assess the accuracy and integrity of the consumer reports and consumer file disclosures produced.

2.2 Debt collection

2.2.1 Weaknesses in compliance management systems

As discussed in previous issues of *Supervisory Highlights*, the CFPB expects a financial institution under its supervision to maintain an adequate compliance management system (CMS) tailored to its operations. A robust and well-administered CMS is vital to preventing violations of Federal consumer financial law and the resulting harm to consumers. Examinations of one or more institutions engaging in consumer debt collection identified various CMS weaknesses that created a risk of consumer harm. One or more institutions' boards of directors did not hold regularly scheduled meetings or receive information sufficient to adequately oversee compliance practices. Examiners found that the institutions lacked formal follow-up or escalation procedures for third-party debt collection personnel who were delinquent in completing their required training. These providers were allowed to continue collecting on debt and interacting with consumers, even when their training was overdue. And the institutions lacked comprehensive compliance audit programs. Supervision directed the institutions to remedy these compliance management weaknesses.

During an examination of one or more institutions, examiners also found weaknesses in inquiry and complaint management for collections operations. The institutions did not log or record consumer complaints that were resolved by agents or their managers – depriving compliance personnel of an important tool for detecting violations of Federal consumer financial law during collection activities. Examiners identified instances where complaints and inquiries forwarded from third-party debt collectors were not recorded, categorized, or processed by the financial institution receiving them. Instead, they remained unreviewed in an electronic queue. Supervision directed the institutions to enhance their procedures and monitoring program to ensure that inquiries and complaints were timely identified, categorized, and resolved, and to conduct an audit to identify and analyze the items in the queue, and the root cause for why the items stayed in the queue.

2.2.2 Failure to conduct investigations of dispute notices from consumers and consumer reporting agencies

The FCRA and its implementing regulation, Regulation V, requires furnishers to conduct a reasonable investigation with respect to disputed information after receiving a dispute notice from a consumer or consumer reporting agency. Furnishers are also required to review all relevant information provided by the consumer, to complete their investigation and report the results to the consumer within the timeframes specified in the FCRA, and to notify the consumer reporting agency and correct any inaccurate information.[4] At one or more debt collectors, examiners found that the entities were simply deleting the trade lines of accounts after they received direct and indirect disputes on those accounts, without fulfilling the requirements of Regulation V.[5] No investigation results or corrections were ever sent to the CRA. Supervision directed the entities to begin tracking, investigating, and resolving direct and indirect consumer disputes.[6]

Relatedly, one or more online statements made by the entities expressed that companies rarely deleted trade lines and regularly investigated disputes. In practice, the entities summarily deleted trade lines and failed to conduct investigations of disputes. Examiners found that these statements were deceptive in violation of the Fair Debt Collection Practices Act.[7] Supervision directed the collectors to remove the deceptive statements.

---

[4] 12 CFR 1022.43(e) and 15 USC 1681s-2(b).

[5] Failures to comply with these furnisher obligations can be harmful to consumers and the accuracy of the consumer reporting system as explained in the CFPB's February 2014 Compliance Bulletin: http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.

[6] 12 CFR 1022.43(e).

[7] 15 USC 1692e.

2.2.3 Failure to have reasonable written policies and procedures regarding information furnished to consumer reporting agencies

Regulation V requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information that it furnishes to a CRA[8]. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. During the examination of one or more debt collectors, examiners found that the entity lacked the appropriate written policies and procedures required to fulfill Regulation V. Supervision directed the collectors to develop reasonable written policies and procedures regarding consumer information that is furnished to CRAs.

2.3 Student loan servicing

The Supervision program covers certain Federal and private student loan servicers. The Bureau's recent examinations identified deceptive practices and a FCRA violation.[9]

2.3.1 Deceptive statements about the deductibility of student loan interest

During one or more examinations, examiners determined that student loan servicers included language on periodic statements suggesting that borrowers could not deduct on tax filings interest paid on qualified student loans unless they paid more than $600 in interest. Examiners found this practice to be deceptive because there is no minimum amount of qualified student loan interest that borrowers must pay before taking a deduction.[10]

At the time of the examination, one or more student loan servicers had already removed the language suggesting a $600 threshold for deducting student loan interest. In addition, the

[8] 12 CFR 1022.42(a).

[9] 15 USC 1681m.

[10] See generally IRS Publication 970 (2013), Tax Benefits for Education.

relevant servicers offered free tax advice and re-filing assistance for borrowers negatively affected by the misleading language.

2.3.2 Deficient FCRA adverse action notices

The FCRA requires that every adverse action notice contain the name, address, and telephone number of the CRA that furnished the report, and a statement that the CRA did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken.[11] The FCRA further provides that if any person takes an adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person must, if they use a credit score, provide to the consumer the credit score, the range of possible credit scores, a maximum of four key factors that adversely affected the credit score, the date on which the credit score was created, and the name of the entity that provided the credit score.[12]

Lenders sometimes require borrowers to have a cosigner in order to take out a private student loan. In many instances, a borrower may later request the release of a cosigner from the loan obligation provided that some conditions are met. These conditions often include satisfying certain credit criteria. If a student loan servicer uses a consumer report to deny a cosigner release request, the servicer must provide a FCRA adverse action notice.[13] During one or more examinations, Supervision determined that a student loan servicer did not include all required information in FCRA adverse action notices when denying cosigner release requests.

In response to a citation, one or more student loan servicers conducted a root cause analysis to determine why the adverse action notices were deficient, and have undertaken remedial and corrective actions regarding this violation, which is under review by Supervision.

---

[11] 15 USC 1681m(a)(3)(A) & (B).

[12] 15 USC 1681m(a)(2)(A) & (B).

[13] 15 USC 1681m(a).

2.4 Mortgage origination

Supervision has completed the first round of targeted reviews for mortgage origination examinations for compliance with the Title XIV rules. The Title XIV rules include requirements related to the ability-to-repay, loan originator compensation, high-cost mortgages, homeownership counseling and escrows. Supervision found instances of non-compliance with certain Title XIV rules and violations of disclosure requirements associated with the Good Faith Estimate (GFE) and the Settlement Statement (HUD-1) as discussed in detail below.

2.4.1 Failing to establish and maintain written policies and procedures pursuant to the Loan Originator Rule

The Loan Originator Rule,[14] as set out in the Truth in Lending Act (TILA)[15] and its implementing regulation, Regulation Z, require, among other things, that a depository institution establish and maintain written policies and procedures designed to ensure and monitor compliance with its provisions.[16] The policies and procedures must be commensurate to the nature, size, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

During the examination process Supervision determined that one or more supervised entities violated Regulation Z by failing to establish written policies and procedures as required by the rule. Specifically, Supervision found written policies on loan originator compensation and qualification and identification requirements without written procedures instructing employees on how to comply with the written policies. Supervision directed one or more supervised entities to develop, implement and maintain written procedures that provide comprehensive guidance to ensure and monitor compliance with the Loan Originator Rule as required by Regulation Z.

---

[14] 12 CFR 1026.36(a), (b), (d)-(j).

[15] 15 USC 1601 *et seq.*

[16] 12 CFR 1026.36(j).

2.4.2 Failing to comply with disclosure requirements concerning the RESPA list of homeownership counseling organizations

The Real Estate Settlement Procedures Act (RESPA)[17] and its implementing regulation, Regulation X, require a lender to provide mortgage applicants with a clear and conspicuous written list of homeownership counseling organizations (housing counseling agencies) within three business days of receiving the application.[18] A lender may comply with the requirements by generating the list of housing counseling agencies in the applicant's location up to 30 days in advance by: (1) utilizing a tool developed and maintained by the Bureau (using HUD data on HUD-approved counseling agencies);[19] or (2) using the lender's own systems utilizing the same HUD data that the Bureau uses on HUD-approved counseling agencies, in accordance with the Bureau's list of requirements in the Bureau's Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule.[20] Lenders comply with these requirements by providing the following data fields for each housing counseling agency on the list to the extent available through the HUD automatic programming interface (API): agency name, phone number, street address, city, state, zip code, website URL, email address, counseling services provided, and languages spoken.

During one or more examinations, examiners found that supervised entities did not fully comply with the disclosure requirements of Regulation X by failing to provide the list of housing counseling agencies to consumers. In particular, the housing counseling agencies lists did not contain the website address for each listed housing counseling agency because the vendors accidentally omitted the website data field. The supervised entities took appropriate actions to correct these violations.

---

[17] 12 USC 2601 *et seq.*

[18] 12 CFR 1024.20(a)(1).

[19] See CFPB, "Find a Housing Counselor," *available at* http://www.consumerfinance.gov/find-a-housing-counselor/.

[20] See CFPB, "Homeownership Counseling Organizations Lists Interpretive Rule," 78 Fed. Reg. 68,343 (Nov. 14, 2013) and CFPB "Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule," 80 Fed. Reg. 22,091 (April 21, 2015).

2.4.3 Failing to fully comply with Regulation X requirements for the GFE

Regulation X provides requirements to lenders for accurate completion of the GFE.[21] Generally, the lender must provide a GFE to a mortgage loan applicant within three business days of receipt of a complete application.[22] The applicant may not be charged any fees, other than the cost of a consumer report, until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE.[23] Subject to certain exceptions and tolerances, the loan originator is bound to the actual charges and terms listed on the GFE.[24] However, a revised GFE may be provided under certain circumstances enumerated in Regulation X, including, but not limited to, changed circumstances affecting settlement costs or the borrower's eligibility for the specific loan terms identified in the GFE, borrower-requested changes, expiration of the GFE, and changes related to interest-rate dependent charges and terms.[25]

In one or more recent examinations, Supervision found the following violations of Regulation X:

- Failing to provide the consumer a GFE within three business days of receipt of a complete application;
- Failing to provide the consumer a timely revised GFE within three business days of receiving information to establish a changed circumstance;
- Failing to include all fees on a GFE;

[21] 12 CFR 1024.7.

[22] 12 CFR 1024.7(a)(1).

[23] 12 CFR 1024.7(a)(4).

[24] 12 CFR 1024.7(f).

[25] 12 CFR 1024.7(f)(1)-(5).

Generally, these were systemic violations that were caused by weaknesses in training, monitoring and corrective action,[26] or compliance audit. Supervision informed one or more supervised entities of the need to enhance compliance training to ensure comprehensive coverage of applicable Regulation X requirements. Additionally, entities were informed that these violations indicate a need for accurate and timely corrective action as well as the need to enhance the compliance audit schedule and coverage of audit activities to address these requirements.

2.4.4 Failing to fully comply with Regulation X requirements for completion of the HUD-1

Regulation X requires that the settlement agent complete the HUD-1 or HUD-1A in accordance with the instructions set forth in Appendix A of the regulation.[27] The loan originator must transmit to the settlement agent all information necessary to fully and accurately complete the HUD-1 or HUD-1A.[28] In examining financial institutions, Supervision cited one or more instances of failure to ensure that the HUD-1 settlement statement accurately reflects the actual settlement charges paid by the borrower.

Generally, this violation was indicative of weaknesses in training, monitoring and corrective action, and compliance audit. Supervision directed one or more supervised entities to review their loan files and refund the appropriate amounts to affected customers.

2.4.5 Deceptive practice from overly broad release in home equity installment loan agreements

Under Regulation Z, a contract or agreement relating to a consumer credit transaction secured by a dwelling, including a home equity line of credit secured by the consumer's principal

---

[26] The CFPB's Supervision and Examination manual defines 'monitoring' as "a compliance program element that seeks, in an organized and risk-focused way, to identify procedural or training weaknesses in an effort to provide for a high level of compliance by promptly identifying and correcting weaknesses."

[27] 12 CFR 1024.8(b).

[28] *Id.*

dwelling, may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of Federal law.[29] Despite this requirement, at one or more supervised entities, language in the "General Waiver Provisions" of agreements provided that consumers who signed the agreements waived all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the agreement.

Examiners concluded that such a general waiver provision is a deceptive practice because it implies that the borrower is agreeing to a waiver that is unenforceable as to any claims based upon a Federal statute.[30] A reasonable consumer might be misled into believing that by signing the note they had waived all notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the note and would therefore be less likely to assert his or her Federal statutory rights. Supervision directed the supervised entities to cease requiring consumers to sign note agreements with waivers that appear to waive rights that may include Federal statutory claims or defenses and provide borrowers who received the broad waiver language with a more limited waiver.

2.5 Mortgage servicing

A high priority for Supervision has been to ensure compliance with the CFPB mortgage servicing rules that took effect on January 10, 2014. While the rules encompass many aspects of mortgage servicing, this section focuses on findings in the areas of loss mitigation, foreclosure, periodic statement disclosures, and Homeowners Protection Act compliance.

2.5.1 Loss mitigation

Regulation X sets forth requirements for soliciting, completing, and evaluating loss mitigation applications. As part of these requirements, servicers must notify borrowers in writing within

[29] 12 CFR 1026.36(h)(2).

[30] 12 USC 5536.

five days after receiving a loss mitigation application acknowledging that it received the application, and stating whether it is complete or incomplete. If the application is incomplete, the servicer must list in its notice the additional documents and information the borrower must submit to complete the application, often called "acknowledgement notices."[31]

Examiners found that at least one servicer sent borrowers loss mitigation acknowledgment notices requesting documents, sometimes dozens in number, inapplicable to their circumstances and which it did not need to evaluate the borrower for loss mitigation. Examiners also found that at least one servicer sent loss mitigation acknowledgement notices requesting documents that borrowers had previously submitted. Supervision cited the servicers for violating Regulation X and directed them to state in acknowledgment notices the specific additional documents actually required to complete a loss mitigation application.[32]

Examiners also found that one or more servicers failed to send any loss mitigation acknowledgment notices. At least one servicer did not send notices after a loss mitigation processing platform malfunctioned repeatedly over a significant period of time. Supervision cited one or more servicers for violating Regulation X. Supervision also cited this practice as unfair because the breakdown caused delays in converting trial modifications to permanent modifications, resulting in harm to borrowers, and may have caused other harm. The injury caused by the platform failure is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition. At Supervision's direction, one or more servicers have begun to remediate consumers, including for interest and fees incurred and for any additional harm. Supervision also directed one or more servicers to fix the servicing platform and to monitor for system weaknesses.

At least one other servicer did not send loss mitigation acknowledgment notices to borrowers who had requested payment relief on their mortgage payments. One or more servicers treated certain requests as requests for short-term payment relief instead of requests for loss mitigation under Regulation X. However, short-term payment relief, including deferments, provide loss

[31] 12 CFR 1024.41(b)(2)(i)(B).

[32] *See* 12 CFR 1024.41(b)(2)(i)(B).

mitigation options in that they provide borrowers an alternative to foreclosure, and Regulation X requires that servicers send loss mitigation acknowledgment notices in response to requests for a loss mitigation option.[33] Supervision determined that at least one servicer violated Regulation X by failing to send these notices.[34]

Additionally, examiners found a deceptive practice related to how one or more servicers disclosed the terms of a payment plan that deferred mortgage payments for daily simple interest mortgage loans.[35] The servicer's communications included misleading representations about how the deferments worked, incorrectly suggesting that deferred interest would be repayable at the end of the loan term when, in fact, it would be collected from the consumer immediately after the deferment ended. Supervision directed one or more servicers to clearly disclose how interest accrues while on the plan and its impact on monthly payments after the deferment period concludes.

The Bureau continues to examine for the risks inherent in transferring loans in loss mitigation, including the risk that information is not accurately transferred between servicers.[36] Examiners found one or more servicers failed to honor the terms of some trial modifications after transfer. Some borrowers who completed trial payments with the new servicer nonetheless encountered substantial delays before receiving a permanent loan modification. Supervision concluded that the delay caused substantial injury as trial payments were less than the amounts required by the promissory note, and consumers continuing to make trial payments while waiting for the permanent modification accrued interest on the unpaid principal balance. Because Supervision also concluded that such injury is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition, Supervision cited this practice as

---

[33] 12 CFR 1024.31.; 12 CFR 1024.41(c)(2)(iii).

[34] 12 CFR 1024.41(b)(2)(i)(B).

[35] 12 USC 5536(a)(1)(B).

[36] In August 2014, CFPB released a compliance bulletin and policy guidance discussing mortgage servicing transfers: http://files.consumerfinance.gov/f/201408_cfpb_bulletin_mortgage-servicing-transfer.pdf.

unfair.[37] Supervision directed one or more servicers to develop and implement policies, procedures, training, and audits to promptly identify and honor loss mitigation agreements, whether completed or in progress, between the borrower and prior servicer at time of transfer.

2.5.2 Foreclosure process

In reviewing the loss mitigation and foreclosure process, examiners also found certain unfair and deceptive practices. At least one servicer sent notices of intent to foreclose to borrowers already approved for a trial modification and before the trial modification's first payment was due without verifying whether borrowers had a pending loss mitigation plan before sending its notice. As the notice could deter borrowers from carrying out trial modifications, it likely causes substantial injury not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition. Supervision cited this practice as unfair. Moreover, a reasonable borrower receiving one of these notices would be misled to think the servicer had abandoned the trial modification. Misinformation would substantially change the borrower's understanding of what actions were available to protect himself, from making the trial payments to bringing the loan current. Supervision also cited this practice as deceptive. One or more servicers were directed to modify and track notices of intent to foreclose, and to clearly and conspicuously state whether such notices affect any pending loss mitigation offer.

CFPB examiners found at least one servicer sent notices warning borrowers who were current on their loans that foreclosure would be imminent. The practice stemmed from a system error whereby default letters were generated to borrowers with low-balance home equity lines of credit (HELOCs) and no monthly payment due. Supervision cited this practice as deceptive and directed one or more servicers to cease sending foreclosure letters to borrowers that the servicer has no intention to pursue.

[37] 12 USC 5536(a)(1)(B).

2.5.3 Regulation Z disclosures

Regulation Z requires servicers to send periodic statements each billing cycle that display clearly and conspicuously in writing, content that includes the account's transaction history encompassing any activity that causes a credit or debit to the amount currently due.[38] In reviewing for Regulation Z compliance, examiners observed that one or more servicers:

- Failed to send periodic statements to some borrowers because of a sustained system error;
- Failed to send periodic statements on a portfolio of loans because the servicer incorrectly believed the loans were exempt from Regulation Z requirements;
- Included an incomplete number of past transactions on periodic statements because of a software limitation; and
- Listed the same fee twice in the transaction history section of the periodic statement

In these cases, Supervision cited the servicer for violating Regulation Z and directed the servicer to send periodic statements when required, and to promptly enhance its systems so that it could show transaction histories that include any activity that causes a credit or debit to the amount currently due as required.[39]

2.5.4 Homeowners Protection Act

The Homeowners Protection Act requires automatic termination of borrower-paid private mortgage insurance (PMI) when the mortgage balance is first scheduled to reach 78 percent of the original value of the property securing the loan, if the borrower is current on the termination date, or, if the borrower is not current, on the first day of the first month beginning after the

[38] 12 CFR 1026.41.

[39] 12 CFR 1026.41(d)(4).

date that the mortgagor becomes current.[40] For fixed rate mortgages, the timing is based on the initial amortization schedule for the mortgage.[41]

For borrowers who were delinquent when their mortgage balance reached 78 percent of the original value of the property based on the original amortization schedule, examiners found one or more servicers failed to automatically cancel the borrower's PMI when the borrower became current. As a result, the servicer collected unearned premiums from some borrowers in violation of the Homeowners Protection Act. Supervision directed one or more servicers to remediate affected borrowers and to implement controls to prevent the issue from recurring.

2.6 Fair lending

2.6.1 Consideration of Public Assistance Income – Section 8 Homeownership Program Vouchers

The Section 8 Housing Choice Voucher (HCV) Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes. The program is a component of the Department of Housing and Urban Development's (HUD's) Section 8 HCV Program, which also includes a rental assistance program.[42] These programs are funded by HUD and administered by participating local Public Housing Authorities (PHAs).

Through the Section 8 HCV Homeownership Program, the participating PHA may provide an eligible consumer with a monthly housing assistance payment to help pay for homeownership

[40] 12 USC 4901(18); 12 USC 4902(b).

[41] 12 USC 4901(18)(A).

[42] "Section 8 Housing Choice Voucher Homeownership Program" refers to the homeownership assistance program authorized by the Quality Housing & Work Responsibility Act of 1998 (Pub. L. No. 105-276, approved October 21, 1998; 112 Stat. 2461), and the applicable implementing regulations, 24 CFR 982.625-982.643. The program is also referred to as the Voucher Homeownership Program, the Housing Choice Voucher Homeownership Option, or the Section 8 Homeownership Program.

expenses associated with a housing unit purchased in accordance with HUD's regulations.[43] In addition to HUD's regulations, the PHAs may also adopt additional requirements, including lender qualifications or terms of financing.[44]

The Equal Credit Opportunity Act (ECOA)[45] and its implementing regulation, Regulation B,[46] prohibit creditors from discriminating in any aspect of a credit transaction against an applicant "because all or part of the applicant's income derives from any public assistance program."[47] "Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is 'public assistance' for purposes of the regulation. The term includes (but is not limited to) . . . mortgage supplement or assistance programs . . . ."[48] As such, mortgage assistance provided under the Section 8 HCV Homeownership Program is income derived from a public assistance program under ECOA and Regulation B.

Regulation B further provides that "[i]n a judgmental system of evaluating creditworthiness, a creditor may consider . . . whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness."[49] However, "[i]n considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances."[50] Accordingly, a blanket practice of excluding or refusing to consider Section 8 HCV Homeownership Program vouchers as a source of income or accepting the vouchers only for certain mortgage loan

---

[43] 24 CFR 982.625(c).

[44] 24 CFR 982.632(a).

[45] 15 USC 1691 *et seq*.

[46] 12 CFR pt. 1002 *et seq*.

[47] 15 USC 1691(a)(2); 12 CFR 1002.2(z), 1002.4(a).

[48] Official Staff Commentary, 12 C.F.R. pt. 1002, Supp. I, 2(z)-3.

[49] 12 CFR 1002.6(b)(2)(iii).

[50] Official Staff Commentary, 12 CFR. pt. 1002, Supp. I, 6(b)(5)-3(ii).

products or delivery channels, without an assessment of an applicant's particular situation, may violate the ECOA and Regulation B.

Through the supervisory process, Supervision has become aware of one or more institutions excluding or refusing to consider income derived from the Section 8 HCV Homeownership Program during the mortgage loan application and underwriting process. Some institutions have restricted the use of Section 8 HCV Homeownership Program vouchers to only certain home mortgage loan products or delivery channels. Supervision has required one or more institutions to update their policies and procedures to ensure that their practices concerning Section 8 HCV Homeownership Program vouchers comply with ECOA and its implementing regulation, Regulation B. In addition, Supervision has required one or more institutions to identify borrowers who, due to their reliance on Section 8 HCV Homeownership Program vouchers, were either denied loans, or discouraged from applying; and to provide those borrowers with financial remuneration and an opportunity to reapply.

An institution's clear articulation of underwriting policies regarding income derived from public assistance programs; training of underwriters, mortgage loan originators, and others involved in mortgage loan origination; and careful monitoring for compliance with such underwriting policies can all help the institution manage fair lending risk in this area and comply with the requirements of ECOA and Regulation B.

2.7 Remedial actions

2.7.1 Public enforcement action

The following public enforcement actions resulted, at least in part, from examination work.

Guarantee Mortgage Corporation

On June 5, 2015, the CFPB announced an enforcement action against a California mortgage bank, Guarantee Mortgage Corporation. Guarantee, which is in the process of dissolving, will pay a civil penalty of $228,000 for paying its branch managers based, in part, on the interest rates of the loans they closed. The Loan Originator Compensation Rule, which the Bureau has enforced since July 21, 2011, protects consumers from being steered into costlier loans by prohibiting loan originators from receiving compensation based on the interest rates of the loans they close.

Regions Bank

On April 28, 2015, the Bureau announced a public enforcement action against Regions Bank (Regions) for its unlawful actions related to the entity's overdraft coverage. In 2010, federal rules took effect that prohibited banks and credit unions from charging overdraft fees on ATM and one-time debit card transactions unless consumers affirmatively opted in. Regions failed to obtain the required opt-ins for certain consumers and delayed fixing the violation for almost a year after it was discovered. Additionally, Regions misrepresented overdraft and non-sufficient funds fees related to its deposit advance product, Regions Ready Advance.[51]

Regions has already refunded hundreds of thousands of consumers approximately $49 million in fees, and the consent order requires the bank to fully refund all remaining consumers, and correct all instances of negative information reported to CRAs as a result of these unlawful fees. The Bureau also fined the company $7.5 million for its illegal actions.

2.7.2 Non-public supervisory actions

Recent non-public supervisory resolutions reached in the areas of mortgage origination, fair lending, mortgage servicing, deposits, payday lending, and debt collection have resulted in remediation of approximately $11.6 million to more than 80,000 consumers.

---

[51] Regions Ready Advance is a short-term, small-dollar line of credit available to some checking account customers. With deposit advance products, the borrower authorizes the bank to claim repayment as soon as the next qualifying electronic deposit is received.

3. Supervision program developments

3.1.1 Mortgage origination examination procedures

On April 1, 2015, the CFPB published examination procedures[52] developed and approved by the Federal Financial Institutions Examination Council (FFIEC)[53] reflecting the upcoming implementation of the Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA), and its implementing regulation, Regulation X, and the Truth In Lending Act (TILA), and its implementing regulation, Regulation Z (TILA-RESPA Integrated Disclosure Rule). The CFPB drafted the TILA-RESPA Integrated Disclosure Rule pursuant to its mandate under the Dodd-Frank Act to integrate the TILA and RESPA mortgage origination disclosures. As a result of the TILA-RESPA Integrated Disclosure Rule, which is effective August 1, 2015, creditors originating most closed-end residential mortgage credit transactions secured by a dwelling must provide consumers with a Loan Estimate (which replaces the Good Faith Estimate and the initial Truth in Lending disclosure) and a Closing Disclosure (which replaces the HUD-1 and final Truth in Lending disclosure). The TILA-RESPA Integrated Disclosure Rule

---

[52] *See* TILA examination procedures, *available at* http://www.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf and the RESPA examination procedures, *available at* http://www.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf.

[53] The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB.

provides specific guidance on how to complete and provide both forms for most closed-end consumer mortgages.

In May 2015, the CFPB published CFPB-specific Mortgage Origination examination procedures[54] to incorporate the updated TILA and RESPA examination procedures. The FFIEC's TILA-RESPA examination procedures and the CFPB's Mortgage Origination examination procedures will guide examiners' review for TILA-RESPA Integrated Disclosure Rule compliance and promote efficient examinations of mortgage origination activity. The Mortgage Origination examination procedures are organized into Modules by subject area. Depending on scope, each examination will cover one or more of the following Modules:

- Company Business Model
- Advertising and Marketing
- Loan Originators
- Loan Disclosures and Terms – Closed-End Residential Mortgage Loans
- Loan Disclosures and Terms – Other Residential Mortgage Loans
- Appraisals
- Underwriting
- Examiner Conclusions and Wrap-up

3.1.2 Risk-based prioritization

As explained in a previous issue of *Supervisory Highlights*, the CFPB prioritizes its supervisory responsibilities by focusing on risks to consumers.[55] The Bureau looks at each distinct product line at an institution, referred to as an "institutional product line." Once broken down into

---

[54] *See* Mortgage Origination Examination Procedures, *available at* http://files.consumerfinance.gov/f/201505_cfpb_mortgage-origination-exam-procedures.pdf.

[55] *See* Supervisory Highlights: Summer 2013, Section 3.2.3, available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

institutional product line, comparisons are made across institutions, charters, or licenses. The Bureau evaluates each product line based on the potential for consumer harm related to a particular market; the size of the product market; the supervised entity's market share; and risks inherent to the supervised entity's operations and offering of financial consumer products within that market.

The Bureau's prioritization approach assesses risks to the consumer at two levels: the market level and then the institution level. At the market-wide level, risk to the consumer is assessed from the products and practices being followed in a particular market. Some markets have stronger incentives to serve consumers than others. While there are potential risks to consumers in numerous financial markets, some markets are viewed as higher risk. In addition to the risks posed to the consumer from the products and practices in the marketplace, the Bureau also considers the relative product market size in the overall consumer finance marketplace.

The other part of the prioritization framework focuses on the institution. It recognizes that some institutions' business models within a market raise greater risk of consumer harm than others. Accordingly, prioritization efforts assess the relative risks to the consumer from each institution's activity within any given market. This process accounts for a broad range of factors that predict the likelihood of specific consumer harm, starting with institution's market share within an individual product line, which corresponds to the number of consumers affected. Relatively large players are typically prioritized as they have a more dominant presence given their ability to impact more consumers than relatively small players.

This prioritization approach augments the size consideration significantly with field and market intelligence. Field and market intelligence includes both qualitative and quantitative factors for each institutional product line, such as the strength of compliance management systems, the existence of other regulatory actions, findings from prior exams, metrics gathered from public reports, and the number and severity of consumer complaints received.

In addition, given the Bureau's mandate to ensure fair, equitable, and nondiscriminatory access to credit for all consumers, general field and market intelligence is supplemented with fair-lending-focused information to ensure that fair lending risks are appropriately identified and prioritized as well. Taken together, the information that gathered about each institutional product line at the market-level and at the institution-level allows the Bureau to focus its resources where consumers have the greatest potential to be harmed. The Bureau's highest priorities are relatively higher risk institutional product lines within relatively higher risk markets.

3.1.3 Potential Action and Request for Response letter

As part of the examination process, the Bureau may send a Potential Action and Request for Response (PARR) letter to a supervised entity. The PARR letter provides the entity notice of preliminary findings of violation(s) of Federal consumer financial law, including fair lending laws, and the Military Lending Act (MLA).[56] If there is a potential ECOA violation that could be referred to Department of Justice, the PARR letter provides the entity notice of the potential for a referral.

The PARR letter also notifies the entity that the Bureau is considering taking supervisory action, such as a non-public memorandum of understanding, or a public enforcement action, based on the potential violations identified and described in the letter. Supervision invites the entity to respond to a PARR letter within 14 days, and to set forth in the response any reasons of fact, law or policy as to why the Bureau should not take action against the entity. The entity is asked to provide documentation with its response. In certain instances, the Bureau requests additional documentation after reviewing the entity's response to the PARR letter. The information provided by the entity helps in determining whether it is appropriate to take supervisory or enforcement action against the entity.

3.1.4 Action Review Committee process

In certain instances, where examiners have found evidence of significant violations of Federal consumer financial law, matters are referred to the Bureau's Action Review Committee (ARC). Where the Bureau sent a PARR letter to a supervised entity, the ARC process comes after the entity's response, so that the committee can consider the response to the examiners' preliminary conclusions.

The ARC determines through a deliberative and rigorous process whether matters that originate from examinations will be resolved through confidential supervisory action, such as a board resolution or memorandum of understanding, or through a public enforcement action. Based

[56] The Military Lending Act (MLA), codified at 10 USC 987 and implemented by Department of Defense regulation at 32 CFR Part 232, is not included in the definition of "Federal consumer financial laws" set forth in Section 1002 of the Dodd Frank Act. The 2013 Amendments to the Military Lending Act in sections 661-663 of the National Defense Authorization Act for Fiscal Year 2013 authorize enforcement of the MLA by the agencies specified in section 108 of the Truth in Lending Act, which include the CFPB and other regulators.

upon the severity of examination findings, the Bureau’s field team will make a recommendation to senior leaders within the Division of Supervision, Enforcement, and Fair Lending whether supervisory or enforcement action is appropriate.

4. Conclusion

The Bureau 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 supervisory work.

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