*Comments of*
**Americans for Financial Reform**
**Center for Responsible Lending**
**Consumer Action**
**The Consumer Federation of America**
**National Association of Consumer Advocates**
**National Consumer Law Center (on Behalf of Its Low-Income Clients)**
**Public Citizen**
**U.S. PIRG**

May 21, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request for Information ("RFI") Regarding the Bureau's Supervision Program (Docket No. CFPB-2018-004)

Dear Ms. Jackson:

The undersigned consumer groups submit these comments in response to the Consumer Financial Protection Bureau's (CFPB's) Request for Information ("RFI") regarding the Bureau's Supervision Program. Our key points are:

- The CFPB's supervision program should not be weakened. Supervision is critical for the Bureau's mission. It is very different from enforcement. It is also often a faster, less resource-intensive, and more flexible tool. It has resulted in enormous benefits to millions of consumers across a number of markets, as well as to the entities being supervised in terms of better compliance and operations.
- The CFPB's supervision activities should not and cannot be delegated to prudential or state regulators. The Dodd-Frank Act is clear that the Bureau has *exclusive* authority to supervise banks with over $10 billion in assets for consumer protection compliance and is *required* to supervise certain nonbanks for the same. Furthermore, prior to the Dodd-Frank Act, prudential regulators failed at supervision for compliance with consumer financial laws, due in part to structural issues and in part to a perceived conflict between protecting consumers and bank safety and soundness. State regulators often lack the authority and resources to supervise nonbank financial services providers, and relying on them would leave consumers without uniform protection across the country.
- The CFPB has appropriately defined which debt collectors, consumer reporting agencies, student loan servicers, international money service transfer companies, and auto finance companies should be supervised as "larger participants" in their respective markets. The Bureau should engage in rulemakings to similarly define larger participants in the prepaid account, installment loan, vehicle title lending, and financial data aggregator markets.

- The CFPB should continue to issue Supervisory Highlights reports. The reports provide valuable information, transparency, and guidance. They help consumers, the general public, the media, and members of industry.
- CFPB supervision has greatly improved compliance by supervised entities with consumer financial laws. Examples of four markets that have benefitted from CFPB supervision include consumer reporting, debt collection, mortgage servicing, and student loan servicing.
    - In the consumer reporting market, CFPB supervision has forced the Big Three credit bureaus to institute some much-needed fundamental reforms, such as establishing robust quality control programs and overseeing information furnishers to ensure they are meeting legal and other obligations.
    - In the student loan servicing market, examiners have halted unfair practices such as servicers declaring loans to be automatically in default when a co-signer has died or declared bankruptcy, where the loan contracts were ambiguous.
    - CFPB supervision of mortgage servicers has resulted in hundreds of thousands of homeowners avoiding millions of dollars in improper charges, sometimes through measures as simple as fixing a software flaw. CFPB examinations of the loss mitigation practices of servicers have led to substantial improvements, helping put homeowners in a better position to avoid foreclosure.
    - In the debt collection market, examiners uncovered multiple violations of the Fair Debt Collection Practices Act and directed collectors to take remedial actions to address these violations. Violations included practices that are often the subject of complaints, such as attempting to collect from authorized users who were not liable for credit card debts, impermissibly communicating with third parties about a debt, and communicating with consumers at inconvenient times.

## I. Supervision is Critical to the CFPB's Mission

### *A. The Dodd-Frank Act gives exclusive authority and, in some cases, actually requires the CFPB to engage in supervision for compliance with federal consumer financial laws.*

The CFPB's supervision program is a crucial and indispensable component of the Bureau's work. We completely agree with the statement in the RFI that "[t]he Bureau's ability to supervise entities is an essential part of the Bureau's statutory mission of enforcing Federal consumer financial laws." 83 Fed. Reg. 7166, 7167. We urge the CFPB to fully honor the spirit of this statement and continue its supervision program with the same vigor as it has during these past six years since it began.

Supervision by the CFPB is critical given that that the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act gives the Bureau sole supervision authority over certain entities for compliance with federal consumer laws. Section 1025(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5515(b)(1), states:

> The Bureau shall have *exclusive authority* to require reports and conduct examinations on a periodic basis of persons described in subsection (a) [financial institutions with over $10 billion in assets] for purposes of—
> (A) assessing compliance with the requirements of Federal consumer financial laws;
> (B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and
> (C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.
>
> (emphasis added).

For other entities, specifically non-bank companies, the Act actually mandates that the CFPB engage in supervision. Section 1024(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5514(b)(1), states:

> The Bureau *shall require reports and conduct examinations* on a periodic basis of persons described in subsection (a)(1) [nonbank mortgage lenders and services; larger participants in a consumer financial services market, private student lenders, payday lenders] for purposes of—
> (A) assessing compliance with the requirements of Federal consumer financial law;
> (B) obtaining information about the activities and compliance systems or procedures of such person; and
> (C) detecting and assessing risks to consumers and to markets for consumer financial products and services.
>
> (emphasis added)

Given that the Bureau is the only regulator with the authority to examine banks with more than $10 billion in assets for consumer protection issues, a failure by the CFPB to adequately supervise these banks means that no regulator will be looking out for the interest of consumers with respect to them. Supervising these banks is particularly important since their actions affect many millions of consumers. Since many of them dominate such a large share of the consumer financial services market and are "too big to fail," the market itself is unlikely to correct their errors.

For nonbank entities, the Dodd-Frank Act actually requires the CFPB to periodically examine covered entities for compliance with federal consumer financial laws. A failure to adequately supervise nonbank entities would violate both the letter and the spirit of the Act.

*B. Supervision is not the same as enforcement, and has aspects that are superior.*

Supervision is very different from, and a necessary complement to, the Bureau's enforcement program. Supervision is a proactive activity, with regularly scheduled examinations on an ongoing basis. With supervision, a regulator is empowered to review the policies, procedures, systems and data of the regulated entity. The regulator may send representatives to conduct on-site visits; send questions and demand answers; and examine the internal operations of the supervised entity. Supervision provides the ability to detect violations and correct them without the need to go to court or an administrative body.[1]

In contrast, enforcement requires a regulator to learn of potential legal violations, undertake an investigation, and collect enough evidence for a *prima facie* legal case. Such investigations are often resource-intensive and less efficient than supervision, especially if there is a significant amount of discovery and other litigation activities.[2] Enforcement is also much slower than supervision, as it may take years to build and prosecute a case. In the meantime, a harmful practice might still continue to cause injury to consumers. Enforcement is an after-the-fact method of regulation, whereas supervision can be proactive. Supervision can fix a problem before it escalates into a more serious matter.

Enforcement is also a much blunter tool, as it is very binary – either a company gets sued or it doesn't. Supervision can be a much more surgical tool, with a gradient of responses such as a memorandum of understanding (MOU) or a potential action and request for response (PARR) letter. Furthermore, these responses can be kept out of the public eye. Supervision means that a regulator can give the business feedback without creating a public relationships nightmare.

Indeed, even those entities supervised by the Bureau have pointed to benefits of the precision and flexibility of supervision, albeit in a backhanded way. In the early days of CFPB supervision, the U.S. Chamber of Commerce's financial services arm complained that:

> Perhaps because of the uneven quality of examination teams, businesses consistently report that that the Bureau's examination teams have little authority to make decisions—the Bureau's examiners must obtain permission from "Washington" before making even the most minor decisions. That lengthens examinations considerably and eliminates *the situation-specific approach that has traditionally characterized, and is one of the key benefits of, the examination process*.[3]

C. *Coordination is important, but should not amount to de facto delegation of authority to another regulator.*

In the final topic in its Request for Information, the CFPB asks for feedback regarding:

> The manner and extent to which the Bureau can and should coordinate its supervisory activity with Federal and state supervisory agencies, including through use of simultaneous exams, where feasible and consistent with statutory directives.

We agree that coordination between the CFPB and other regulatory agencies is helpful and important. Section 1025(b)(2) of the Dodd-Frank Act explicitly requires such coordination,

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[1] See Jean Braucher & Angela Littwin, Examination as a Method of Consumer Protection, 87:4 Temple L. Rev. 807 (Summer 2015).
[2] *Id.* at 808 ("Although examination is time-consuming and commands devotion of resources both by the agency and regulated entities, it is still less resource-consuming than litigation. It thus provides a relatively cost-effective way for an agency to obtain both changes in company practices and compensation for victims.").
[3] Comment from David Hirschmann, Center for Capital Markets Competitiveness, February 14, 2013 (emphasis added).

including consultation over examination schedules and reporting, in order to minimize regulatory burden on banks.[4] Section 1024(b)(3) requires similar coordination in the supervision of nonbank entities.[5]

Some of the comments that will be filed in response to this RFI may complain about deficiencies in coordination between the CFPB and prudential regulators. But developing the ability to have good coordination, to work well together, takes time. It has been a mere six years since the CFPB began its supervision program. During those six years, the Bureau was required to hire staff, put a structure in place, create protocols and draft a nearly 1600 page Examinations Manual. At the same time, the Bureau was developing relationships with the prudential regulators, figuring out roles, and establishing channels of communications. Such undertakings require time to properly develop, and we assume they are still being worked on to this day. But such efforts do not require new regulations. And they certainly will not be helped by weakening the Bureau's supervision program.

One outcome that cannot happen is for the Bureau to cede supervision activity to these other federal and state agencies. Media reports indicate that the Acting Director has raised such a possibility.[6] However, such an outcome is both inadequate, contrary to the Dodd-Frank Act, and detrimental to the CFPB's mission of protecting American consumers.

With respect to bank supervision, as discussed in Section I.A above, the Dodd-Frank Act gives the CFPB sole and exclusive authority to examine banks with over $10 billion in assets for compliance with consumer protection laws. The prudential regulators simply do not have the authority to supervise the big banks for consumer protection – period. If the CFPB does not supervise big banks for consumer protection, no one will be doing it. Such lack of oversight is not just harmful to consumers, it can literally jeopardize the national and world economies. After all, it was consumer protection abuses and lack of oversight over such abuses that created the mortgage meltdown and financial crisis ten years ago.

Even if the prudential regulators hypothetically had the legal authority to supervise banks over $10 billion for consumer protection, delegating or ceding such a role to them is ill-advised. As discussed in the next section, the financial crisis of 10 years ago was caused in part because the prudential regulators had a conflict of interest when it came to consumer protection, and placed

[4] That paragraph specifically states: "To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons."

[5] That paragraph states: "To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators, the State bank regulatory authorities, and the State agencies that licence, supervise, or examine the offering of consumer financial products or services, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons."

[6] Kate Berry, *CFPB should take back seat to bank regulators on supervision: Mulvaney*, American Banker, March 1, 2018 ("Mick Mulvaney, the acting director of the Consumer Financial Protection Bureau, said Thursday the agency may allow prudential regulators to take the lead on more supervisory matters to cut down on duplication and ease the burden of exams on financial firms.… suggesting regulators like the Office of the Comptroller of the Currency and the Federal Reserve Board could have a greater supervisory role on consumer compliance matters. 'There's no reason why folks have to go through sequential regulations for the same thing,'")

the profit margins of banks over consumer protection. Ceding supervision of consumer protection to the prudential regulators raises the distinct possibility that they will not doing a proper job and will once again jeopardize our economy.

With respect to nonbank entities, ceding authority or delegation is impossible, because the Dodd-Frank Act literally mandates that the CFPB must examine covered entities for compliance with consumer financial laws. As discussed above, the Bureau "*shall* require reports and conduct examinations on a periodic basis" of covered entities. Section 1024(b)(1) of the Dodd-Frank Act.

Furthermore, there is no way to delegate or cede supervision of many nonbank entities to another regulator, whether federal or state, because these companies simply do not have another supervising regulator. The other regulators for these companies, such as the Federal Trade Commission or state Attorneys General, may be able to take enforcement action. But as discussed above, enforcement is very different from supervision.

State regulators in particular cannot fill the gap if the CFPB ceases or reduces its supervision of nonbank entities.[7] Relying on state regulators would leave consumers without uniform protection across the country. Many state agencies lack the financial resources to go after well-funded national corporations. State Attorneys General usually do not have supervision authority. Many non-bank entities, such as credit reporting companies, do not have any state agency with supervision authority over them. Specific industries are discussed below.

### D. *Consumer protection supervision by bank prudential regulators has historically been hampered by a perceived conflict of interest.*

Before the Dodd-Frank Act, the prudential regulators were primarily responsible for overseeing banks for compliance with federal consumer financial laws. Oversight was spread among several agencies, including the Office of Comptroller of Currency (OCC), the former Office of Thrift Supervision (OTS), the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

A review of the history of consumer protection by these prudential regulators demonstrates consistent inattention, at best, and opposition, at worst, to the needs of consumers. These regulators not only ignored the glaring abuses of predatory subprime mortgages, but in some cases they actively opposed efforts by other regulators, such as state agencies and legislatures, to rein in the abuses. These failures encompass many years and many different subject areas, and show that the problems were institutional, not occasional lapses.[8]

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[7] *See generally*, Evan Weinberger, States Face Limits in Stepping Up as CFPB Retreats, Bloomberg BNA, Apr. 30, 2018.

[8] *See* Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve, Hearing Before the Subcomm. on Domestic Monetary Policy of the H. Comm. on Fin. Serv. 111 Congr. 183 (2009)(statement of Lauren Saunders, National Consumer Law Center); Jean Braucher & Angela Littwin, Examination as a Method of Consumer Protection, 87:4 Temple L. Rev. 807, 821-26 (Summer 2015).

Part of the problem was a perceived conflict of interest between consumer protection and bank financial health that frequently resulted in prudential regulators giving short shrift to the former in favor of the latter. Prudential regulators often considered consumer protection to conflict with bank safety and soundness, because protecting consumers from harmful yet profitable products could hurt banks' bottom lines.

Another contributing factor was that banks could essentially choose their own regulator by changing their charters. This was especially problematic because federal regulators' budget depended on the fees paid by the banks within their jurisdiction. Thus, a regulator had an extremely strong incentive to refrain from taking robust action to protect consumers, and in fact to take the side of the banks against consumers – a bank that was unhappy with its prudential regulator's consumer protection activities could simply switch charters (and take its fees) to a friendlier regulator. Indeed, this type of charter shopping occurred with one of the most notorious purveyors of subprime mortgages – Countrywide Financial, which reorganized as a thrift and moved from the OCC to the OTS when the latter promised a friendlier regulatory environment.[9]

These problems caused such great harm to the American economy, and Congress addressed them by placing consumer financial protection in one federal agency irrespective of the charter or legal structure of the institution. This design gives consumer protection the attention and clear focus it deserves. It provides consistent regulation no matter who offers the product or service, and results in a regulator that can take a holistic view. Perhaps most importantly, by preventing charter shopping, it ensures the Bureau's regulatory independence and freedom from regulatory arbitrage.

The CFPB's design reflects an understanding of why the prudential regulator model of consumer protection failed and a goal of reversing course. Consumer protection is the CFPB's only mission. Thus, it does not face the perceived conflict of interest between that mission and the need to boost the bottom line of banks in the name of safety and soundness.

*E. Supervision of nonbank has made a critical difference.*

In addition to appointing a single regulator for consumer protection for the big banks, Congress made the very deliberate and wise decision to include non-banks within the CFPB's authority. By doing so, Dodd-Frank prevents a company from removing itself from the CFPB's jurisdiction by changing its structure. It also levels the proverbial playing field between banks and nonbanks, the former of which have sometimes complained that other market players are not as regulated as they are. The CFPB's supervision program for nonbanks directly addresses that complaint. Indeed, one of Congress's explicit objectives in creating the CFPB was to ensure that "Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition." Section 1021(b)(4) of the Dodd-Frank Act, 12 U.S.C. § 5511(b)(4).

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[9] Jean Braucher & Angela Littwin, Examination as a Method of Consumer Protection, 87:4 Temple L. Rev. 807, 823 (Summer 2015).

More importantly, nonbank supervision has benefitted consumers immensely and improved compliance by supervised entities with federal consumer financial laws. As discussed below in Section II, it has resulted in a sea change in the way critical industries such as credit reporting agencies, debt collectors, student loan servicers, and mortgage servicers have treated consumers.

*F. The CFPB has appropriately defined which companies to supervise as "larger participants," but should also supervise other important financial services markets.*

Under the Dodd-Frank Act, one category of nonbanks that the CFPB is required to supervise are "larger participants of a market for other consumer financial products or services." Section 1024(a)(1)(B). The Bureau is required to define by regulation what entities are considered "larger participants". *Id.* (referring to § 1024(a)(2)).

Thus far, the CFPB has issued regulations defining "larger participants" in five markets – consumer reporting, debt collection, student loan servicing, international money transfers, and automobile financing. 12 C.F.R. Part 1090. The CFPB appropriately defined which larger participants to supervise in each of these markets. In most cases, the CFPB adopted a narrower definition than urged by consumer advocates. For example:

- In the debt collection market, the CFPB chose a threshold of $10 million in annual receipts from debt collection,[10] whereas consumer advocates had urged a threshold of $7 million.[11] Furthermore, the Bureau excluded debt collectors that primarily collect medical debt, despite our urgings.[12]
- In the consumer reporting market, the CFPB excluded furnishers of information from coverage as larger participants[13] (although some furnishers may fall into other categories of covered persons subject to supervision, such as banks with over $10 billion in assets).
- With respect to money transfer providers, the CFPB only covered providers of international transfers.[14] Consumer advocates had urged that larger participant providers of domestic money transfers also be covered.[15]
- In the student loan servicing market, the CFPB chose a threshold of 1 million loans,[16] whereas consumer advocates urged a threshold of 200,000 loans.[17]

[10] 12 C.F.R. § 1090.106(b).
[11] National Consumer Law Center, Comments to the CFPB on Defining Larger participants in Certain Consumer Financial Product and Service Markets (Debt Collection and Consumer Reporting), April 17, 2012, *available at* https://www.nclc.org/images/pdf/rulemaking/nclc_larger_participant_debt_collector_april2012.pdf.
[12] *Id.*
[13] 12 C.F.R. § 1090.104(a)(ii).
[14] 12 C.F.R. § 1090.107(b).
[15] National Consumer Law Center, et al., Comments to the CFPB on Defining "Larger Participants" of the International Money Transfer Market, April 1, 2014, *available at* https://www.nclc.org/images/pdf/banking_and_payment_systems/comments-larger-participants-imf-04012014.pdf
[16] 12 C.F.R. § 1090.106(b).
[17] Center for Responsible Lending, et al., Comments to the CFPB on Defining Larger Participants of the Student Loan Servicing Market, May 28, 2013, *available at* http://www.studentloanborrowerassistance.org/wp-content/uploads/2007/03/comments-servicer-larger-markets-may2013.pdf.

Thus, the CFPB's definitions of larger participants in all of these markets were conservative and modest. In the long run, we hope the CFPB will expand these definitions. But while the CFPB did not cover as many entities as we had urged, overall the Bureau's rules capture the primary larger participants that need oversight in these markets and represent a reasonable approach.

The major task that remains for the CFPB is to address additional markets for which a definition of larger participants must be established. These markets include prepaid account issuers, installment lenders, vehicle title lenders, and financial data aggregator markets.

*G. The CFPB's Supervisory Highlights reports provide valuable information and guidance.*

In the Request for Information, the CFPB asks for feedback about "[t]he usefulness of Supervisory Highlights to share findings and promote transparency." We urge the CFPB to keep producing Supervisory Highlights reports. They provide valuable feedback and information to consumers, members of industry, the general public, academics, and the media. They serve the role of providing transparency without naming individual companies and causing public relations problems for them. They provide a high level view of how CFPB supervision is working.

We have conducted a review of all five years' worth of Supervisory Highlights reports, which reveals some striking trends. It appears that in several markets, supervised companies have gone from struggling to set up compliance systems (or totally ignoring the need for them) to being more proactive about correcting non-compliant practices and conducting internal evaluations. The deficiencies noted in the reports have become less structural (*i.e.* companies with no compliance system at all) and more particular (e.g., specific deceptive practices). The reports also note that companies themselves are noticing data or systems errors that they are self-correcting.

We discuss individual observations in the Supervisory Highlights reports in Section II with respect to the particular markets analyzed in those sections. We also have included a chart summarizing our review of all sixteen Supervisory Highlights reports in Appendix A.

In addition to providing transparency and documenting improvements in supervised markets, the Supervisory Highlights reports provide critical guidance for industry. And the industry is eager for such guidance. For example, in one of the earlier-filed comments to this RFI, the Operational Compliance Manager of a mortgage lender requested that:

> The vast majority of lenders genuinely want to get things right the first time, but sometimes struggle getting guidance on issues that aren't clear in the written regulatory literature.
> Therefore, although the CFPB is generally good about calling back with informal answers to those who submit questions, it would be most helpful to provide written responses, even if it contains qualifying comments about it not being legal advice.

> Otherwise, we have nothing to rely on when dealing with Auditors, State & Prudential Regulators, and business partners. Instead, we are left with mere recollections of informal telephone conversations – which doesn't have much credibility.[18]

Thus, the CFPB should continue to issue Supervisory Highlights reports to provide the kind of written guidance that is greatly desired by members in industry.

## II. Examples of Consumer Financial Services Markets Where CFPB Supervision Has Resulted in Significant Reform

### *A. Credit reporting*

One of the most important CFPB achievements in its supervision program has been to tackle the intransigent deficiencies in the credit reporting industry. The Big Three credit reporting companies (CRCs) occupy a unique role in the American credit economy. They serve a vitally important function for both the credit industry and in the financial lives of Americans. A good credit history is necessary for consumers to obtain credit, and to have that credit be fairly priced. Credit reports are also used by other important decisionmakers, such as insurers, landlords, utility providers, and unfortunately, even employers. Thus, it is no exaggeration to say that a credit history can make or break a consumer's finances.

Yet CRCs are entirely private companies, and the fact that there are only three of them makes them an oligopoly. The CRCs are publicly traded, which means their highest duty is to shareholder profit, not to consumers or creditors or the American economy. Consumers do not have any leverage over these private companies, unlike most other industries, because market forces do not apply to this industry - we are not the customer, but rather the commodity, of the CRCs. We cannot vote with our feet or our purse strings. For example, we cannot choose to avoid Equifax even after its negligence resulted in the theft of sensitive data for over half of the U.S. adult population. This characteristic – lack of consumer choice – is a common theme among those markets with the worst abuses, such as debt collection and student loan servicing, where consumers have benefitted the most from CFPB's supervision.

In addition to the lack of market forces to rein them in, the CRCs were insufficiently regulated until the Bureau began supervising them. Until 2012, their primary regulator was the beleaguered Federal Trade Commission (FTC), which only had the power to take enforcement action when something went wrong. As discussed in Section I, enforcement is very different from supervision. In the case of the CRCs, it was also far less effective. In addition, even with respect to enforcement, the FTC was outstaffed and outgunned by the CRCs and their deep pocketed resources. As for the states, there was (and still is) no state agency that could exercise supervision authority over the CRCs[19] - the most that states can do is take enforcement action through their Attorneys General.

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[18] Comments from Vernon Tanner, Sr. Vice President – Operational Compliance Manager, Crescent Mortgage Company, Feb. 26, 2018.

[19] The one future possible exception would be New York State, which has proposed but not finalized rules requiring consumer reporting agencies to register with its Department of Financial Services and permitting the Department to conduct examinations. New York State Department of Financial Services, Proposed 23 N.Y. Comp. Codes R. &

Due to this insufficient oversight and the lack of consumer choice, the CRCs developed a culture of impunity and arrogance. For decades, they abused consumers, cut corners in personnel and systems, and failed to invest in measures that would promote accuracy or handle disputes properly. Their idea of a dispute system was a travesty of automation, converting painstakingly written consumer disputes and supporting documentation into two- or three-digit codes and sending only those codes to the creditor or debt collector (the "furnisher") that provided the erroneous information.[20] After the furnisher responded, the CRCs' main response was to repeat or "parrot" whatever the furnisher claimed. The CRC always took the side of the furnisher, like a judge that always sides with the defendant. And they often spent minimal resources on disputes -- at one point, Equifax paid a mere $0.57 per dispute letter to a Philippines-based vendor to handle disputes.[21]

The CRCs also have had error rates that are simply unacceptable. The definitive FTC study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious they would be denied credit or need to pay more for it.[22]

It is no surprise then that the CRCs are often the top three most complained-about companies to the Bureau, with the vast majority of complaints involving incorrect information on credit reports.[23] These problems with accuracy stem fundamentally from a culture where compliance and quality control take a back seat to profits and marketing, and where cutting corners is the norm.

A CFPB's Supervisory Highlights report documented these problems, noting major deficiencies at the CRCs such as:[24]

- Lacking programs to test the accuracy of credit reports that the CRCs produced. CFPB personnel were surprised to find that the CRCs' quality control systems were either rudimentary or virtually non-existent.
- Insufficient monitoring and re-vetting of furnishers to ensure they were continuing to meet their legal and other obligations. Furnishers were rarely provided with feedback regarding data quality, and were sometimes charged fees for data-quality reports.

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Regs. 201, *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/DFS_CRA_Reg.pdf#_blank

[20] *See* Chi Chi Wu, National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports (Jan. 2009), *available at* www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf.

[21] *Id*. at 32.

[22] Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

[23] *See, e.g.*, Consumer Financial Protection Bureau, Monthly Complaint Report, Vol. 21, March 2017, *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Monthly-Complaint-Report.pdf.

[24] Consumer Financial Protection Bureau, Supervisory Highlights Consumer Reporting Special Edition, Issue 14 (Mar. 2, 2017), available at http://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

- Deficiencies regarding dispute handling: not only in conducting cursory reviews as discussed above, but also in failing to consistently notify furnishers of disputes and to describe the results of dispute investigations in federally-mandated notices to consumers.

CFPB supervision has made a significant difference in addressing these problems and compelling the CRCs to institute reforms for the first time. While there are still plenty of problems and concerns with the CRCs, the Bureau's supervision program "moved the needle" and started the CRCs along the right path. The same Supervisory Highlights report documents how supervision has resulted in the CRCs:[25]

- formalizing and centralizing data governance policies;
- establishing robust quality control programs;
- enhancing standards for public records data including greater frequency of updates and stricter identity-matching criteria;
- monitoring furnishers on an ongoing basis, including a process to temporarily stop accepting data from furnishers that have accuracy problems or that fail to provide regular updates;
- tracking furnisher dispute data;
- providing data-quality reports to data furnishers at no cost; and
- correcting the deficiencies in dispute handling by ensuring appropriate review of consumer proof documents, and proper provision of notices to both furnishers and consumers.

The CFPB has also engaged in supervision of other key players in the credit reporting system, including furnishers, resellers and specialty reporting agencies. This supervision has resulted in similar reforms.[26]

The FTC, state agencies, and consumer litigants have been fighting with the Big Three CRCs for over forty years regarding their abuse of consumers, but they have never been able to make the CRCs change their culture or institute fundamental reforms. It is *only* CFPB supervision that has resulted in large-scale improvements finally being made. While this is admittedly a work in progress, the Bureau has succeeded in forcing the CRCs to adopt systemic policies and procedures to improve accuracy. Instituting "compliance management systems" may not seem sexy, but it's the type of reform that is necessary in order to improve the overall accuracy of data on a large scale.

Reform of the credit reporting system will potentially benefit tens of millions of consumers. As discussed above, 5% of consumers with a credit file – about 11 million Americans – have serious errors in their reports that could cause them to pay more for credit or result in a denial of credit. Each of these 11 million consumers could be losing thousands of dollars by being forced to pay more for car loans or mortgages – or worse they may lose out on jobs or homes by being denied employment or credit based on their credit reports. If the CFPB reforms fix the serious deficiencies in their systems, these 11 million Americans will benefit to the tune of potentially

[25] *Id.*
[26] *Id.*

billions of dollars. More importantly, the CFPB will be helping these consumers restore their good names and financial reputations, which may be more precious to them than dollar savings.

However, the reforms announced by the CFPB in its report are only the first step. Whether the CFPB is successful in obtaining meaningful and lasting reform of the credit reporting system depends on continued vigorous supervision of the Big Three CRCs. If the CFPB's supervision program is weakened, the progress made by Bureau may be undone and the Big Three CRCs may backslide into their old ways.

### *B. Student Loan Servicing*

Currently in the United States, roughly 44 million people owe more than $1.5 trillion on their student loans.[27] This makes student loan debt the second largest source of debt in the United States, just behind mortgages.[28] Unfortunately, federal data show that more than 1 in 4 of these borrowers are delinquent or in default on their federal student loans.[29]

At the National Consumer Law Center (NCLC), advocates see and hear the human toll of the tattered student loan safety net every day from the low-income borrowers that they represent in Massachusetts. Vulnerable students attempting to improve their lives and better provide for their families through education face severe consequences if they default on federal student loans. The federal government has nearly boundless powers to collect student loans, far beyond those of most unsecured creditors. It can garnish a borrower's wages without a judgment, seize tax refunds (even those that include the Earned Income Tax Credit, a special tax break intended to boost low wage workers out of poverty[30]), place a levy on federal benefits such as Social Security,[31] and deny eligibility for new education grants or loans.

Even borrowers who avoid default and repay their debts can face additional charges if they fall behind on their payments at any point. For borrowers facing financial hardship, competent and accurate servicing can be the difference between missing a payment and staying on track.

Servicing in the private student loan market poses even more challenges to borrowers. Within the private loan market, there is a general lack of information about servicing and debt collection practices.[32] The CFPB has provided information on some revealing trends, including that private

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[27] *See* Fed Reserve St. Louis, 2018 Q1 Student Loans Owned and Securitized, Outstanding (updated May 7, 2018), https://fred.stlouisfed.org/series/SLOAS.
[28] *See* Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit (May 2017), https://www.newyorkfed.org/microeconomics/hhdc.html.
[29] Consumer Financial Protection Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform, (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf. Default is defined as being more than 270 days behind on payment.
[30] For stories from borrowers on the impact of EITC offsets *see* Persis Yu, National Consumer Law Center, Voices Of Despair: Student Borrowers Trapped In Poverty When The Government Seizes Their Earned Income Tax Credit (March 2018).
[31] *See* Persis Yu, National Consumer Law Center, Pushed into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans (May 2017).
[32] For more detailed comments, *see* NCLC Comments to CFPB on Proposal to Collect Student Loan Servicing Data (federal and private), Docket No. CFPB-2017-0002, April 24, 2017, and NCLC Comments to the Consumer

student loan servicers generally receive a flat monthly fee per account serviced with compensation generally not tied to any specific services performed on behalf of the borrower. This compensation structure disincentivizes servicers from providing any services to borrowers.

A common complaint we hear from borrowers is that they are unable to obtain even basic information, such as amounts owed and paid, from their private student lenders or servicers. A borrower from New York who contacted NCLC through its website summarized this problem concisely: "I have a private loan that has been passed around and I can't seem to get ahold of anyone about it."

Accountability is critical to ensuring that borrowers receive consistent and high quality services.[33] As the CFPB aptly identified in its 2015 report on student loan servicing:

> Borrowers depend on servicers to offer an error resolution process that is accessible, effective, and transparent. Adequate customer service and error resolution is especially important in the student loan market, where the consequences of borrowers' failure to satisfy an obligation can be particularly injurious, given many borrowers' limited credit history. When errors occur and are not quickly addressed, harm to borrowers may not be limited to problems with the individual loan or loans in question. Increasingly, consumer credit profiles serve as a precondition to employment, housing, and access to credit, and consequently, servicing errors can have spillover effects on many other aspects of borrowers' lives and livelihoods.[34]

CFPB supervision is a critical component to providing that accountability, and when done aggressively, can make a meaningful difference for ensuring consumer protections. As the CFPB highlighted in its latest annual Student Loan Ombudsman report,[35] in 2014, the Bureau reported on complaints from student borrowers about surprise automatic defaults that required borrowers to pay back the loans in full immediately if their co-signer had died or declared bankruptcy. Among them were borrowers who had been making their loan payments on time each month. In March 2016, the Bureau reported that CFPB examiners halted one or more servicers' unfair automatic defaults where loan contracts were ambiguous. Soon after, at least six of the nation's largest private student lenders eliminated the contract terms that led to automatic defaults. According to today's report, at least two-thirds of all private student loans made in the 2016-17 academic year, estimated to total approximately $8 billion, did not permit automatic defaults for borrowers who are successfully repaying their private loans.

A $1.5 trillion market cannot go without supervision. It is the congressionally mandated duty of the CFPB to supervise the student loan market and ensure that student loan borrowers are protected from abusive and predatory student lending practices.

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Financial Protection Bureau on Request for Information Regarding Complaints from Private Education Loan Borrowers, Docket No. CFPB-2012-0024, August 13, 2012.

[33] For more detailed comments, *see* NCLC Comments to CFPB on Proposal to Collect Student Loan Servicing Data (federal and private), Docket No. CFPB-2017-0002, April 24, 2017.

[34] Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input 140-141 (Sept. 2015).

[35] Consumer Fin. Prot. Bureau, Annual report of the CFPB Student Loan Ombudsman, Strategies for consumer-driven reform (Oct. 2017).

### C. *Supervision of Mortgage Servicers*

#### i. The importance of getting mortgage servicing right

Servicing plays a central role in the home mortgage market. Servicers communicate with homeowners about every aspect of their mortgage loans. They prepare the written account statements and notices that tell homeowners about the status of their loans. They collect payments, manage escrow accounts, and decide whether to offer help when homeowners experience financial distress. Servicers ultimately make the decisions about whether to foreclose. Yet, homeowners have no ability to choose their mortgage servicers. Servicing rights are bought and sold like a marketable commodity. The investors that own mortgage loans exercise little direct control over servicers. The servicer's compensation is not tied directly to how well a loan performs.[36]

Servicing is also vulnerable to abuse because the terms of servicing contracts and economies of scale make it highly profitable for servicers to collect even relatively small charges from an individual homeowner. For example, one court noted that Wells Fargo, with a servicing portfolio of 7.7 million mortgages, could earn $115,000,000.00 if it collected a single $15.00 fee once annually from each homeowner.[37] In 2006, a relatively stable period before delinquencies skyrocketed, Countrywide Mortgage received $285 million in revenue from late fees alone.[38]

By 2013, over four million American families had lost their homes to foreclosures. Millions more were in default and facing foreclosures. Investors in these mortgages faced staggering losses. As the crisis deepened, the loss to investors from each foreclosure averaged about $145,000.[39] These losses hit in particular the public and non-profit entities that invested heavily in mortgage-backed securities.[40]

As the crisis intensified, it was servicers, not the investors who owned the loans, that continued to decide when foreclosures would proceed. In many instances, servicers foreclosed unnecessarily. An array of loss mitigation options provided alternatives to foreclosures, but servicers failed to implement them. Unnecessary foreclosures occurred because servicers made little effort to consider the alternatives. Despite growing evidence that affordable loan modifications were sustainable, servicers did not communicate with more than half of all borrowers with seriously delinquent loans about loss mitigation options.[41]

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[36] *See e.g.* Adam J. Levitin and Tara Twomey, *Mortgage Servicing,* 28 Yale J. on Reg. 1 (2011).
[37] *In re Stewart*, 391 B.R. 327, 343 n. 4 (Bankr. E.D. La. 2008).
[38] Gretchen Morgenson, Dubious Fees Hit Borrowers in Foreclosures, N.Y. Times, Nov. 6, 2007, at A1 (reporting that Countrywide received $285 million in revenue from late fees in 2006).
[39] Alan M. White, *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications*, 41 Conn. L. Rev. 1107 (2009).
[40] American Association of Mortgage Investors, *White Paper, The Future of the Housing Market for Consumers After the Housing Crisis: Remedies to Restore and Stabilize America's Mortgage and Housing Markets* (January 2011) available at http://the-ami.com/wp-content/uploads/2011/01/AMI_State_AG_Investigation_Remedy_Recommendations_Jan_2011.pdf
[41] State Foreclosure Prevention Working Group, Memorandum on Loan Modification Performance (Aug. 2010) (consisting of representatives of twelve states' attorneys general and Conference of Bank Supervisors), *See* https://www.dfs.ny.gov/about/press/pr100824.htm

Government investigations have consistently identified certain servicer practices that aggravated the foreclosure crisis.[42] Servicers misled and confused homeowners about their loss mitigation options. They lost borrowers' paperwork, demanded redundant and unnecessary documents, misrepresented the reasons for denying loss mitigation requests, imposed unfair charges, and foreclosed before completing assessments of borrowers' options.[43]

ii. The CFPB's crucial role in supervising mortgage servicers

The CFPB began to supervise mortgage servicers in 2011, while the country was in the midst of the gravest foreclosure crisis in its history. As discussed above, the CFPB is *required* to supervise nonbank mortgage servicers' compliance with federal consumer protection laws. 12 U.S.C. § 5514(b)(1)(A). These laws include the Real Estate Settlement Procedures Act (RESPA) and the Truth-in-Lending Act (TILA), which together regulate a wide range of mortgage servicing activities.[44]

The Bureau has also issued regulations that address many aspects of mortgage servicing as part of its duty to implement RESPA and TILA. Much of the CFPB's supervision has focused on ensuring that servicers follow the new RESPA and TILA rules, as well as detecting unfair and deceptive servicer practices.

A review of the CFPB's Supervisory Highlights reports shows the effectiveness and importance of the Bureau's oversight so far. For example, a report from 2013 focused on problems with servicers' loss mitigation practices, such as long application processing delays, missing notices to borrowers, incomplete and disorganized files, and gaps in written policies and procedures.[45] In the report, the CFPB stressed the importance of compliance with the new RESPA rules scheduled to go into effect in January 2014, emphasizing that "the examination materials that will be used to assess compliance with these new provisions have been published, well in advance of the compliance deadline."[46]

Three years later, the CFPB reported that servicers had made significant improvements "in part by enhancing and monitoring their servicing platforms, staff training, coding accurately,

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[42] U.S. Government Accountability Office, GAO-11-433, *Mortgage Foreclosures: Documentation Problems Reveal Need for Ongoing Regulator Oversight* (2011); U.S. Government Accountability Office, GAO Report 11-288 *Troubled Asset Relief Program Treasury Continues to Face Implementation Challenges and Data Weaknesses in its Making Home Affordable Program* (2011); U.S. Government Accountability Office Report to Congressional Committees, GAO-09-837, *Troubled Asset Relief Program: Treasury Actions Needed to Make the Home Affordable Modification Program More Transparent and Accountable* (2009); March Oversight Report: The Final Report of the Congressional Oversight Panel (2011); Congressional Oversight Panel, *Foreclosure Crisis: Working Toward a Solution: March Oversight Report* (2009).

[43] National Consumer Law Center, *At a Crossroads, Lessons from the Home Affordable Modification Program (HAMP)* January 2013, *available at* https://www.nclc.org/issues/at-a-crossroads.html .

[44] The CFPB also examines servicers for compliance with other federal statutes that broadly apply to financial transactions beyond mortgage lending and servicing, including the Electronic Fund Transfer Act (EFTA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (GLBA), and the Equal Credit Opportunity Act (ECOA).

[45] Consumer Financial Protection Bureau, Supervisory Highlights Issue 3 (Summer 2013).

[46] *Id* at 15.

auditing, and allowing for greater flexibility in operations."[47] The CFPB's procedures for identifying problem areas and working with servicers to resolve them were working well.[48] Many deficiencies were due to servicers' use of outdated or defective "information technology structures."[49] CFPB supervision led servicers to replace this outdated technology and better manage their documents.[50]

Mortgage servicing relies heavily on software programs and platforms. Servicers also depend on other service providers to perform discrete tasks. The service providers in turn use their own platforms to store and transfer documents and data. An error imbedded in any of these computer programs can impact hundreds of thousands of homeowners, leading potentially to improper assessment of fees, denials of loss mitigation options, and even foreclosures. As we discuss below, the CFPB repeatedly found these types of computer program errors in servicers' systems. CFPB supervision led to prompt and effective remedial actions, with crucial improvements saving homeowners and investors millions of dollars. In addition, the effective supervision obviated public enforcement actions that could have been costly to the servicers, their reputations, and to the CFPB.

Finally, reporting these outcomes in the CFPB's Supervisory Highlights reports is very beneficial to all parties. Publication of these results points other mortgage servicers in the direction they should look to improve their own systems.

iii. <u>Supervision of mortgage servicers' loss mitigation activities</u>

When servicers mishandle homeowners' applications for loss mitigation help, they open the floodgate to unnecessary foreclosures. The CFPB's RESPA rules brought some order to this chaotic application process, but it must be combined with rigorous supervision. Otherwise the chaos will return.

CFPB examinations of servicers' loss mitigation practices have led to substantial improvements, including fixing flaws in computer programs and improving standardized forms, at a minimal cost to servicers. Supervision encouraged staff training and control mechanisms to ensure that loss mitigation worked properly. Loss mitigation reduces the financial hit both to homeowners and to the investors who own, insure, and guarantee mortgage loans.

CFPB's supervision shows that simple requests to revise a computer program can dramatically change outcomes for hundreds of thousands of homeowners. For example:

- One examination revealed that a servicer's software was improperly charging all homeowners a fee when it approved them for a loss mitigation option. At the CFPB's

[47] Consumer Financial Protection Bureau, Supervisory Highlights Mortgage Servicing Special Edition Issue 11 (June 2016), at 19.
[48] *Id.*
[49] *Id.*
[50] *Id.* pp. 19-20.

request, the servicer removed the charge from its software program and refunded the improperly collected fees.[51]

- A CFPB audit found that a servicer's loss mitigation processing platform had been malfunctioning repeatedly over a substantial period of time. The program failed to acknowledge receipt of homeowners' loss mitigation applications, as required by the RESPA rules. The CFPB told the servicer to correct the software and then monitored to make sure that it did so.[52]
- Another CFPB audit found that a servicer's underwriting program routinely inflated homeowners' income by using gross income instead of net income to calculate eligibility for loss mitigation. This was contrary to the guidelines set by the investors who owned the loans. The CFPB directed the servicer to revise its underwriting formula and beef up training of its underwriters.[53]

The CFPB Supervisory Highlights reports show repeatedly that examinations led to changes in forms that had far-reaching impact on entire loan portfolios. For example, letters sent by "one or more servicers" to homeowners offering them a loss mitigation option listed a date for acceptance that had already passed before the homeowners received the letters.[54] A different servicer sent out letters giving homeowners thirty days to submit documents to complete loss mitigation applications, but denied the applications before thirty days were up.[55] The CFPB directed these servicers to implement controls to properly date their notices to homeowners.

Servicers' overly burdensome requests to homeowners for documents have consistently impeded loss mitigation. CFPB supervision has resulted in servicers revising document requests, making them more comprehensible and limited to relevant information.[56] Other servicers sent homeowners letters denying loss mitigation options without including information about the option to appeal the decisions, in violation of the RESPA rules.[57] As part of its Supervision, the CFPB directed the servicers to revise the standardized language in their denial letters to inform homeowners that they could appeal the denials.

iv. Improving servicing transfers practices

The rights to service a mortgage are routinely transferred from one servicer to another, which can sometimes create a host of problems for homeowners. In recent years, many new players have entered the mortgage servicing market, but they often lack trained staff and must develop new technology platforms. Even with an experienced servicer, incompatible servicing programs can lose track of essential borrower information. The RESPA rules set certain standards for the exchange of documents upon servicing transfers.[58]

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[51] Consumer Financial Protection Bureau, Supervisory Highlights Issue 2 (Winter 2013).
[52] Consumer Financial Protection Bureau, Supervisory Highlights Issue 8 (Summer 2015).
[53] Consumer Financial Protection Bureau, Supervisory Highlights, Mortgage Servicing Special Edition, Issue 11 (June 2016).
[54] *Id.* at p. 10.
[55] Consumer Financial Protection Bureau, Supervisory Highlights Issue 9 (Fall 2015).
[56] Consumer Financial Protection Bureau, Supervisory Highlights Issue 3 (Summer 2013); Issue 8 (Summer 2015); Issue 11 (June 2016).
[57] *Id.* Issue 9 (Fall 2015).
[58] 12 C.F.R. §§ 1024.38(b)(4), 1024.41(k). *See also, Servicing Transfers,* CFPB Bulletin 2014-01 (Aug. 19, 2014).

CFPB supervision has frequently addressed problems caused by servicing transfers.[59] For example, examinations found that new servicers did not respect loan modifications approved by prior servicers, even when the investor had approved the modifications and the homeowners had been making all required payments on the modified loans. Instead of recognizing the modifications, the new servicers demanded the higher monthly payment amounts due before the modifications. In these cases, the CFPB directed the servicers to revise their policies and procedures to link databases from the prior servicers to their own platforms. In the June 2016 Supervisory Highlights report, the CFPB documented that servicers had improved their data transfer systems after earlier examinations had cited these types of servicing transfer problems.

v. Accomplishments in other mortgage servicing areas

Supervision has focused on a number of important servicing issues. For example, CFPB examinations gave particular attention to safeguarding the rights of servicemembers, who receive special protections against foreclosures under federal law. The CFPB compelled corrections by two servicers found to have inadequate checks in place to verify a homeowner's military status before proceeding with foreclosures.[60]

CFPB examinations also addressed the following issues:

- CFPB found servicers charging late fees contrary to investor guidelines. These servicers were required to take corrective measures.[61]
- TILA rules require servicers to be specific in their monthly statements and to clearly disclose the nature of each charge assessed to an account.[62] As part of a review, the CFPB informed a servicer that it must stop using labels such as "Misc. Expense" and "Charge for Service" on monthly statements and instead provide homeowners with a comprehensible explanation for each charge.[63]
- The RESPA rules require that servicers meet certain accountability standards in handling homeowners' escrow accounts.[64] Supervision led servicers to stop practices that routinely caused the late payment of property taxes, resulting in penalties assessed against the homeowners.[65]
- In another case, CFPB supervision discovered a servicer disbursing funds from some homeowners' escrow accounts to pay for insurance premiums owed by other homeowners.[66] The CFPB ordered the servicers to implement appropriate corrective policies and practices.

[59] Consumer Financial Protection Bureau, Supervisory Highlights Issue 2 (Winter 2013); Issue 3 (Summer 2013); Issue 8 (Summer 2015); Issue 11 (June 2016).
[60] Consumer Financial Protection Bureau, Supervisory Highlights Issue 2 (Winter 2013).
[61] *Id.* Issue 3 (Summer 2013).
[62] 12 C.F.R. § 1026.41(d).
[63] Consumer Financial Protection Bureau, Supervisory Highlights Issue 15 (Spring 2017).
[64] 12 C.F.R. §§ 1024.17, 1024.34.
[65] Consumer Financial Protection Bureau, Supervisory Highlights Issue 3 (Summer 2013).
[66] *Id.* Issue 15 (Spring 2017).

In summary, the CFPB's supervision of mortgage servicers has focused on important and appropriate subjects. As a result, hundreds of thousands of homeowners avoided millions of dollars in improper charges. Many homeowners were put in a better position to avoid foreclosures through more effective loss mitigation procedures. And it was only because of the CFPB's supervision program that these homeowners received relief—homeowners themselves would never have been able to uncover the cause of the problems they were experiencing. Yet in many cases a simple letter from an oversight agency was able to pinpoint a problem affecting thousands of consumers and put an end to a widespread practice that was leading to unfounded charges and could potentially take away their homes.

### *D. Debt Collection*

Debt collection is a pervasive part of American life, affecting a huge number of consumers. In 2016, 33% of Americans with a credit report had at least one debt in collection.[67] In predominantly nonwhite zip codes, the share with debt in collection reached 45%.[68]

The need for CFPB supervision of debt collectors is clear from the prevalence of consumer complaints about the debt collection industry. Debt collection is a leading source of consumer complaints to the CFPB,[69] the FTC,[70] the Better Business Bureau,[71] and others.[72] The categories of the 84,500 complaints received by the CFPB in 2017 were:

- Attempts to collect debt not owed (39%)
- Written notification about debt (22%)
- Communication tactics (13%)
- Took or threatened to take negative or legal action (11%)
- False statements or representation (10%) and

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[67] Urban Institute, Debt in America: An Interactive Map (Apr. 2018), *available at* http://apps.urban.org/features/debt-interactive-map/.

[68] *Id.*

[69] Consumer Fin. Protection Bur., Annual Report 2018: Fair Debt Collection Practices Act (Mar. 2018), available at http://files.consumerfinance.gov ("In 2017, the Bureau handled approximately 84,500 debt collection complaints, making it one of the most prevalent topics of complaints about consumer financial products or services received by the Bureau.").

[70] Fed. Trade Comm'n, Consumer Sentinel Network Data Book 2017 (608,535 complaints, or 22.74% of all complaints).

[71] U.S. Better Bus. Bureau, 2016 Statistics Sorted by Complaints, available at www.bbb.org (in 2016 it received 16,817 complaints and more than three million inquiries about collection agencies). *See also* Emma Fletcher and Rubens Pessanha, BBB Institute for Marketplace Trust, 2016 BBB Scam Tracker Annual Risk Report: A New Paradigm for Understanding Scam Risk, available at www.bbb.org (the Better Business Scam Tracker received reports of a number of debt-related scams in 2016, including tax collection scams (7902), debt collection scams (2798), and credit repair/debt relief scams (487)).

[72] CFA & NACPI, 2016 Consumer Complaint Survey Report (July 27, 2017), available at www.consumerfed.org (investigators who survey state and local consumer protection agencies to ask about their top complaints found that credit and debt complaints ranked fourth).

- Threatened to contact someone or share information improperly (4%)[73]

In addition to receiving complaints from consumers, the CFPB has also surveyed consumers about their experiences with debt collection. In 2017, the CFPB published the results of this survey, in which respondents indicated that they had experienced a variety of debt collection abuses.[74] For example, of respondents who had been contacted about a debt:

- 53% "indicated that the debt was not theirs, was owed by a family member, or was for the wrong amount";
- 63% "said they were contacted too often";
- 36% were called after 9 p.m. or before 8 a.m. (presumed inconvenient times);
- 27% were threatened; and
- 75% of consumers who requested that the creditor or debt collector stop contacting them reported that the contact did not stop.[75]

CFPB supervision has addressed several of these abuses. For example, examiners found that debt collectors had violated the Fair Debt Collection Practices Act by attempting to collect from authorized users who were not liable for credit card debts, impermissibly communicating with third parties about a debt, and communicating with consumers at inconvenient times. Examiners directed the debt collectors to take remedial actions to address each of these violations.[76]

CFPB supervision of debt collectors is critical. Although the CFPB's supervisory authority only extends to larger participants in the debt collection market,[77] its impact is extensive and important. First, the larger participants in the debt collection market have massive portfolios of debts in collection, meaning that their collection practices impact large numbers of Americans. For example, the debt buyer Encore Capital Group, Inc. claims that twenty percent of American consumers either owe it money currently or have owed it money in the past.[78] Second, CFPB supervision provides guidance to the rest of the debt collection industry through the publication of the Supervisory Highlights reports, as well as through the publication of Guidance documents that address emerging industry practices that the Bureau becomes aware of through its supervision and enforcement activities.[79] Thus, CFPB supervision of the larger participants in the debt collection market allows the Bureau to monitor and respond to emerging trends quickly in a way that is beneficial to the industry as a whole.

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[73] Consumer Fin. Protection Bur., Annual Report 2018: Fair Debt Collection Practices Act (Mar. 2018), available at http://files.consumerfinance.gov.

[74] Consumer Fin. Protection Bur., Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt (Jan. 2017).

[75] Id. at 5, 35, 46.

[76] Consumer Financial Protection Bureau, Supervisory Highlights Issue 16 (Summer 2017)

[77] 12 C.F.R. § 1090.105(b).

[78] Chris Albin-Lackey, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor (Human Rights Watch, Jan. 2016).

[79] *See, e.g.,* CFPB Compliance Bulletin 2017-01, Phone Pay Fees (July 31, 2017).

There is simply no substitute for CFPB supervision. The states cannot provide the same level of oversight, because the existing state regulatory framework is insufficient to protect all consumers from abusive debt collection practices. Although some states require debt collectors to be licensed, others do not.[80] Even those states that do require licensure for debt collectors may have significant gaps in coverage. For example, some states specifically exempt certain debt buyers from licensure.[81] Whether they arise due to an absence of state licensing laws or an exemption for a particular type of debt collector, these gaps mean that the states cannot adequately supervise the 8,513 debt collection agencies that were active in the United States in 2017.[82] Moreover, the type of oversight that states provide varies greatly,[83] as do the level of resources and types of tools that each state that does require licensure provides to its regulator. States also differ as to the degree in which state licensing statutes focus on protecting consumers compared to preventing the misappropriation of creditor funds.[84]

**Conclusion**

The CFPB supervision program has done what Congress intended it to do – improve the lives of millions of Americans by ensuring that providers of financial services and products follow the law. There is simply no substitute – not by prudential regulators nor by state agencies nor by other federal authorities. The CFPB has the tools, it has the mission, it has the expertise, and most importantly, it has the authority and mandate under the Dodd-Frank Act. The CFPB has used all of these tools to make significant and important reforms to the industries that it supervises, to the benefit of everyone – consumers, industry members, and the American public. The CFPB should – indeed it must – continue this vigorous and excellent work.

* * *

[80] *See* National Consumer Law Center, Fair Debt Collection, Appx. D (9th ed. 2018), *updated at* www.nclc.org/library (summarizing state debt collection practices statutes, including debt collection licensing statutes); insideARM, State Licensing Interactive Map, *available at* www.insidearm.com/state-laws/

[81] *See, e.g.,* Tenn. Code Ann. §§ 62-20-103(a)(9) (exempting "[a]ny person that holds or acquires accounts, bills or other forms of indebtedness through purchase, assignment, or otherwise; and only engages in collection activity through the use of a licensed collection agency or an attorney authorized to practice law in this state"); *Dorrian v. LVNV Funding, L.L.C.*, 479 Mass. 265, 94 N.E.3d 370 (2018) (concluding that the debt buyer LVNV is not a debt collector under the Massachusetts licensing statute).

[82] IBISWorld, Debt Collection Agencies – US Market Research Report (Dec. 2017), *available at* www.ibisworld.com/industry-trends/market-research-reports/administration-business-support-waste-management-services/administrative/debt-collection-agencies.html.

[83] *See* insideARM, State Licensing Interactive Map, *available at* www.insidearm.com/state-laws/ (showing maps for license requirements, bond requirements, and licensing fee requirements).

[84] *Compare* Alaska Stat. §§ 08.24.290 (grounds for revocation of license focused on preventing misappropriation of creditor's funds) with Ark. Code Ann. § 17-24-307(grounds for revocation of agency license focus on abusive debt collection practices against consumers).

Thank you for the opportunity to submit these comments. If you have questions about them, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

Respectfully submitted,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform
Center for Responsible Lending
Consumer Action
The Consumer Federation of America
National Association of Consumer Advocates
Public Citizen
U.S. PIRG

## Appendix A – Chart with Highlights from CFPB Supervisory Highlights Reports

### September 2017

| Industry | Act | CFPB Action |
|---|---|---|
| Auto loan servicing | (H) Despite loan extensions or other repossession avoidance options, servicers repossessed cars after repossession was canceled | Directed to stop and refund customers repossession fees. Servicers now required to verify that repossession orders are still active immediately before repossessing cars. |
| Credit card account management | (H) Failed to provide full tabular disclosures when opening accounts | Directed to review and strengthen procedures for opening accounts |
| Credit card account management | (H) Deceptive communications to consumers regarding costs and availability of pay-by-phone options | Directed to reimburse consumers paying unnecessary fees, and ensure consumers are informed of all payment options before paying |
| Credit card account management | (H) Service reps did not follow call scripts for debt cancellation products & did not give consumers accurate info on fees & benefits | Directed to reimburse consumers and ensure service reps are following scripts & providing accurate information |
| Credit card account management | (H) Did not follow error resolution process in Regulation Z (late communications, no investigation of charges, etc.) | Directed entities to remediate affected consumers, develop stronger error resolution plans, and in some cases to change service providers |
| Debt collection | (H) Did not verify that the correct person was contacted before trying to collect debt | Directed to improve consumer verification processes; retrained collection agents |
| Debt collection | (H) Deceptively implied that a credit card user (not cardholder) was responsible for a debt | Remedial & corrective actions under review |
| Debt collection | (H) False representations regarding the credit score effect of paying a debt in full rather than settling the debt | Directed to change training materials and language used by collectors |
| Debt collection | (H) Deliberately contacting consumers at inconvenient times | Directed to enhance compliance monitoring of dialer systems & call times |
| Deposits | (H) Unnecessary freezing of deposit accounts after suspicious activity | Directed to review freezing policy and communications with consumers about hard holds on accounts |
| Deposits | (H) Misrepresentations about which payments qualified for waiver of monthly service fees | Cited for deceptive acts and practices; required to ensure that disclosures are accurate & not misleading |
| Deposits | (H) Violations of Regulation E's error resolution requirements, | Directed to come into compliance with Regulation E |

| | | |
|---|---|---|
| | including delays in communications and failure to investigate claims | |
| Deposits | (H) Deceptive statements about coverage of overdraft protection | Directed to cease misrepresenting overdraft protection products |
| Mortgage origination | (H) Failure to fully comply with Know Before You Owe mortgage rule (lack of documentation, incomplete disclosures) | Reimbursement to affected consumers, corrective actions depending on the cause of the harmful act |
| Mortgage origination | (H) Failure to reimburse unused service deposits | Refunds to affected consumers |
| Mortgage origination | (H) Arbitration language in residential loan documents, in violation of Regulation Z | Directed to remove the language |
| Mortgage servicing | (H) Failed to fully complete loan modification applications, accepted incomplete applications | Directed to implement procedures that would ensure servicers obtain all available documents & information for applications |
| Mortgage servicing | (H) Broad waivers of rights in loss mitigation agreements | Directed to remove all waivers from agreements |
| Remittances | (H) Failed to treat int'l mobile top-ups and bill payments over $15 as remittance transfers | Directed to include disclosures and compliance management with these transactions |
| Mortgage servicing | (H) Servicers' billing failed to give total charges on statements | Directed to include this info on periodic statements |
| Payday loans | (H) Repeated collection calls to workplace or other third parties | Remedial & corrective actions under review |
| Payday loans | (H) Misrepresentations re: actions collectors would take if not paid (in-person visits, etc.) | Remedial & corrective actions under review |
| Payday loans | (H) Misrepresentations about loan products (availability, competitor comparisons, online applications) | Directed to revise marketing materials & remove misleading information |
| Payday loans | (H) Using borrower references to market loans to them or attempt collections | Directed to ensure disclosures include full use of references |
| Payday loans | (H) Unauthorized debits on borrowers whose loans were already paid | Remedial & corrective actions under review |
| Mortgage servicing | (H) Failed to provide borrowers with foreclosure protections | Directed to pay $1.15M to harmed borrowers |

## April 2017

| Industry | Act | CFPB Action |
|---|---|---|
| Mortgage servicing | (H) Failed to request all documents needed for loss mitigation programs, then denied applications that were missing documents | Directed to review and strengthen policies & procedures |
| Mortgage servicing | (H) Failed to timely register loss mitigation applications, causing consumers to lose foreclosure protections | Directed to remediate consumers & strengthen policies for processing and registering applications |
| Mortgage servicing | (H) Paid consumers' insurance premiums with other consumers' escrow funds | Directed to strengthen policies regarding how escrow funds are used |
| Mortgage servicing | (H) Issued periodic statements without fully itemized charges | Directed to provide specific descriptions |
| Student loan servicing | (H) Failed to remediate borrowers for wrong deferment terminations, resulting in greater fees and interest | Directed to conduct audit to locate affected accounts for remediation |
| Student loan servicing | (H) Deceptive statements regarding interest during deferment periods | Directed to conduct audit to locate affected accounts for remediation |
| Credit bureau | (H) Falsely reported that credit scores sold to consumers were the same seen by lenders | Directed to truthfully represent credit scores and pay $3 million civil penalty |
| Mortgage servicing | (H) Businesses paid for referrals for mortgage services | Ordered to pay $4 million civil penalty |
| Mortgage servicing | (H) Did not notify consumers of foreclosure relief options | Ordered to pay $21.4 million in remediation to consumers, and $7.4 million in civil penalties |

## Consumer Reporting Special Edition (March 2017)

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting | (P) Strengthened policies & systems for data governance & handling consumer info | |
| Consumer reporting | (P) Developed systems to track patterns and trends in consumer reports and possible errors | |
| Consumer reporting | (P) Greater monitoring of data from outside furnishers, including ceasing to accept data from furnishers who do not meet | |

| | | |
|---|---|---|
| | standards | |
| Consumer reporting | (H) Reseller CRCs used systems with programming errors that introduced errors into data | Directed to review & strengthen accuracy procedures |
| Consumer reporting | (P) Increased use of tech systems, call scripts, training for dispute handling | |
| Consumer reporting | (H) Failed to review all consumer dispute documentation | Directed to revise policies to ensure all consumer information is considered |
| Consumer reporting | (H) Failed to give timely or clear notice of dispute investigation results | Directed to state results of investigations quickly and clearly |
| Consumer data furnishing | (H) Weak data oversight & monitoring | Directed to address system weaknesses |
| Consumer data furnishing | (H) Failed to have clear and reasonable written policies | Directed to develop such policies |
| Consumer data furnishing | (H) Failed to maintain full documentation and records | Directed to retain dispute documentation for a reasonable amount of time |
| Consumer data furnishing | (H) Reported consumer info that furnisher knew was incorrect | Directed to correct the data |

**General market observations:**

- Overall CRCs have made advances to promote greater accuracy, oversight of furnishers, and enhancements to dispute resolution
- Continued improvements are necessary; many CRCS lack clear incentives to do better and under-invest in accuracy

**October 2016**

| Industry | Act | CFPB Action |
|---|---|---|
| Auto loan origination | (H) Weak complaint systems, lacking policies & training | Directed to implement & strengthen CMS |
| Auto loan servicing | (H) Held borrowers' personal property found in repossessed cars and charging fees for storing the property | Directed to stop charging for storing property or refusing to return property |
| Debt collection | (H) Charged unlawful convenience or collections fees | Remedial & corrective actions |
| Debt collection | (H) Made false statements to get consumer info or collect debts, including impersonating consumers | Remedial & corrective actions |
| Debt collection | (H) Unlawful communication with third party about the debt | Remedial & corrective actions |
| Debt collection | (H) Failed to train employees to record & analyze dispute records | Directed to develop stronger policies & training for dispute records & analysis |
| Debt collection | (H) Failed to investigate FCRA | Remedial & corrective actions |

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| | disputes | |
| Debt collection | (H) Failed to give consumers authorization terms for recurring electronic fund transfers | Directed to strengthen policies & employee training |
| Debt collection | (P) Had a well-organized, monitored compliance system with trained employees & call scripts | |
| Mortgage origination | (H) Failed to verify total monthly income as part of ability to pay | Directed to revise policies to ensure proper verification |
| Mortgage origination | (H) Failed to provide timely disclosures after applications | Directed to strengthen monitoring and compliance systems |
| Mortgage origination | (H) Failed to ensure loan originators were properly licensed under the SAFE Act | Directed to discontinue using unlicensed loan originators |
| Student loan servicing | (H) Denied or failed to approve income-driven repayment plan applications | Directed to remedy harmed borrowers and follow up all applications |
| Student loan servicing | (H) Failed to provide borrowers choice in payment allocation | Directed to hire consultants to improve communications with borrowers about payment allocation |
| Student loan servicing | (H) Failed to notify borrowers that interest would accrue during paid-ahead periods | Directed to hire consultants to improve communications with borrowers about paid-ahead periods |
| Student loan servicing | (H) Data & systems errors that skew interest payments | Directed to remediate consumers & fix data errors |
| Fair lending | (H) Marketed different or fewer products to non-English speaking consumers | Revised marketing materials to be more comprehensive in Spanish |
| Fair lending | (H) Failed to provide info about any debt-relief offers to non-English speaking consumers | Directed to remediate affected consumers and begin communicating with them in their preferred language |
| Fair lending | (H) Deceptive marketing in Spanish of products; subsequent info provided only in English | Directed to remediate affected consumers and cease all deceptive marketing/communications |
| Credit (bank) | (H) Deceptive marketing and illegal billing of add-on products | Required to end unfair billing, pay $27.75 million in relief and $4.5 million civil penalty |
| Student loan servicing | (H) Failed to communicate with consumers; charged illegal fees | Required to pay $410 K to borrowers & $3.6 million civil penalty, and improve billing & processing procedures |

[Mortgage Servicing Special Edition (June 2016)]

| Industry | Act | CFPB Action |
|---|---|---|
| Mortgage servicing | (H) Failed to notify customers about options to avoid foreclosure | Cited violating servicers & directed them to remediate borrowers and monitor communications platforms. New rules standardize servicer receipt of loss mitigation applications. |
| Mortgage servicing | (H) Deceptive notices regarding foreclosure in loss mitigation programs. | Remedial & corrective actions are under review. |
| Mortgage servicing | (H) Deceptive notices regarding fees & charges in loss mitigation programs | Cited for deceptive & abusive practices, required servicers to provide accurate info on fee assessment. |
| Mortgage servicing | (H) Delayed sending loss mitigation offer letters until deadlines were imminent or past | Cited for unfair practice; remedial & corrective actions under review |
| Mortgage servicing | (H) Changed loss mitigation agreements after borrowers had signed | Directed to take remedial & corrective actions |
| Mortgage servicing | (H) Treated borrower gross income as net income when evaluating loss mitigation applications | Cited for violating Regulation X; directed servicer to train personnel on guidelines for income reporting |
| Mortgage servicing | (H) Failed to convert trial loan modifications to permanent ones after trial period ended, charging borrowers higher interest | Directed to take remedial & corrective actions |
| Mortgage servicing | (H) Deceptive disclosures of when deferred mortgage payments would be collected | Directed to clearly disclose the interest accrual and payment schedule for deferred payments |
| Mortgage servicing | (H) Sent incorrect foreclosure warnings to customers who were current on payments | Directed to cease sending these letters |
| Mortgage servicing | (H) Required borrowers to sign loan modification/mortgage repayment agreements that included consumer rights waivers | Directed to remove this language from agreements |
| Mortgage servicing | (H) Loss mitigation denials did not give specific or correct reasons for denials, and did not explain borrowers' right to appeal | Directed to state the specific reason borrowers were denied and explain appeal options |
| Mortgage servicing | (H) Transferring loans/documents between | Directed transferees to develop policies & trainings to ease loan transfers and quickly |

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| | incompatible platforms meant that some information was lost and some loan agreements not honored | identify loan agreements |
| Mortgage servicing | (P) Transferee servicers began using new technological tools & platforms to maintain loan data during transfers | Directed servicers to continue and expand use of loan data tools |

**General market observations:**

- CFPB has increased supervision of servicers' loss mitigation and loan modification communications with consumers, who previously were often unaware of options other than foreclosure or had received deliberately confusing, deceptive, or late communications from servicers.
- Servicers have improved in actively reviewing and analyzing complaints against themselves for instances of law violations, created new complaint departments/personnel, and even designated primary contacts for state and federal regulators to address complaints.

**Summer 2016**

| Industry | Act | CFPB Action |
|---|---|---|
| Auto loan origination | (H) Deceptive marketing of gap-coverage products | Under review |
| Auto loan origination | (H) Generally weak compliance management system | Remedial & corrective action |
| Debt collection | (H) Sold debts that were in bankruptcy, fraudulent, or already settled | Directed to redress affected consumers and increase oversight of debt records |
| Debt collection | (H) False and misleading statements about repayment options | Directed to find out why collectors made false statements and determine appropriate corrective action |
| Mortgage origination | (H) Incorrect calculations of finance charges | Review procedures to be sure charges are calculated correctly |
| Mortgage origination | (H) Referrals did not fit the rules of affiliated business arrangements, requiring unnecessary affiliated services | Directed to revise disclosures to avoid improper referrals |
| Mortgage origination | (H) Failed to provide adverse action notices | Directed to revise training and policies to ensure disclosures/notices are provided |
| Mortgage origination | (H) Failed to properly disclose interest on interest-only loans | Directed to review whether payments were correctly applied to interest and principal |
| Mortgage origination | (H) Weak or otherwise inadequate complaint management systems | Directed to enhance monitoring & corrective actions and to revise training, policies, & procedures for compliance |
| Payday loans | (H) Loan agreements included a vaguely-defined range of | Directed to specify an acceptable range of transfer amounts, or notify consumers each |

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|---|---|---|
| | amounts to be debited from consumers' accounts, rather than individual notice of transfers | time a transfer is initiated |
| Fair lending | (H) Recorded conditional approvals of loan applications as denials if applicants withdrew | Directed to review recording practices and resubmit HDMA Loan Application Register if there were many errors |
| Debt sales | (H) Gave inflated APR info on credit card accounts sold to debt buyers, who used the inflated APRs when trying to collect | Ordered to pay $5 million in customer relief and $3 million in penalties |

**March 2016**

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting | (H) Furnishers of consumer info failed to have written policies/procedures regarding info accuracy & verification | Directed to establish & strengthen such policies/procedures |
| Consumer reporting | (H) Failed to timely update outdated or incorrect information | Directed to update information for all accounts |
| Consumer reporting | (H) CRAs failed to ensure & maintain data quality | Directed to develop monitoring for data quality |
| Debt collection | (H) Failed to honor consumers' cease-communications requests | Directed to improve training for handling cease-communications requests |
| Debt collection | (H) Threatened garnishment against consumers not eligible for garnishment (student loans) | Directed to investigate why employees made threats & to stop in future |
| Mortgage origination | (H) Failed to maintain written policies/procedures for loan origination | Directed to establish such policies |
| Remittance transfers | (H) Gaps in compliance systems resulting in inaccurate communications with consumers | |
| Remittance transfers | (H) Inaccurate or incomplete disclosures & receipts | Cited for violation of Remittance Rule |
| Remittance transfers | (H) Deceptive statements re: conditions to receive funds | Directed to cease making deceptive statements |
| Remittance transfers | (H) Transfer fees resulted in no-money-received transactions | Not a violation, but providers should be sure consumers are aware of this |
| Student loan servicing | (P) Restructured payment allocations to be most beneficial to borrowers | |
| Student loan servicing | (H) Auto-default clauses in case of bankruptcy or death – loan becomes immediately due | Directed to immediately cease this practice |
| Student loan | (H) Failed to disclose that | Directed to make this clear in disclosures |

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|---|---|---|
| servicing | forbearance could mean loss of cosigner release | |
| Student loan servicing | (H) Servicing conversion errors result in inaccurate higher interest rates | Directed to reimburse affected consumers |
| Student loan servicing | (H) Weak or confused policies & procedures for furnishing consumer data, ensuring accuracy, etc. | Directed to strengthen policies/procedures |
| Fair lending | (H) Excluded borrowers from debt relief offers because of national origin | Paid $201 million in redress to consumers |
| Payday loans | (H) Illegal debt collection practices | Ordered to refund $7.5 million to consumers and pay $3 million civil penalty; barred from future in-person debt collection |
| Mortgage loan origination | (H) Discriminatory redlining | $25 million in direct subsidies to qualified consumers in affected neighborhoods, $2.25 million in community programs, and $5.5 million civil penalty |

**General market observations:**

- The accuracy of consumer information given to consumer reporting agencies needs to be improved across all industries/product areas

Winter 2015

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting agencies | (P) Improved dispute handling systems in response to CFPB directives | |
| Consumer reporting agencies | (H) Failed to forward all consumer information submitted in disputes | Directed to strengthen training for handling consumer information |
| Debt collection | (H) Made false representations re: loan rehabilitation and legal action taken against borrowers | Remedial & corrective actions under review |
| Debt collection | (H) False statements re: borrowers' ability to change or cancel ACH payments | |
| Deposits | (H) Failed to disclosure changes in overdraft calculation and fee assessment | |
| Mortgage origination | (H) Staff received compensation based on terms of specific transactions | Redirected transaction compensation to proper parties |
| Mortgage | (H) Failed to provide revised | Refunded consumers |

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|---|---|---|
| origination | GFEs, resulting in greater settlement charges to consumers | |
| Mortgage origination | (H) Failed to timely provide Good Faith Estimates (GFEs) | Appropriate corrective action |
| Mortgage origination | (H) Advertised products without required disclosures | Appropriate corrective action |
| Mortgage origination | (H) Failed to timely and properly notify applicants of action taken on applications | Directed to review denied applications for compliance issues |
| Mortgage origination | (H) General deficiencies in compliance management systems & audits | Directed to address weaknesses in systems |
| Fair lending | (H) Declined applicants who relied on non-employment income | Directed to identify & remediate wrongly denied applicants |

**Fall 2015**

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting agencies | (H) Did not have written procedures or training ensuring accuracy of consumer data furnished to CRAs | Directed to standardize policies/system used for provision of data to CRAs |
| Debt collection | (H) Failed to state that calls were from a debt collector | Directed to train employees to properly identify themselves |
| Debt collection | (H) Failed to comply with consumer requests re: time and means of communication | Directed to train employees to properly note consumer communication requests |
| Debt collection | (H) Inadequate policies & procedures for consumer data furnished to CRAs under Reg V | Directed to develop stronger policies |
| Mortgage origination | (H) Failed to keep charges at settlement reasonably below the good faith estimate for the origination charge | Required to provide restitution for harmed borrowers, & develop procedures for documenting circs. that would cause charges to increase |
| Mortgage origination | (H) Inaccurate completion of HUD-1 settlement statements | Directed to provide restitution to harmed consumers, and strengthen oversight of statements |
| Mortgage origination | (H) Failed to provide loan applicants with homeownership counseling services | Directed to strengthen compliance management system |
| Mortgage origination | (H) Failed to provide fully accurate loan disclosure statement after application | Directed to strengthen compliance management system |
| Mortgage origination | (H) Failed to provide adequate consumer financial privacy | Directed to strengthen compliance management system |

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|---|---|---|
| | notices | |
| Mortgage origination | (H) Failed to properly register employees involved in loan origination with NMLSR | Directed to identify all such employees & get them properly registered |
| Mortgage origination | (H) Failed to reimburse borrowers for understated APRs and other charges | Directed to reimburse harmed borrowers and upgrade systems to identify borrowers owed money |
| Mortgage servicing | (H) Failed to timely & completely communicate with borrowers re: loss mitigation options, application status, deceased borrowers' successors | Directed to establish policies & procedures compliant with Regulation X |
| Mortgage servicing | (H) Failed to properly evaluate loss mitigation applications | Directed to allow borrowers time to submit all required documents before evaluating applications |
| Mortgage servicing | (H) Included misleading waivers designed to make borrowers think they could not bring claims against servicers | Directed to remove language from loan agreements |
| Mortgage servicing | (H) Failed to timely terminate mortgage insurance, resulting in greater cost to borrowers | Directed to reimburse borrowers and revise termination policies |
| Mortgage servicing | (H) Charged illegal fees for payments made over the phone | Directed to only collect phone fees when authorized by law |
| Mortgage servicing | (H) Failed to send timely or accurate debt validation letters | Directed to review debt validation policies to ensure correct communications |
| Student loan servicing | (H) Did not allow borrowers a choice in allocating partial payments, causing higher fees | Directed to change allocation process and give comprehensive disclosures about allocation |
| Student loan servicing | (H) Auto payment system issues (early debits, fees when payment falls on a non-business day) | Directed to review auto payment system & cease charging unwarranted fees |
| Student loan servicing | (H) Deceptive statements re: dischargeability of student loans in bankruptcy | Directed to cease deceptive statements |
| Student loan servicing | (H) Deceptive statements re: late fees charged by DOE | Directed to cease stating that DOE charges late fees |
| Student loan servicing | (P) Clear communication with borrowers re: balance owed during a paid-ahead period | |
| Student loan servicing | (H) Failure to verify and audit consumer data provided to CRAs | Directed to strengthen policies & procedures |
| Fair lending | (H) Denied minority loan applicants more frequently than similarly situated whites | Cited for ECOA violation & required to provide relief |
| Auto loans | (H) Charged minority borrowers | Required to pay $80 million in damages |

| | | |
|---|---|---|
| | higher interest | |
| Credit cards | (H) Deceptive marketing & billing of credit card add-ons | Required to refund consumers $700 million and pay $35 million in civil penalties |
| Student loan servicing | (H) Overstated minimum payments & denied info needed for tax benefits | Ordered to refund $16 million to consumers & pay $2.5 million civil penalty |
| Mortgage servicing | (H) Deceptive marketing of mortgage payment program | Ordered to return $33.4 million in fees to consumers & pay $5 million civil penalty |
| Mortgage servicing | (H) Did not honor modifications in transferred loans | Paid $1.5 million in restitution to consumers |
| Deposit bank | (H) Failed to credit full deposits to consumers' accounts | Required to pay $11 million in restitution and $7.5 million civil penalty |
| Credit cards | (H) Deceptive marketing of add-ons | Required to pay $3 million in restitution and $500K in civil penalties |

**Summer 2015**

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting agencies | (H) Policies were outdated; furnishers were not checked to be adhering to them | Directed to revise and maintain policies |
| Consumer reporting agencies | (H) No quality control policies to test consumer data for accuracy | Directed CRAs to establish quality controls |
| Debt collection | (H) Inadequate compliance management systems | Directed to strengthen policies and trainings, and remedy management weaknesses |
| Debt collection | (H) Failed to investigate disputes | Directed to begin tracking and investigating reported disputes |
| Debt collection | (H) Failed to have written policies on furnishing consumer data to CRAs | Directed to develop such policies |
| Student loan servicing | (H) Deceptive statements about tax deductibility of student loan interest | Directed to remove deceptive language |
| Student loan servicing | (H) Did not provide complete FRCA adverse action notices | Remedial & corrective actions |
| Mortgage origination | (H) Failed to maintain written policies in compliance with the Loan Originator Rule | Directed to develop such policies |
| Mortgage origination | (H) Failed to timely provide applicants with homeownership counseling services | Corrected |
| Mortgage origination | (H) Failed to timely or fully provide a Good Faith Estimate | Directed to strengthen training and monitoring procedures |
| Mortgage | (H) Failed to fully complete | Directed to refund consumers and |

| | | |
|---|---|---|
| origination | HUD-1 settlement statements | strengthen training |
| Mortgage origination | (H) Loan agreements included misleading waivers of notices and demands | Directed to remove language from agreements |
| Mortgage servicing | (H) Misleading or inadequate communication with consumers re: loss mitigation applications | Directed to remediate consumers and fix servicing platforms |
| Mortgage servicing | (H) Loss of information when transferring loans, resulting in higher interest and fees | Directed to develop policies & audits to maintain consumer information during transfers |
| Mortgage servicing | (H) Sent foreclosure notices to borrowers already approved for trial modifications | Directed to track foreclosure notices more carefully |
| Mortgage servicing | (H) Failed to send clear periodic statements of transaction history | Directed to send such statements |
| Mortgage servicing | (H) Collected unearned premiums on mortgage insurance after failing to automatically terminate it | Directed to remediate affected consumers |
| Fair lending | (H) Denied loan applications from borrowers with non-employment income | Provided borrowers financial remuneration and opportunity to reapply after unfair denial |
| Mortgages | (H) Paid managers based on interest rates of loans they closed | Paid $228K in civil penalties |
| Deposit banks | (H) Charged illegal overdraft fees | Directed to fully refund all consumers; fined $7.5 million |

**Fall 2014**

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting agencies | (H) Failed to notify consumers that investigations were underway or complete, and gave inconsistent information on dispute reporting | Directed to strengthen policies and procedures for consumer communication |
| Debt collection | (H) Charged illegal convenience fees | Directed to identify and reimburse harmed consumers |
| Debt collection | (H) Made false threats of litigation | Directed to cease making threats |
| Debt collection | (H) Gave prohibited disclosures to third parties | Directed to conduct remedial training for employees and monitor collections agents |
| Debt collection | (H) Inflated APRs when selling debts | Remedial & corrective action |
| Deposits | (H) Delayed in investigating reported errors | |
| Deposits | (H) Denied consumers' error | Directed to develop policies in line with |

| | | |
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| | claims, citing consumer negligence | Reg. E |
| Deposit | (H) Did not give consumer documentation supporting denial of error claim | Directed to correct notices of denial |
| Mortgage servicing | (H) Lacked policies for oversight of service providers | Directed to strengthen policies |
| Mortgage servicing | (H) Failed to timely convert trial loan modifications to permanent ones, resulting in higher interest | Determined unfair practices |
| Mortgage servicing | (H) Changed terms of loan modification agreements without warning | Determined unfair practices |
| Student loan servicing | (H) Allocated partial payments to maximize late fees | Cited as unfair practices |
| Student loan servicing | (H) Misrepresented minimum payments to include interest on deferred loans | |
| Student loan servicing | (H) Charged late fees on loans still in grace period | Directed to stop charging these fees |
| Student loan servicing | (H) Failed to provide accurate tax info for deducting loan interest payments, required additional certification that money was used for education | Found to be deceptive |
| Student loan servicing | (H) Misrepresented that student loans are not dischargeable in bankruptcy | Directed to clarify communications and cease these statements |
| Student loan servicing | (H) Routinely autodialled borrowers late at night or early in the morning | Directed to improve internal controls to stop inconvenient autodialled calls |
| Fair lending | (H) Advertised free checking accounts without disclosing eligibility & activity requirements | Ordered to pay $2.9 million to consumers and $200K in civil penalties |
| Mortgage servicing | (H) Denied and delayed loss mitigation, foreclosure relief, loan modification applications | Ordered to pay $27.5 million to consumers and $10 million in civil penalties; barred from acquiring default loan portfolios until entity shows compliance |
| Credit/bank | (H) Illegal billing of add-on products and services consumers did not receive | Ordered to pay $48 million to consumers and $9 million in civil penalties |
| Payday loans | (H) Used illegal debt collection practices to pressure borrowers into taking out more loans | Ordered to pay $5 million in refunds and $5 million in civil penalties |

## Auto Lending Special Edition (Summer 2014)

| Industry | Act | CFPB Action |
|---|---|---|
| Auto lending | (H) Discretionary pricing that resulted in discrimination against minority borrowers | Redress for consumers, maintain strong policies on discretionary pricing to avoid future discrimination |
| Auto lending | (P) Limited discretionary pricing adjustment to reduce discrimination against borrowers | |
| Auto lending | (P) Developed dealer compensation not based on discretionary markup, also to reduce discrimination | |

**General market observations:**

- After supervisory actions targeting discriminatory lending, some lenders are more strictly monitoring dealers and, when seeing evidence suggesting discrimination, are implementing limits to discretionary pricing adjustments or taking other actions to manage or reduce risks of discrimination
- So far maintaining strong compliance management, imposing strict caps on discretionary pricing adjustments, and/or adopting non-discretionary dealer compensation models has looked like a good way to limit fair lending risk

## Spring 2014

| Industry | Act | CFPB Action |
|---|---|---|
| Consumer reporting agencies | (H) Insufficient oversight of complaint management systems | Directed to establish more active authority over CMS |
| Consumer reporting agencies | (H) Failed to exercise oversight of third-party service providers | Directed to establish policies to be sure service providers are adequately trained, complying with federal law, etc. |
| Consumer reporting agencies | (H) Failed to monitor & track consumer complaints and documentation | Directed to establish a complaint management process |
| Consumer reporting agencies | (H) Refused to accept online or phone-filed disputes if consumers did not have a recent CRA report or disclosure | Directed to stop requiring this before filing disputes |
| Debt collection | (H) Inadequate and outdated complaint management systems | Directed to update and strengthen CMS |
| Debt collection | (H) Failed to assess debt buyers' compliance with federal law | Directed to carefully examine business relationships with other entities |
| Debt collection | (H) Sold cancelled debts to debt buyers | Directed to remediate harmed consumers, and establish new procedures to keep this from happening |
| Debt collection | (H) Deleted disputed accounts | Directed to investigate going forward |

| | | |
|---|---|---|
| | instead of investigating dispute | |
| Debt collection | (H) Failed to get written authorization before starting recurring transfers from consumers' accounts | Directed to fully comply with Reg. E when setting up payment plans |
| Debt collection | (H) Harassing phone calls to borrowers | |
| Debt collection | (H) Misleading claims of debts owed that entities could not back up in court | |
| Payday loans | (H) Ineffective compliance management programs | Directed to strengthen policies, training, & oversight |
| Payday loans | (H) Improper collections calls (to references, third parties, after do-not-call requests, etc.), in-person visits | Cited for unfair and abusive practices, directed to cease violations |
| Credit cards | (H) Deceptive marketing and illegal billing of credit card add-on products | Ordered to pay $727 million to consumers and $20 million in civil penalties; temporarily barred from marketing add-on products |

**Winter 2013**

| Industry | Act | CFPB Action |
|---|---|---|
| Mortgage servicing | (H) Failed to honor existing loan modifications after a servicing transfer | Directed to remediate consumers and revise policies relating to servicing transfers |
| Mortgage servicing | (H) Required borrowers to waive existing claims in order to apply for loan modifications | Directed to cease using waivers |
| Mortgage servicing | (H) Deceptive marketing regarding money saved through biweekly payment programs | Directed to cease making deceptive statements |
| Mortgage servicing | (H) Failed to verify data provided to consumer reporting agencies | Directed to strengthen reporting processes to avoid giving false information |
| Mortgage servicing | (H) Failed to honor deferred payment plan for a soldier on active duty, charged fees | Directed to revise policies for greater oversight of payment plans |
| Mortgage servicing | (H) Failed to honor borrowers' requests to contact attorneys for future collections attempts | Directed to implement training & monitoring to avoid recurrence |
| Credit services | (H) Charged consumers for credit monitoring products they did not receive | Refunded $309 million to consumers, directed to pay $20 million in civil penalties |
| Payday loans | (H) Robo-signed court | Refunded $14 million to consumers, |

| | | |
|---|---|---|
| | documents; overcharged servicemembers & their families | directed to pay $5 million fine |
| Auto loans | (H) Charged minority borrowers higher interest rates | Paid $80 million to consumers, $18 million in penalties, established new compliance system |
| Credit cards | (H) Unfair billing practices & deceptive marketing of add-on products | Paid $59.5 million to consumers, $9.6 million in civil penalties, $6.6 million in other fines |

## Summer 2013

| Industry | Act | CFPB Action |
|---|---|---|
| Nonbanks | (H) Less likely than banks to have any kind of complaint management system | Directed entities to establish CMS |
| Mortgage servicing | (H) Carelessness in transferring loans – lack of review or organization of documents, no disclosures | Directed to carefully review and organize all documents received in transfers |
| Mortgage servicing | (H) Changes in payment process without notice to borrowers, resulting in late payments | Directed to remediate affected borrowers and provide notice going forward |
| Mortgage servicing | (H) Delayed and disorganized loss mitigation process | Directed to review entire loss mitigation process for efficiency and accuracy, as well as specific fees and charges to borrowers |
| Fair lending | (H) Failed to provide timely adverse action notice | Directed to review CMS to ensure timing requirements are met |
| Auto loans | (H) Deceptive marketing and lending targeting active-duty military | Directed to reimburse harmed consumers, stop deceptive practices, improve disclosures |

## Fall 2012

| Industry | Act | CFPB Action |
|---|---|---|
| Financial institutions (unspecified) | (H) Institutions had nonexistent or weak compliance management systems | Directed institutions to establish CMS and adopt policies & procedures to ensure compliance with consumer law |
| Financial | (H) Failed to properly oversee third-party service providers | Directed to ensure servicers are complying with the law |
| Credit cards | (H) Deceptive product marketing | Directed to end such marketing, be audited, remediate affected consumers, and pay civil penalties |
| Mortgage origination | (H) Failed to completely disclose interest rates & payment schedules | Directed to follow the law on disclosures |