CONSUMER FINANCIAL PROTECTION BUREAU | JULY 2024

# Supervisory Highlights: Servicing and Collection of Consumer Debt

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# 1. Introduction

This edition of *Supervisory Highlights* focuses on the Consumer Financial Protection Bureau's (CFPB's) work in connection with debt collection. The collection of debt is an important and necessary part of the consumer financial marketplace, whether through servicing of current loans or the collection of delinquent debt. But servicing and collections also present risk of harm to consumers if handled improperly, particularly where there are violations of applicable law. This edition highlights violations of law and consumer harm in the areas of auto and student loan servicing and debt collection, including credit card debt collections.

This edition also presents findings in deposits and prepaid accounts as well as credit card account management with a focus on medical credit cards. The findings in this edition of *Supervisory Highlights* cover select examinations that were generally completed from April 1, 2023, to December 31, 2023.

Additionally, this edition summarizes supervisory activity related to section 1034(c) of the Consumer Financial Protection Act of 2010 (CFPA).[1] Section 1034(c) requires large banks and credit unions to comply with consumer requests for information concerning their accounts for consumer financial products and/or services in a timely manner, subject to limited exceptions.[2] The supervisory activity indicates that some entities have ceased charging consumers fees to obtain account information and items such as printed copies of check images and account statements. Some entities are also offering free balance inquiry information at third party ATMs. The CFPB is continuing to gather information and assess industry compliance with section 1034(c) across products, including mortgage, deposit, and credit card accounts.

To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.[3] We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

[1] 12 U.S.C. 5534(c); CFPB, *Consumer Information Requests to Large Banks and Credit Unions*, 88 Fed. Reg. 71279 (Oct. 16, 2023), available at https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf.

[2] *Id.*

[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 Auto Loan Servicing

The CFPB continues to examine auto loan servicing activities, primarily to assess servicers' compliance with the CFPA's prohibition on unfair, deceptive or abusive acts or practices (UDAAP)[4]. Recent auto loan servicing examinations identified unfair acts or practices related to collecting the final payment for auto loans.

### 2.1.1 Failing to auto-debit the final payment without adequate notification that the borrowers must make the final payment manually

Examiners found that servicers engaged in unfair acts or practices by failing to debit consumers' final payment via their autopay system without adequate notification to borrowers enrolled in autopay that they need to make the final payment manually. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[5]

Servicers offered preauthorized recurring electronic fund transfer enrollment for consumers to make automatic payments on their loans. The servicers' autopay systems did not debit consumers' final payments when they were a different amount from their regular monthly payments. Servicers failed to adequately communicate to consumers that they must remit the final payment manually, despite being enrolled in autopay. Servicers then charged consumers late fees for failing to make the final payment on time.

This practice caused substantial injury to the consumers in the form of late fees assessed when the final payment was not made. Consumers could not reasonably avoid the injury because they had no control over the autopay system the servicers chose to use. Further, consumers did not reasonably anticipate that a servicer's autopay system would not make the final

[4] 12 U.S.C. §§ 5531, 5536.

[5] *Id.*

payment. Consumers could not reasonably foresee incurring a late charge as a result. The injury was not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers are revising their policies and procedures to ensure that they either include the final payment in autopay withdrawals or adequately notify consumers enrolled in autopay if and when a payment is required to be submitted manually.

## 2.2 Student Loan Servicing

The CFPB continues to examine student loan servicing activities. This work includes assessing whether entities have engaged in any violations of the CFPA's prohibition against UDAAPs,[6] the Electronic Fund Transfer Act and its implementing Regulation E,[7] and the Fair Debt Collection Act (FDCPA) and its implementing Regulation F.[8]

Examiners identified unfair and abusive acts or practices by student loan servicers related to failing to provide adequate avenues for communication due to excessive hold times. Examiners also identified deceptive acts or practices related to misrepresenting which forms consumers should use to enroll in certain programs. And examiners found that servicers failed to notify consumers of preauthorized funds transfers that exceeded the previous transfer amount.

### 2.2.1 Excessive barriers to assistance

Consumers frequently contact their servicer by phone to make payments, access benefits, and resolve disputes. Examiners found certain servicers had excessive hold times when consumers contacted them, with average hold times of 40 minutes over a six-month period. As a result of these long hold times almost half of consumers dropped their calls before speaking with an agent. During the six-month period the servicers significantly understaffed their call centers. The servicers also disabled consumers' access to their online account management portals where consumers could make payments after a relatively short amount of time and had problems with their interactive voice response systems, limiting consumers' ability to pay or obtain assistance accessing benefits without speaking to an agent.

Examiners found that student loan servicers engaged in unfair and abusive acts or practices by failing to provide, for an extended period, an adequate avenue for consumers to timely resolve

[6] 12 U.S.C. §§ 5531, 5536.

[7] 15 U.S.C. § 1693, *et seq*: 12 C.F.R. Part 1005, *et seq*.

[8] 15 U.S.C. § 1692, *et seq*: 12 CFR Part 1006 *et seq*.

disputes or inquiries by phone or submit phone payments, when they offered the option of paying and resolving disputes or inquiries by phone.

An abusive act or practice: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of: a lack of understanding on the part of the consumer of the material risks, costs or conditions of the product or service; the ability of the consumer to protect the interest of the consumer in selecting or using a financial product or service; or the reasonable reliance by the consumer on a covered person to act in the interest of the consumer.[9]

Examiners found that servicers engaged in abusive acts or practices because servicers took unreasonable advantage of consumers' inability to protect their interests. The servicers gained an advantage by understaffing their call centers because they reduced their salary expenses. The advantage gained by servicers was unreasonable because resolving disputes or inquires and receiving payments are essential functions of a loan servicer.

Consumers were unable to protect their own interests, including their interest in "limiting the amount of time or effort necessary" to remedy problems,[10] as well as their interest in making payments on their loans or accessing benefit programs. Typically, consumers are unable to choose their loan servicer and so are unable to switch to a new servicer when they encounter problems reaching their servicer. Because consumers were unable to switch servicers, they were unable to limit the amount of time spent resolving problems, make payments, or access benefit programs. Consumers may ordinarily have alternatives to calling their servicer, such as making payments online or through an interactive voice response system, but many consumers were unable to access these alternatives because of problems with the interactive voice response system and the servicers' disabling of many consumers' online accounts. As a result, consumers often had no other recourse than to contact their servicers by phone. Therefore, the servicers engaged in abusive acts or practices.

Examiners also found that the servicers' conduct was unfair. The long hold times were likely to cause substantial injury to consumers. First, some consumers were unable to make timely payments because of long hold times, which likely resulted in additional late fees. Second, some consumers called to obtain information about how to enroll in forbearance or deferment programs and were therefore unable to enter these programs, which could result in additional unnecessary payments or late fees. Third, servicers injured consumers by forcing them to spend considerable amounts of time resolving issues or making payments. Consumers could not

[9] 12 USC § 5535(a)(1)(B). See also CFPB Policy on Abusive Acts or Practices, April 3, 2023, available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/#1

[10] See CFPB Policy on Abusive Acts or Practices at p.14.

reasonably avoid the injury because they could not switch servicers and they have no control over call hold times. Some consumers were also unable to make payments through alternative means because of problems with interactive voice response systems or online accounts. Finally, the injury to consumers was not outweighed by countervailing benefits to consumers or competition. Consumers do not benefit from excessive hold times, and adequate staffing is inherent to being a functioning student loan servicer.

In response to these findings, servicers developed plans to reduce hold times and drop rates.

### 2.2.2 Providing inaccurate information about benefit forms

Examiners found that servicers engaged in deceptive acts or practices by providing inaccurate information regarding which forms consumers should submit in order to qualify for certain loan programs. Student loans often include certain benefits which consumers are entitled to access, such as forbearance. To access these programs consumers often must submit specific forms.

A representation, omission, act, or practice is deceptive when: (1) the representation, omission, act or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act or practice is material.[11]

Examiners found that some consumers contacted their servicers to determine the appropriate forms to submit in order to apply for a specific benefit. The servicers misrepresented to consumers which form to submit and, when the consumers submitted the specified forms, their requests were denied. Consumers had a reasonable belief the forms were correct when specified by the servicers and were acting reasonably when they followed their instructions. And the misrepresentations were material because they affected the consumers' decision to fill out the incorrect forms, which delayed consumers' ability to successfully apply for the benefit. In response to these findings, servicers improved training and monitoring.

### 2.2.3 Failing to notify consumers of larger preauthorized electronic funds transfers

Regulation E, 12 CFR 1005.10(d)(1), requires the designated payee of a preauthorized electronic fund transfer from a consumer's account to provide the consumer with written notice of the amount and date of the transfer at least 10 days before the scheduled transfer date if the amount will vary from the previous transfer under the same authorization or from the preauthorized

[11] 12 U.S.C. §5531.

amount. Examiners found that servicers violated this provision when they did not provide written notices to consumers before withdrawing an amount that exceeded the previous transfer under the same authorization. In response to these findings, servicers are remediating consumers.

# 2.3 Debt Collection

The CFPB has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including very large depository institutions, nonbanks that are larger participants in the consumer debt collection market, including nonbanks that collect student loan debt, and nonbanks that are service providers to certain covered persons. Recent examinations of larger participant debt collectors identified violations of Regulation F,[12] which implements the FDCPA. Examiners also identified unfair practices related to incorrect documentation related to the statute of limitations in credit card collections.

## 2.3.1 Failure to provide debt validation notice to consumers

Section 1006.34(a) of Regulation F requires that within five days after the initial communication with the consumer in connection with the collection of any debt, a debt collector must send a written or electronic validation notice unless the validation information is contained, or provided orally, in the initial communication or the consumer has paid the debt before the validation information is required to be provided.[13] A written or electronic validation notice must be sent in a manner that is reasonably expected to provide actual notice to the consumer.[14] The Official Interpretation of Regulation F states that a debt collector who sends the requisite validation disclosure in writing or electronically but receives notice that the disclosure was not delivered to the consumer has not sent the disclosure in a manner that is reasonably expected to provide actual notice.[15]

Examiners found that debt collectors failed to provide the requisite validation information either orally in, or in writing within five days of, the initial oral communication with consumers. This happened when the initial communication occurred via telephone, but after the debt collector had received notice that its prior written disclosure was not delivered to the consumer.

[12] 12 C.F.R. Part 1006 *et seq*.

[13] 12 C.F.R. 1006.34(a).

[14] 12 C.F.R. 1006.42(a).

[15] 12 C.F.R. pt. 1006, Supp. I, Comment 42(a)(1)–2.

In response to these findings, debt collectors are revising their procedures and enhancing monitoring and training with respect to providing debt validation notices in these circumstances.

Examiners also found that student loan debt collectors failed to provide validation notices as required where the initial communication with the consumer occurred in writing. In response to these findings, the debt collectors will update their written communications with borrowers to provide the validation information.

### 2.3.2 Using false, deceptive or misleading representations

Examiners found that student loan debt collectors violated Regulation F's prohibition on the use of false or misleading representations, section 1006.18(c)(4) & (e)(1)-(2). As a result of these violations, the borrowers may have reasonably believed that the FDCPA did not apply and may have been misled about their rights under the FDCPA, such as their right to dispute the debt.

First, examiners found that debt collectors used false, deceptive, or misleading representations or means in connection with collection of a debt when they used a business, company, or organization name other than the true name of the debt collectors' business, company, or organization.[16] In written communications and telephone calls reviewed by examiners, the debt collectors used different names and failed to disclose their true company names. In response to these findings, the debt collectors will cease using incorrect names and update all call scripts and written correspondence to use their true company names.

Second, examiners found that debt collectors also used false, deceptive, or misleading representations or means in connection with collection of a debt when they failed to provide key initial disclosures in communications with borrowers. Regulation F requires debt collectors to disclose, in initial communications with consumers, that the debt collectors are attempting to collect a debt and that any information obtained will be used for that purpose.[17] If the debt collectors' initial communication with the consumer is oral, the debt collectors must make the disclosure again in their initial written communication with the consumer. And in all subsequent communications with the consumer, the debt collectors must disclose that the communication is from a debt collector.[18] Examiners observed that the debt collectors failed to provide these disclosures in written communications and telephone calls with borrowers. In

[16] 12 C.F.R § 1006.18(c)(4).

[17] 12 C.F.R. § 1006.18(e)(1).

[18] 12 C.F.R. § 1006.18(e)(2).

response to these findings, the debt collectors will update their written communications and call scripts to provide the required disclosures.

### 2.3.3 Communicating with consumers at inconvenient or unusual times or places

Section 1006.6(b)(1) of Regulation F prohibits communicating or attempting to communicate, including electronically, with a consumer at a time or place the debt collector knows or should know to be inconvenient or unusual, with communications before 8 a.m. or after 9 p.m. in the consumer's time zone presumed to be inconvenient in the absence of any knowledge of circumstances to the contrary.[19] Examiners found that debt collectors communicated with consumers at times and places known by the collectors to be inconvenient or unusual. For example, debt collectors sent payment reminder emails to the consumer before 8 a.m. in the consumer's time zone. Examiners identified multiple phone calls where the consumer directly informed the collectors' agent that it was an inconvenient time or place for the consumer, but the agents continued the conversations beyond permissible follow-up questions. For example, examiners identified multiple instances where consumers told debt collectors' agents that it was an inconvenient time to talk, either because they were at work or driving, but the agents continued the conversation. Examiners also identified instances in which a consumer informed a debt collector's agent that it was a "bad time" to discuss the debt in question because they were at church without a wallet, but the agent nevertheless continued to discuss the debt. In response to these findings, the debt collectors are enhancing their policies and procedures and training to ensure that they do not communicate with consumers at inconvenient or unusual times or places.

### 2.3.4 Harassing, oppressive, or abusive conduct in connection with the collection of debt

Section 1006.14(a) of Regulation F prohibits debt collectors, in connection with the collection of any debt, from engaging in any conduct the natural consequences of which would be to harass, oppress, or abuse any person.[20] Examiners found that debt collectors engaged in harassing, oppressive, or abusive conduct in connection with the collection of debt. For example, in phone calls, consumers explained to the debt collectors' agents that they were unable to make payments according to a prior settlement agreement because of a recent hospital stay. In response to consumers' explanations of the medical difficulties that left them without enough

[19] 12 C.F.R. 1006.6(b)(1).

[20] 12 C.F.R. 1006.14(a).

money to pay the debt in question, the agents took an aggressive tone and were verbally abusive towards the consumers. At other debt collectors, consumers requested that the debt collectors stop contacting them. Despite this request, the debt collectors subsequently placed over 100 telephone calls to the consumers. Although the frequency of calls to the consumer was within the limits established by Section 1006.14(b)(2)(i), and so the collectors were entitled to a presumption that their conduct was not harassing, examiners found that the collectors placing over 100 calls to the consumer after being specifically asked to stop overcame that presumption and had the effect of harassing the consumer. In response to these findings, debt collectors are enhancing their training and oversight to prevent harassing communications.

### 2.3.5 Failure to cease communicating through a specific medium after a consumer request

Section 1006.14(h) of Regulation F provides that if a consumer has requested that the debt collector not use a medium of communication to communicate with the consumer, the debt collector must not use that medium to communicate or attempt to communicate with the consumer in connection with the collection of any debt, with certain exceptions.[21] For example, Regulation F explains that if a consumer requests that a debt collector "stop calling" the consumer, the debt collector is prohibited from communicating or attempting to communicate with the consumer through telephone calls.[22] The regulation also states that, within a medium of communication, a person may request that a debt collector not use a specific address or telephone number.[23]

Examiners found that debt collectors communicated or attempted to communicate with consumers through a medium of communication, such as a text message, and/or through a specific telephone number that the consumers had requested the debt collectors not use to communicate with the consumers. In response to these findings, debt collectors are revising their procedures and enhancing monitoring and training to prevent communications, or attempts to communicate, through specified mediums following a consumer's request.

[21] 12 C.F.R. 1006.14(h).

[22] 12 C.F.R. pt. 1006, Supp. I, Comment 14(h)(1)–3.

[23] 12 C.F.R. pt. 1006, Supp. I, Comment 14(h)(1)–2.

### 2.3.6 Failure to disclose in subsequent communications that communication is from a debt collector

Section 1006.18(e) of Regulation F requires that a debt collector disclose, in each communication subsequent to the initial communication with the consumer, that the communication is from a debt collector. Examiners found that debt collectors failed to disclose in subsequent communications that those communications were from a debt collector. Examiners found that the debt collectors' service providers, when communicating about the debt with consumers on the telephone or via text message on behalf of the collectors, failed to disclose that the communication was from a debt collector. Examiners also found that when consumers requested an electronic payment confirmation, service providers responsible for producing those confirmations on behalf of debt collectors failed to include the required disclosure that the communication was from a debt collector. In response to these findings, the debt collectors are enhancing their service provider oversight.

### 2.3.7 Incorrect documentation related to the statute of limitations in credit card collections

Examiners found that credit card issuers engaged in an unfair act or practice when they failed to properly calculate and document the debt collection statute of limitations for a particular state and then sold the credit card debt to debt collectors. The statute of limitations for credit card debt is the amount of time—set by each state—that lenders and collection agencies have to file a lawsuit against consumers for nonpayment. Examiners determined that the entities sold thousands of credit card debts to debt collectors misrepresenting the state's statute of limitations for credit card debt as ten years rather than five years, including some accounts on which the statute of limitations had already expired. The entities' practices created the risk of substantial injury to consumers because third parties may rely on the entities' statute of limitations data when determining their ability to file a collections lawsuit. The injury was not reasonably avoidable because consumers could neither anticipate nor control how the entities coded accounts in their systems and were not likely to recognize the entities' errors. Finally, the injury caused by the miscoding of accounts for sale was not outweighed by countervailing benefits to consumers or competition. To remedy the issue, the entities contacted their debt buyers to ensure that they used the correct statute of limitations period for debts already sold. Also, the entities updated their systems and procedures to state the correct statute of limitations period for current and future debts.

# 2.4 Credit Card Account Management- Medical Payment Products

In assessing the operations of supervised entities for compliance with Federal consumer financial laws, examiners reviewed medical payment products issued by supervised entities. Consumers may apply for medical payment products, such as a medical credit card—often at the point of sale, such as a doctor's office or hospital. Consumers then use these products to pay for healthcare-related products or services. When offering a medical payment product to consumers, healthcare providers commonly use sales and marketing materials provided by the issuer of the medical payment product.

## 2.4.1 Service provider oversight in offering medical payment products

At one entity, examiners identified a significant number of consumer complaints regarding how dentists and other healthcare providers promoted, offered, and sold medical credit cards to consumers. For example, where credit card issuers offer "deferred interest" promotions—credit terms under which interest accrues, but consumers are not obligated to pay if the balances are paid in full by a specific date—consumers frequently complained of healthcare providers misrepresenting the specifics of these promotions. Consumers also complained that it was unclear whether their monthly payments would be allocated to their promotional or non-promotional balances. Other consumers complained that they felt pressured by healthcare providers to open a credit card while receiving treatment.

Supervision expects supervised entities to have effective processes for managing the risks of service provider relationships, including relationships with medical providers who directly communicate with consumers about medical payment products. In examining entities that offer medical payment products, examiners reviewed materials related to oversight of medical providers that directly communicate with consumers about the entities' medical payment products. These materials did not provide enough information for examiners to assess the program's adequacy, and Supervision plans to continue to assess entities' oversight of medical providers, including whether the oversight is commensurate to the risks in the product offering. Additionally, Supervision intends to monitor the incentives entities offer to enroll patients in specific products and marketing materials about the products.

# 2.5 Deposit and Prepaid Accounts

In reviewing deposits and prepaid account practices, examiners have focused on practices that prevent consumers from accessing their funds or important account information, and have assessed whether entities have complied with the CFPA's prohibition against engaging in UDAAPs.[24] In certain instances, examiners found that entities engaged in unfair acts or practices with respect to account freezes. Examiners also observed problems related to the failure to provide periodic statements for allotment accounts. Additionally, in reviewing bank practices in providing consumers access to account information, examiners have observed a number of changes in how supervised entities impose fees when customers seek to obtain basic account information. Many entities eliminated fees for responding to requests for account information.

## 2.5.1 Account freezes

As part of administering deposit accounts and prepaid accounts, institutions regularly review account activity to identify fraud and other suspicious activity and then freeze funds to prevent such activity. Examiners found that institutions engaged in unfair practices in connection with how they handle consumer communications related to these account freezes.

For example, some institutions failed to affirmatively notify consumers after blocking their accounts. In other instances, institutions provided notices but failed to provide clear guidance to consumers, such as directing them to write in by mail for more information without specifying the information the consumer needed to unfreeze their accounts. Institutions sometimes exacerbated these practices by frustrating consumers' ability to contact the institution. For example, certain institutions dropped or blocked most calls from numbers associated with the frozen accounts so that consumers could not connect with a customer service representative to ask questions or challenge the freezes. In other instances, institutions automatically forwarded calls from these numbers to a pre-recorded message that did not provide meaningful information about the consumer's account.

These practices caused or were likely to cause substantial injury to consumers as those consumers were unable to access frozen funds for weeks or months. In these instances, this injury was not reasonably avoidable as consumers would not have reason to believe their account activity would trigger a freeze. Additionally, institutions deprived consumers of the information needed to address the account suspensions. The injury was not outweighed by

[24] 12 U.S.C. §§ 5531, 5536.

countervailing benefits to consumers or competition as consumers need to be able to address holds on their accounts in a timely manner so they may access their own money.

In response to these findings, the institutions planned to enhance their processes to provide automatic notice of account freezes and describe in these notices the process for consumers to unfreeze their accounts. Institutions also changed their processes to allow consumers to communicate directly with customer service representatives and challenge account freezes over the telephone, among other process improvements.

### 2.5.2 Failure to provide periodic statements for allotment saving accounts

Supervision examined institutions holding allotment savings accounts for servicemembers and other Federal employees. Military and other federal employee payroll deductions—called allotments—are one way that companies can collect first-in-line payments on contracts for expensive items such as insurance or rent. Without adequate oversight of these allotment accounts, servicemembers and other federal employees may have had accounts opened without their knowledge, or kept open, resulting in excess fees and other harm.

In its recent exam work, Supervision observed that institutions did not send periodic statements to consumers with dormant allotment accounts for an extended time period. The institutions charged fees on thousands of dormant accounts, including where consumers were not provided timely notice of their account information. In response to examiners' observations, the institutions corrected system issues and committed to remediating affected servicemembers and other federal employees.

### 2.5.3 Consumer Requests for Information

Section 1034(c) requires large banks and credit unions to comply with consumer requests for information concerning their accounts for consumer financial products and/or services in a timely manner, subject to limited exceptions.[25] In a recent Advisory Opinion, the CFPB noted that responding to consumer requests for information is vital to ensuring high levels of customer service and enabling consumers to resolve issues with their accounts when they encounter problems.[26] A large bank or credit union would not comply with section 1034(c) if it imposed conditions or requirements on consumer information requests that unreasonably impede a

[25] *Id.*

[26] *Id.*

consumer's ability to request and receive account information.[27] Charging fees to consumers to request account information can impede consumers' ability to exercise their rights under 1034(c).[28] To assess industry practices and compliance with section 1034(c), the CFPB issued information requests to select entities regarding their deposit and credit card-related services and fees associated with consumer requests for information.

Examiners found that some responding entities ceased charging consumers fees to obtain account information. This has resulted in several changes, including consumers being able to request and obtain printed copies of check images and account statements without charge. Some responding entities have ceased the practice of charging consumers fees related to bank account research and analysis when consumers have questions about their accounts. Some entities are no longer imposing fees for balance inquiries at third party ATMs. Finally, some responding entities are fulfilling requests to confirm a consumer's deposit activity – often called "verifications of deposit" – at no charge.

In line with eliminating these charges, some entities have taken steps to update policies and procedures and provide their employees with tailored instructions and training. These changes will ensure that frontline employees are aware of and able to implement the fee changes. Some entities have also updated applicable fee schedules to reflect "No Charge" for services covered by section 1034(c) and are including updated fee schedules in consumer correspondence. Concurrently, these entities also have made relevant system changes to ensure that any applicable system-generated fees are no longer assessed. The steps taken also reflect the ability and willingness of these supervised entities to ensure they comply with federal consumer financial law. The CFPB estimates that these adjustments in fee schedules will result in millions of dollars in savings on an annual basis for customers seeking basic account information from these entities.

[27] *Id.*

[28] *Id.*

# 3. Supervisory Developments

## 3.1 Recent CFPB Supervision Developments

Set forth below are select supervision program developments including circulars and rules that have been issued since the last regular edition of *Supervisory Highlights*.

### 3.1.1 CFPB creates registry to detect corporate repeat offenders

On June 3, 2024, the CFPB finalized a rule to establish a registry to detect and deter corporate offenders that have broken consumer laws and are subject to federal, state, or local government or court orders.[29] The registry will also help the CFPB to identify repeat offenders and recidivism trends.

### 3.1.2 CFPB issues interpretive rule regarding Buy Now, Pay Later

On May 22, 2024, the CFPB issued an interpretive rule that confirms that Buy Now, Pay Later lenders are credit card issuers.[30] Accordingly, Buy Now, Pay Later lenders must provide consumers some key legal protections and rights that apply to conventional credit cards. These include a right to dispute charges and demand a refund from the lender after returning a product purchased with a Buy Now, Pay Later loan.

[29] The final rule is available at: cfpb_nonbank-registration-orders_final-rule.pdf (consumerfinance.gov)

[30] The interpretive rule is available at: cfpb_bnpl-interpretive-rule_2024-05.pdf (consumerfinance.gov)

### 3.1.3 CFPB issues rule on procedures for supervisory designation proceedings

On April 23, 2024, the CFPB updated its procedures for designating nonbank covered persons for supervision to conform to a recent organizational change and to further ensure that proceedings are fair, effective, and efficient for all parties.[31]

### 3.1.4 Consumer financial protection circular 2024-02 on remittance transfers

On March 27, 2024, the CFPB issued a circular regarding deceptive marketing practices about the speed or cost of sending a remittance transfer.[32] The circular states that remittance transfer providers may be liable under the CFPA for deceptive marketing about the speed or cost of sending a remittance transfer. Providers may be liable under the CFPA for deceptive marketing practices regardless of whether the provider follows the disclosure requirements of the Remittance Rule. For example, among other things, it may be deceptive to: market remittance transfers as being delivered within a certain time frame when transfers actually take longer to be made available to recipients; marketing remittance transfers as "no fee" when in fact the provider charges fees; market promotional fees or promotional exchange rates for remittance transfers without sufficiently clarifying when an offer is temporary or limited; market remittance transfers as "free" if they are not in fact free.

[31] The final rule is available at: https://www.federalregister.gov/documents/2024/04/23/2024-08430/procedures-for-supervisory-designation-proceedings

[32] The circular is available at: https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-02/

# 4. Remedial Actions

## 4.1 Public Enforcement Actions

The CFPB's supervisory activities resulted in and supported the below enforcement actions.

### 4.1.1 Pennsylvania Higher Education Assistance Agency (PHEAA)

On May 31, 2024, the CFPB sued student loan servicer PHEAA, which does business as American Education Services, for illegally collecting on student loans that have been discharged in bankruptcy and sending false information about consumers to credit reporting companies.[33] The CFPB's lawsuit asks the court to order PHEAA to stop its illegal conduct, provide redress to borrowers it has harmed, and pay a civil penalty.

### 4.1.2 Chime, Inc. d/b/a Sendwave

On October 17, 2023, the CFPB issued an order against Chime, Inc. doing business as Sendwave, a nonbank remittance transfer provider. Sendwave offers and provides consumers international money transfer services, known as remittance transfers, in 50 states and the District of Columbia through its mobile application, the Sendwave App.[34] The app enables users to send money to recipients in several countries primarily in Africa and Asia. The CFPB found that Sendwave violated the CFPA's prohibition on deceptive acts and practices by misrepresenting to consumers the speed and cost of its remittance transfers. The CFPB also found that Sendwave violated the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E, including Subpart B, known as the Remittance Transfer Rule, by: (1) wrongly requiring customers to waive their rights; (2) failing to provide required disclosures, including the date of fund availability and exchange rate; (3) failing to provide timely disclosures; and (4) failing to investigate errors properly and maintain required policies and procedures for error resolution. The violations of EFTA and Regulation E also constitute violations of the CFPA. The order requires Sendwave to

[33] The complaint is available at: https://www.consumerfinance.gov/enforcement/actions/pennsylvania-higher-education-assistance-agency-pheaa-dba-american-education-services-or-aes/

[34] The Consent Order is available at: cfpb-0012-chime-inc-dba-sendwave-consent-order_2023-10.pdf (consumerfinance.gov)

provide approximately $1.5 million in redress to consumers and to pay a $1.5 million civil money penalty. Sendwave must also take measures to ensure future compliance.