CONSUMER FINANCIAL PROTECTION BUREAU | DECEMBER 2021

Supervisory Highlights

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1. Introduction

A key function of the Consumer Financial Protection Bureau (CFPB or the Bureau) is to supervise the institutions subject to its supervisory authority.[1] The CFPB helps consumers take control over their economic lives through its supervision program by making consumer financial markets more transparent and competitive. To accomplish this, the CFPB examines institutions to assess compliance with Federal consumer financial law, obtain information about compliance management systems (CMS), and detect and assess risks to consumers and markets for consumer financial products and services.[2] The CFPB's supervision program is focused on preventing violations of law and consumer harm before they occur.

The findings included in this report cover examinations completed between January 2021 and June 2021 in the areas of credit card account management, debt collection, deposits, fair lending, mortgage servicing, payday lending, prepaid accounts, and remittance transfers. To maintain the anonymity of the supervised institutions discussed in S*upervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions. This edition of *Supervisory Highlights* also summarizes recent developments in the Bureau's supervision program and remedial actions.

The CFPB publishes *Supervisory Highlights* to help institutions and the general public better understand how we examine institutions for compliance with Federal consumer financial laws. *Supervisory Highlights* summarizes existing legal requirements and violations identified in the course of the Bureau's exercise of supervisory and enforcement authority.[3]

We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

[1] 12 U.S.C. § 5511(c)(4).
[2] 12 U.S.C. §§ 5514(b) and 5515(b).
[3] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

2. Supervisory Observations

2.1 Credit Card Account Management

The Bureau assessed the credit card account management operations of supervised institutions for compliance with applicable Federal consumer financial laws. Examinations of these institutions identified violations of Regulation Z and deceptive acts or practices prohibited by the Consumer Financial Protection Act (CFPA).

2.1.1 Billing error resolution violations

Regulation Z contains billing error resolution provisions with which a creditor must comply following receipt of a billing error notice from a consumer. Examiners found that creditors violated the following provisions of Regulation Z:

- 12 C.F.R. § 1026.13(c)(2) by failing to resolve a dispute within two complete billing cycles after receiving a billing error notice regarding the failure to credit a payment that the consumer made;

- 12 C.F.R. § 1026.13(e)(1) by failing to reimburse a consumer for a late fee after the creditor determined a missing payment had not been credited to the consumer's account, as the consumer had asserted; and

- 12 C.F.R. § 1026.13(f) by failing to conduct reasonable investigations after receiving billing error notices related to a missing payment and unauthorized transactions.

In response to these findings, the creditors are implementing plans to identify and remediate affected consumers. They are also developing and providing training to employees on Regulation Z's billing error resolution requirements and relevant policies and procedures.

2.1.2 Deceptive marketing of credit card bonus offers

Sections 1031 and 1036 of the CFPA prohibit deceptive acts or practices.[4] An act or practice is deceptive when: (1) it misleads or is likely to mislead the consumer; (2) the consumer's

[4] 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material.

Examiners found that credit card issuers engaged in deceptive acts or practices by advertising to certain existing customers that they would receive bonus offers if they opened a new credit card account and met certain spending requirements. A consumer could reasonably conclude that an issuer would perform according to the plain terms of its advertisement. The bonus offers were material because they were central characteristics of the credit card advertisements. In fact, the issuers misled consumers because they failed to provide the advertised bonuses to customers who satisfied these requirements. And the issuers failed to ensure that their employees followed procedures for making correct system entries when enrolling existing consumers.

Examiners also found that the credit card issuers engaged in deceptive acts or practices by advertising to other consumers that they would receive certain bonuses if they opened new credit card accounts in response to the advertisements and met certain spending requirements. The issuers, however, failed to disclose or adequately disclose that consumers must apply online for the new credit card to receive the bonus. In fact, if the consumers otherwise satisfied the requirements but applied through a different channel, the credit card issuers failed to provide the bonus, as promised. The advertising's overall net impression misled or was likely to mislead consumers who could reasonably conclude that they needed only to satisfy the specified spending requirements, as the application channel was not disclosed or was inadequately disclosed. The representation regarding the bonus offer terms was material because it related to a core feature of the product. Thus, the credit card issuers' failure to adequately disclose the online limitation in light of the representation constituted a deceptive act or practice.

In response to these findings, the issuers are modifying applicable advertisements and undertaking remedial and corrective actions.

2.2 Debt Collection

The Bureau has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including nonbanks that are larger participants in the consumer debt collection market and nonbanks that are service providers to certain covered persons.[5] Recent

[5] 12 U.S.C. § 5514(e).

examinations of larger participant debt collectors identified risks of violations of the Fair Debt Collection Practices Act (FDCPA).

2.2.1 Risk of a false representation or deceptive means to collect or attempt to collect a debt

Section 807(10) of the FDCPA prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.[6] Examiners found that debt collectors discussed restarting a payment plan with consumers and represented that improvements to the consumers' creditworthiness would occur upon final payment under the plan and deletion of the tradeline. However, numerous factors influence an individual consumer's creditworthiness, including potential tradelines previously furnished by prior owners of the same debt. As a result, such payment may not improve the credit score of the consumers to whom the representation is made. Examiners found that such representations could lead the least sophisticated consumer to conclude that deleting derogatory information would result in improved creditworthiness, thereby creating the risk of a false representation or deceptive means to collect or attempt to collect a debt in violation of Section 807(10). In response to these findings, the collectors revised their FDCPA policies and procedures. They also enhanced training and monitoring systems to prevent, identify, and address risks to consumers that may arise from deceptive statements by collection agents and third-party service providers about the effects of payment or non-payment on consumer credit, credit reporting, or credit scoring.

2.3 Deposits

The CFPB examines institutions for compliance with Regulation E,[7] which implements the Electronic Fund Transfer Act (EFTA).[8] The CFPB also examines for compliance with other relevant statutes and regulations, including Regulation DD,[9] which implements the Truth in Savings Act,[10] and the CFPA's prohibition on unfair, deceptive, and abusive acts or practices (UDAAPs).[11] Examiners found that institutions violated Regulation E.

[6] 15 U.S.C. § 1692e(10).
[7] 12 C.F.R. § 1005 *et seq.*
[8] 15 U.S.C. § 1693 *et seq.*
[9] 12 C.F.R. § 1030 *et seq.*
[10] 12 U.S.C. § 4301 *et seq.*
[11] 12 U.S.C. §§ 5531, 5536.

2.3.1 Regulation E error resolution for misdirected payments

Supervision conducted examinations of institutions in connection with the provision of person-to-person digital payment network services. Regulation E defines the term "error" to include, among other things, "[a]n incorrect electronic fund transfer to or from the consumer's account."[12] Regulation E requires institutions to investigate promptly and determine whether an error occurred.[13] Examiners found that, in certain cases, due to inaccurate or outdated information in the digital payment network directory, consumers' electronic fund transfers (EFTs) were misdirected to unintended recipients, even though the consumer provided the correct identifying token information for the recipient, i.e., the recipient's current and accurate phone number or email address. These misdirected transfers are referred to as "token errors." Token errors are incorrect EFTs because the funds are not transferred to the correct account.[14] Examiners found that institutions violated Regulation E by failing to determine that token errors constituted "incorrect" EFTs under Regulation E.

Additionally, institutions violated Regulation E by failing to conduct reasonable error investigations when the institutions received error notices from consumers that alleged that the consumers had sent funds via a person-to-person payment network, but that the intended recipients had not received the funds.[15] The institutions reviewed only whether they processed the transactions in accordance with the sender's payment instructions and not whether the transfer went to an unintended recipient due to a token error. The institutions did not consider relevant information in their own records, or information that they reasonably could obtain during their investigation, to consider whether the consumer's error notice constituted an error under Regulation E.

These violations caused monetary harm to consumers. As a result of these findings, the institutions are revising their policies and procedures, are conducting lookbacks, and will provide remediation to injured consumers.

[12] 12 C.F.R. § 1005.11(a)(1)(iii).
[13] 12 C.F.R. § 1005.11(c).
[14] 12 C.F.R. § 1005.11(a)(1)(ii).
[15] 12 C.F.R. § 1005.11(c)(1).

2.4 Fair Lending

The Bureau's fair lending supervision program assesses compliance with the Equal Credit Opportunity Act (ECOA)[16] and its implementing regulation, Regulation B,[17] as well as the Home Mortgage Disclosure Act (HMDA)[18] and its implementing regulation, Regulation C,[19] at institutions subject to the Bureau's supervisory authority. Examiners found lenders violated ECOA and Regulation B.

2.4.1 Pricing Discrimination

ECOA prohibits a creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of race or sex.[20]

Examiners observed that mortgage lenders violated ECOA and Regulation B by discriminating against African American and female borrowers in the granting of pricing exceptions based upon competitive offers from other institutions. The failure of the lenders' mortgage loan officers to follow the lenders' policies and procedures with respect to pricing exceptions for competitive offers, the lenders' lack of oversight and control over their mortgage loan officers' use of such exceptions, and managements' failure to take appropriate corrective action surrounding self-identified risks all contributed to the observed pricing disparities.

The examination team observed that lenders maintained policies and procedures that permitted mortgage loan officers to provide pricing exceptions for consumers, including pricing exceptions for competitive offers, but did not specifically address the circumstances when a loan officer could provide pricing exceptions in response to competitive offers. Rather, the lenders relied on managers to promulgate a verbal policy that a consumer must initiate or request a competitor price match exception.

The examination team identified lenders with statistically significant disparities for the incidence of pricing exceptions for African American and female applications compared to similarly situated non-Hispanic white and male borrowers. Examiners did not identify evidence

[16] 15 U.S.C. §§ 1691-1691*f*.

[17] 12 C.F.R. pt. 1002.

[18] 12 U.S.C. §§ 2801-2810.

[19] 12 C.F.R. pt. 1003.

[20] 15 U.S.C. § 1691(a)(1). ECOA also prohibits a creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. § 1691(a).

that explained the disparities observed in the statistical analysis. Instead, examiners identified instances where lenders provided pricing exceptions for a competitive offer to non-Hispanic white and male borrowers with no evidence of customer initiation. Furthermore, examiners noted that lenders failed to retain documentation to support pricing exceptions. Also, lenders' fair lending monitoring reports and business line personnel raised fair lending concerns regarding the lack of documentation to support pricing exception decisions. Despite such concerns, lenders did not improve the processes or document customer requests to match competitor pricing during the review period. In response to these findings, lenders plan to undertake remedial and corrective actions regarding these violations, which are under review by the Bureau.

2.4.2 Religious Discrimination

ECOA prohibits discrimination on the basis of religion[21] and its implementing Regulation B states: "A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any person in connection with a credit transaction."[22] Regulation B also states that "a creditor shall not take a prohibited basis [including religion] into account in any system of evaluating creditworthiness of applicants."[23]

Examiners found that lenders violated ECOA and Regulation B by improperly inquiring about small business applicants' religion and by considering an applicant's religion in the credit decision. For religious institutions applying for small business loans, lenders utilized a questionnaire which contained explicit inquiries about the applicant's religion. Examiners determined that lenders also denied credit to an applicant identified as a religious institution because the applicant did not respond to the questionnaire.

In response to these findings, lenders updated the questionnaire to ensure compliance with ECOA and Regulation B. In addition, lenders also identified affected applicants and provided an offer for each identified applicant to reapply for a small business loan.

[21] 15 U.S.C. § 1691(a)(1). ECOA also prohibits a creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, sex, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. § 1601, et. seq. 15 U.S.C. § 1691(a).

[22] 12 C.F.R. pt. 1002.5(b).

[23] 12 C.F.R. pt. 1002.6(b)(1).

2.5 Mortgage Servicing

The Bureau is prioritizing mortgage servicing supervision work in light of the increase in borrowers needing loss mitigation assistance this year.[24] Recent mortgage servicing examinations have identified various Regulation Z and Regulation X violations, as well as unfair and deceptive acts or practices prohibited by the CFPA. Under Sections 1031 and 1036 of the CFPA, an act or practice is unfair when: (1) it causes or is likely to cause substantial injury; (2) the injury is not reasonably avoidable by consumers; and (3) the substantial injury is not outweighed by countervailing benefits to consumers or to competition.

Examiners found that mortgage servicers engaged in the following unfair acts or practices:

- charging delinquency-related fees to borrowers in Coronavirus Aid, Relief, and Economic Security (CARES) Act forbearances;
- failing to terminate EFTs after receiving notice that the consumer's bank account had been closed and an insufficient fund (NSF) fee had been assessed; and
- assessing fees for services that exceeded the actual cost of the services performed.

Additionally, examiners found that mortgage servicers engaged in deceptive acts or practices by incorrectly disclosing transaction and payment information in borrowers' online mortgage loan accounts.

Examiners also found violations of Regulation X requirements to evaluate borrowers' complete loss mitigation applications within 30 days of receipt, Regulation Z requirements relating to overpayments to borrowers' escrow accounts, and Homeowners Protection Act (HPA) requirements to automatically terminate private mortgage insurance (PMI) pursuant to the applicable deadline.

2.5.1 Charging delinquency-related fees to borrowers in CARES Act forbearances

Examiners found that mortgage servicers engaged in unfair acts or practices by charging late fees and default-related fees to borrowers in CARES Act forbearances. Section 4022(b)(3) of the CARES Act prohibits a mortgage servicer from imposing "fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and

[24] *See* CFPB Bulletin 2021-02, "Supervision and Enforcement Priorities Regarding Housing Insecurity" (Mar. 31, 2021).

in full under the terms of the mortgage contract" in connection with a CARES Act forbearance.[25] Examiners found that, due to human and system errors, mortgage servicers charged late fees and default-related fees to borrowers in violation of this provision of the CARES Act. Borrowers experienced substantial injury in the form of illegal fees, which were significant, especially for consumers experiencing economic hardship from the COVID-19 pandemic. The mortgage servicers failed to refund some of the fees until almost a year later. Borrowers likely suffered further harm if they could not pay other expenses because of the fees. The injury was also widespread and impacted a large number of borrowers. Borrowers could not reasonably avoid the injury because they could not anticipate that the mortgage servicers would assess unlawful fees and borrowers had no reasonable means to avoid imposition of the fees. Charging the illegal fees did not provide any countervailing benefit to consumers or competition. In response to these findings, the mortgage servicers remediated impacted borrowers and corrected credit reporting to accurately reflect the current balance and amount past due. The mortgage servicers also corrected the underlying system errors.

2.5.2 Failing to terminate preauthorized EFTs

Examiners found that mortgage servicers engaged in unfair acts or practices by failing to terminate preauthorized EFTs resulting in repeated NSF fees for failed preauthorized EFTs where the consumer's account was closed. Examiners found that mortgage servicers, despite receiving notice of account closures, continued to initiate EFTs from the closed accounts each month after the initial NSF until the consumer affirmatively canceled the preauthorized EFT arrangement. Borrowers experienced substantial injury because the mortgage servicers' practices resulted in repeated NSF fees. Borrowers could not reasonably avoid the injury because they could not anticipate that the mortgage servicers would continue to attempt the EFTs, particularly where, in some cases, the EFT agreement disclosed that the EFTs would terminate when the relevant account closes. The continued attempts to withdraw payment from closed accounts and fees associated with the subsequent NSF transactions did not provide any countervailing benefit to consumers or competition. In response to these findings, the mortgage servicers remediated impacted borrowers and are changing their practices so that they cancel preauthorized EFTs upon receiving notice of a failed draw attempt tied to a closed account.

2.5.3 Charging consumers unauthorized amounts

Examiners found that mortgage servicers engaged in unfair acts or practices by overcharging consumers for services rendered by a service provider. Examiners found that the mortgage

[25] 15 U.S.C. § 9056(b)(3).

servicers overcharged borrowers between $3 and $15 more than the actual cost of home inspection and Broker Price Opinion fees. The mortgage servicers caused substantial injury to consumers by collecting or attempting to collect fees in excess of the expenses actually incurred. In some instances, borrowers paid money they were not obligated to pay under the loan notes. Consumers could not reasonably avoid the injury because the fees were not disclosed to consumers. The injury resulting from the overcharges was not outweighed by countervailing benefits to consumers or competition. Examiners found that the lack of Board and management oversight, training, and monitoring and audit helped enable this unfair practice. In response to these findings, the mortgage servicers are providing remediation to affected borrowers and have changed their practices.

2.5.4 Misrepresenting mortgage loan transaction and payment history in online accounts

Examiners found that mortgage servicers engaged in deceptive acts or practices by providing inaccurate descriptions of payment and transaction information in borrowers' online mortgage loan accounts. The inaccurate description and information were likely to mislead borrowers because the information was false. It was reasonable for borrowers to rely on their mortgage servicers to report accurate mortgage payments and account transaction histories. The inaccurate descriptions and information were material because they were likely to affect borrowers' conduct regarding their mortgage payments. In response to these findings, the mortgage servicers are implementing corrective actions to ensure the accuracy of account information. The mortgage servicers will also communicate website changes to borrowers and provide access to customer service representatives. Finally, the mortgage servicers are providing remediation to affected borrowers.

2.5.5 Failing to evaluate complete loss mitigation applications within 30 days

Regulation X generally requires servicers to provide consumers with a written notice within 30 days of receiving the complete loss mitigation application that states the servicers' determination of which loss mitigation options, if any, they will offer the consumer.[26] Examiners found that mortgage servicers violated Regulation X because the servicers did not evaluate the borrowers' complete loss mitigation applications and provide a written notice stating the servicers' determination of available loss mitigation options within 30 days of

[26] 12 C.F.R. § 1024.41(c)(1). This notice is only required if the servicer receives a loss mitigation application more than 37 days before a foreclosure sale.

receiving the complete loss mitigation applications. The mortgage servicers indicated that the delays were partly attributable to increased borrower assistance requests, lack of availability of key vendors, and a slowdown in economic activity due to shelter-in-place requirements. Examiners found that the mortgage servicers had not engaged in good faith efforts to comply with the 30-day timeline. In response to these findings, the mortgage servicers implemented additional controls and increased staffing to help ensure timely evaluation of complete loss mitigation applications.

2.5.6 Incorrect handling of partial payments

Regulation Z contains certain requirements for treatment of partial payments. Servicers can take any of the following actions when receiving a partial payment: (i) credit the partial payment upon receipt, (ii) return the partial payment to the consumer, or (iii) hold the payment in a suspense or unapplied funds account.[27] Regulation Z requires servicers that retain partial payments in a suspense or unapplied funds account to: (i) disclose to the consumer the total amount of funds being held on periodic statements (if periodic statements are required) and (ii) on accumulation of sufficient funds to cover a periodic payment treat such funds as a periodic payment received.[28]

Examiners found that mortgage servicers violated Regulation Z by applying payments in excess of the amount due to the borrowers' escrow accounts, rather than handling them in accordance with the requirements in 12 C.F.R. § 1026.36(c)(1)(ii). In situations where the excess payments were less than $100, the mortgage servicers attempted to refund the excess payment by applying them to the borrowers' escrow accounts. However, these amounts remained in the escrow accounts and the mortgage servicers failed to either return them to the borrowers or alternatively credit the payment to the borrowers' next regularly scheduled monthly payment. In response to these findings, the mortgage servicers have changed their practices to apply excess payments as specified in the underlying loan note in compliance with Regulation Z.

2.5.7 Failing to automatically terminate PMI timely

The HPA requires that servicers automatically terminate PMI when the principal balance of the mortgage loan is first scheduled to reach 78 percent of the original value of the property based on the applicable amortization schedule, as long as the borrower is current.[29] Examiners found that mortgage servicers violated the HPA when they failed to terminate PMI on the date the

[27] 12 C.F.R. § 1026.36(c)(1)(ii), Supp. I, Comment 36(c)(1)(ii)-1.
[28] 12 C.F.R. § 1026.36(c)(1)(ii).
[29] 12 U.S.C. § 4902(b)(1).

principal balance of the mortgage was first scheduled to reach 78 percent loan-to-value on a mortgage loan that was current. The root cause of the issue was human error, which resulted in inaccurate data in the mortgage servicers' PMI termination report. In response to these findings, the mortgage servicers have corrected their PMI termination reports and implemented a quality control process to help ensure timely PMI terminations in the future.

2.6 Payday Lending

The Bureau's Supervision program covers institutions that offer or provide payday loans. Examinations of these lenders identified unfair and deceptive acts or practices and violations of Regulation E under EFTA.

2.6.1 Erroneous debiting and misrepresentations surrounding failure to honor loan extensions

Examiners found that lenders engaged in unfair acts or practices when they debited or attempted to debit from consumer's accounts the remaining balance of their loans on the original due date after the consumers (1) applied for a loan extension, and (2) received a confirmation email stating that only an extension fee would be charged on the due date. The practice caused or was likely to cause substantial injury in the form of unexpected debits of the full loan balance, as well as possible bank fees. The injury was not reasonably avoidable because consumers were not informed in advance that remitting a payment or otherwise having their account balance altered would result in cancellation of a loan extension, and received communications indicating that the loan extension had been granted and that only an extension fee would be charged on the original due date. The substantial injury was not outweighed by countervailing benefits to consumers or to competition.

Based on similar facts, examiners found that lenders engaged in deceptive acts or practices when they misrepresented in loan extension confirmation e-mails to consumers that consumers would pay only extension fees on the original due dates of their loans. The misrepresentations were likely to mislead a reasonable consumer into believing that the extensions were consummated and only the extension fees would be debited on the due date. The misrepresentations were material because the possibility of debiting the full loan amount was likely to affect a consumer's payment decisions. In response to these findings, lenders plan to undertake remedial and corrective actions regarding these violations, which are under review by the Bureau.

2.6.2 Unauthorized, duplicate debits and failure to retain records

Examiners found that lenders engaged in unfair acts or practices when they debited or attempted one or more additional, identical, unauthorized debits from consumers' bank accounts after consumers called to authorize a loan payment by debit card and lenders' systems erroneously indicated the transactions did not process. In other instances, lenders debited or attempted one or more duplicate, unauthorized debits on consumer accounts due to a coding error. Both types of acts or practices caused or were likely to cause substantial injury because they deprived consumers of access to their funds and created significant risks that consumers would be charged bank fees. Consumers could not reasonably avoid the resulting substantial injury because they had no reason to anticipate debits or attempted debits they had not authorized and could not prevent them from occurring. The substantial injury was not outweighed by countervailing benefits to consumers or to competition. The lenders' cost to fix the problem would not outweigh the injury to consumers.

Based on the same facts, lenders violated Regulation E,[30] when they failed to retain, for a period of not less than two years, evidence of compliance with the requirements imposed by EFTA.[31] In response to these findings, lenders plan to undertake remedial and corrective actions regarding these violations, which are under review by the Bureau.

2.7 Prepaid Accounts

The Bureau now examines financial institutions who issue prepaid accounts and their service providers, such as program managers, for compliance with Regulation E,[32] which implements EFTA,[33] in connection with prepaid accounts. The Bureau also examines for compliance with other relevant statutes and regulations, including Regulation Z,[34] which implements the Truth in Lending Act,[35] and the CFPA's prohibition on UDAAPs[36] related to prepaid accounts. Examiners identified violations of Regulation E and EFTA.

[30] 12 C.F.R. § 1005.13(b)(1).
[31] 12 C.F.R. § 1005.10(b).
[32] 12 C.F.R. pt. 1005.
[33] 15 U.S.C. § 1693 *et seq.*
[34] 12 C.F.R. pt. 1026.
[35] 15 U.S.C. § 1601 *et seq.*
[36] 12 U.S.C. §§ 5531, 5536.

2.7.1 Prepaid account stop payment and waiver violations

Examiners found violations related to stop-payment waivers at financial institutions. EFTA and Regulation E provide that a consumer "may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer."[37] Under EFTA, the right to stop such payments cannot be waived in writing or through any other agreement.[38] Examiners found that financial institutions included language in their Terms of Use agreements that waived a consumer's rights under both EFTA and Regulation E. The Terms of Use required consumers to first notify the merchants in order to exercise, through the financial institutions, the consumers' right to stop a pre-authorized payment. This is inconsistent with the consumers' rights set forth under both EFTA and Regulation E and a violation of EFTA.[39]

Relatedly, examiners found that financial institutions enforced the provisions of the Terms of Use and failed to honor stop-payment requests that they received either orally or in writing at least three business days before the scheduled date of the transfer, as required by Regulation E.[40] Their service providers improperly required consumers to first contact the merchant before they would process any stop-payment requests. And, in certain cases, their service providers also subsequently failed to process stop-payment requests due to system limitations, even after a consumer had contacted the merchant. Therefore, examiners concluded that the financial institutions had violated Regulation E.[41]

In response to these findings, the financial institutions are developing and implementing comprehensive CMS for their service providers and ceasing and desisting from violating EFTA and Regulation E.

2.7.2 Prepaid account notice of error investigation violations

As noted in the Summer 2020 edition of *Supervisory Highlights,*[42] both EFTA section 908(a) and Regulation E require a financial institution investigating an alleged EFT error, when it determines that no error or a different error occurred, to communicate certain information to consumers. This information includes the investigation determination and an explanation of

[37] 12 C.F.R. § 1005.10(c)(1); *see also* 15 U.S.C. § 1693e(a).
[38] 15 U.S.C. § 1693*l*.
[39] 15 U.S.C. § 1693*l*.
[40] 12 C.F.R. § 1005.10(c).
[41] 12 C.F.R. § 1005.10(c).
[42] *Supervisory Highlights*, Issue 22 (Summer 2020). Available at: https://www.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-22_2020-09.pdf.

the determination.[43] To give purpose to both obligations, the meaning of an "explanation" is not synonymous with that of a "determination." Financial institutions must go beyond just providing their findings and actually explain those findings. Examiners found that financial institutions failed to explain their determinations within the report of results, in violation of Regulation E.

In response to these findings, financial institutions are developing and implementing comprehensive CMS programs capable of ensuring compliance with all of EFTA and Regulation E's requirements.[44]

Similarly, and as discussed in the deposits section of the Summer 2021 edition of *Supervisory Highlights*,[45] if a financial institution is unable to complete its investigation within 10 business days of receiving a notice of error, Regulation E provides that a financial institution may take up to 45 days from receipt of the error notice to investigate and determine if an error occurred, as long as the financial institution, among other things, provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice.[46]

If the alleged error involves an EFT that was not initiated within a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made, the applicable time for provisional credit is 20 business days instead of 10 business days and the financial institution may take up to 90 days, instead of 45 days, to investigate and determine whether an error occurred, provided the institution otherwise complies with the requirements of Regulation E.[47]

Examiners found that financial institutions violated Regulation E by failing to: (i) promptly begin their investigations upon receipt of an oral error notice, (ii) complete investigations of disputed point-of-sale debit transactions within 90 days of the initial error notice, after issuing provisional credit where required, and (iii) report the investigation results in the determination letter sent to consumers.[48]

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[43] 12 U.S.C. §§ 1693f(a) and 1693f(d) and 12 C.F.R. § 1005.11(d)(1).

[44] 12 C.F.R. § 1005.11(d)(1).

[45] *Supervisory Highlights*, Issue 24 (Summer 2021). Available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-24-summer-2021/.

[46] 12 C.F.R. § 1005.11(c)(2).

[47] 12 C.F.R. § 1005.11(c)(3). *See also* 12 C.F.R. § 1005.2(l).

[48] 12 C.F.R. § 1005.11(c)(1)-(3).

In response to these findings, the financial institutions are enhancing their CMS to ensure compliance with the requirements of EFTA and Regulation E applicable to prepaid accounts.[49]

2.8 Remittance Transfers

The Bureau continues to examine institutions under its supervisory authority for compliance with Regulation E, Subpart B (Remittance Rule).[50] The Bureau also reviews for any UDAAPs in connection with remittance transfers. Examiners identified violations of Regulation E.

2.8.1 Failure to investigate notice of errors

Section 1005.33(c)(1) of the Remittance Rule states that "a remittance transfer provider shall investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error." The investigation required under 12 C.F.R. § 1005.33(c)(1) must also include an effort to determine the amount of any required monetary remediation. Among other things, section 1005.33(c)(2)(ii)(B) of the Remittance Rule requires that, in the event of an error for failure to make funds available by the disclosed date of availability, a remittance transfer provider must "[r]efund[] to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer." A remittance transfer provider must refund any fees charged in connection with the remittance transfer unless the provider investigates and determines that fees were not "imposed . . . on the remittance transfer."[51] A deduction imposed by a foreign recipient bank may constitute a fee that must be refunded to the sender subject to the requirements of the Remittance Rule. Comment 33(c)-10 of the Official Interpretation of Regulation E, however, provides that "[a] remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of § 1005.33."

Examiners found that providers violated section 1005.33(c) of the Remittance Rule. These providers received notices of errors alleging that remitted funds had not been made available to the designated recipient by the disclosed date of availability. The providers then failed to investigate whether a deduction imposed by a foreign recipient bank constituted a fee that the institutions were required to refund to the sender, and subsequently did not refund that fee to the sender. These violations deprived consumers of their rights under the Remittance Rule. In response to these findings, the providers are revising their policies and procedures to comply

[49] 12 C.F.R. § 1005.11(c)(1)-(3).
[50] *See*: 78 Fed. Reg. 30662 (May 22, 2013), as amended (codified at 12 C.F.R. §§ 1005.30 through 1005.36).
[51] 12 C.F.R. § 1005.33(c)(2)(ii)(B).

with the fee-refund provisions of the Remittance Rule and are conducting lookbacks. The providers also will remediate consumers who did not receive fee refunds that were due to them.

3. Supervisory Program Developments

3.1.1 Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the Continuing COVID-19 Pandemic and CARES Act

On November 10, 2021, the Board of Governors of the Federal Reserve, the CFPB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the state financial regulators (collectively, agencies) issued a joint statement to communicate to mortgage servicers the agencies' supervisory and enforcement approach as risks associated with the Coronavirus Disease (COVID-19) pandemic continue to change.[52]

On April 3, 2020, the agencies issued the "Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act" (April 2020 Joint Statement) to clarify the application of the Regulation X mortgage servicing rules and explain the agencies' approach to supervision and enforcement of the rules in response to the COVID-19 pandemic. In the April 2020 Joint Statement, the agencies announced that until further notice, they would not take supervisory or enforcement action against mortgage servicers for failing to meet certain timing requirements under the mortgage servicing rules as long as the servicers made good faith efforts to provide those required notices or disclosures and took the related actions within a reasonable period of time.

While the COVID-19 pandemic continues to affect consumers and mortgage servicers, the agencies determined that the temporary flexibility described in the April 2020 Joint Statement is no longer necessary because servicers have had sufficient time to adjust their operations by, among other things, taking steps to work with consumers affected by the COVID-19 pandemic and developing more robust business continuity and remote work capabilities. Accordingly, the temporary supervisory and enforcement flexibility announced in the April 2020 Joint Statement no longer applies and the agencies will apply their respective supervisory and enforcement

[52] The joint statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the Continuing Covid-19 Pandemic and CARES Act is available at: https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules_joint-statement_2021-11.pdf

authorities, where appropriate, to address any noncompliance or violations of the Regulation X mortgage servicing rules, as described in the statement.[53]

3.1.2 CFPB publishes CMS-IT procedures

On September 21, 2021, the Bureau published examination procedures for Compliance Management System – Information Technology (CMS-IT).[54] The CMS-IT procedures are designed to assess supervised institutions' use of IT and associated IT controls that support consumer financial products and services. Deficiencies in IT and IT systems can pose a risk to consumers and may be the root cause of Federal consumer financial law violations. The procedures utilize the fundamental elements of CMS to review the controls implemented by institutions to manage IT and IT systems that are supporting consumer financial operations. The new procedures are expected to help examiners understand the controls for institutions to manage risks and comply with Federal consumer financial laws.

3.1.3 CFPB issues rules to facilitate a smooth transition as federal foreclosure protections expire

On June 28, 2021, the CFPB finalized amendments to the federal mortgage servicing regulations to reinforce the ongoing economic recovery as the federal foreclosure moratoria are phased out.[55] The rules will help protect mortgage borrowers from unwelcome surprises as they exit forbearance. The amendments will support the housing market's smooth and orderly transition to post-pandemic operation. The rules establish temporary special safeguards to help ensure that borrowers have time before foreclosure to explore their options, including loan modifications and selling their homes. The rules cover loans on principal residences, generally exclude small servicers, and took effect on August 31, 2021.

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[53] This includes the *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X* (86 FR 34848), which became effective on August 31, 2021. Though the temporary supervisory and enforcement flexibility announced in the April 2020 Joint Statement no longer applies, guidance in the April 2020 Joint Statement generally explaining the application of the CARES Act and interaction with the Regulation X mortgage servicing rules in effect at that time remain in place.

[54] The CMS-IT procedures are available at: https://files.consumerfinance.gov/f/documents/cfpb_compliance-management-review-information-technology_examination-procedures.pdf.

[55] The rule is available at: https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf

4. Remedial Actions

The Bureau's supervisory activities resulted in or supported the following public enforcement actions.

4.1.1 CFPB sues LendUp Loans for violating a 2016 consent order and deceiving borrowers

On September 8, 2021, the CFPB filed a lawsuit in federal district court accusing LendUp Loans, LLC (Lend Up) of violating a 2016 consent order and deceiving tens of thousands of borrowers.[56] In 2016, the Bureau had ordered LendUp to pay $1.83 million in consumer redress and a $1.8 million civil penalty, and to stop misleading consumers with false claims about the cost of loans and the benefits of repeated borrowing. In the complaint, the CFPB alleges that, in violation of the 2016 order, LendUp has continued with much of the same illegal and deceptive marketing. The CFPB also alleges that LendUp illegally failed to provide timely and accurate notices to consumers whose loan applications were denied.

LendUp, headquartered in Oakland, California, offers single-payment and installment loans to consumers and presents itself as an alternative to payday lenders. A central component of LendUp's marketing and brand identity is the "LendUp Ladder." LendUp told consumers that by repaying loans on time and taking free courses offered through its website, consumers would move up the "LendUp Ladder" and, in turn, receive lower interest rates on future loans and access to larger loan amounts.

According to the CFPB's complaint, LendUp was not telling consumers the truth. The CFPB's investigation found that 140,000 repeat borrowers were charged the same or higher interest rates for loans after moving up to a higher level on the LendUp Ladder. The investigation also found that many borrowers had their maximum loan size reduced, even after reaching the highest level on the ladder.

The CFPB alleges that LendUp violated the CFPB's 2016 consent order, the CFPA, ECOA, and ECOA's implementing regulation, Regulation B. Specifically, the CFPB alleges that LendUp:

- **Deceived consumers about the benefits of repeat borrowing:** LendUp misrepresented the benefits of repeatedly borrowing from the company by advertising

[56] A copy of the complaint is available at: https://files.consumerfinance.gov/f/documents/cfpb_lendup-loans-llc_complaint_2021-09.pdf.

that borrowers who climbed the LendUp Ladder would gain access to larger loans at lower rates when, in fact, that was not true for tens of thousands of consumers.

- **Violated the CFPB's 2016 consent order:** The CFPB's 2016 consent order prohibits LendUp from misrepresenting the benefits of borrowing from the company. LendUp's continued misrepresentations about the LendUp Ladder violate this order.
- **Failed to provide timely and accurate adverse action notices:** Adverse action notices inform consumers why they were denied credit, and timely and accurate notices are vital to maintaining a transparent underwriting process and protect consumers against credit discrimination. LendUp failed to provide adverse-action notices within the 30 days required by ECOA for over 7,400 loan applicants. LendUp also issued over 71,800 adverse-action notices that failed to accurately describe the main reasons why LendUp denied the application as required by ECOA and Regulation B.

The CFPB is seeking an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty.

LendUp is also subject to a 2021 stipulated final judgment that resolved the CFPB's claims that LendUp violated the Military Lending Act in connection with its extensions of credit.[57]

[57] The stipulated final judgment can be found at: https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-lendup-loans-llc-for-military-lending-act-violations/.