



If you would like assistance preparing for a CFPB examination or determining whether your existing documents, policies, and procedures are compliant with federal consumer protection laws, please contact Suzanne Garwood at 202.344.8046.

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CFPB: OCTOBER ROUNDUP

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Although credit card issuers remained on the Bureau's hot seat in October, the Bureau proved to be active in a number of other areas. Specifically, the agency articulated its supervisory oversight over debt collectors and issued a number of reports on topics ranging from student loans to the important and systemic supervisory issues it has identified over the last few years. The Bureau also issued regulations to amend Regulation Z, which may help stay-at-home spouses to better access credit.

CREDIT CARDS

Last month, the CFPB issued yet another enforcement order against a credit card issuer. However, unlike the Bureau's previous orders, this most recent order was not focused on add-on products. Rather, the CFPB identified five specific issues for the issuer and its affiliates to address.

1. **Misleading Marketing Materials.** The issuer allegedly sent misleading offers to some of its credit card consumers, which led them to believe that, if they met the terms of the offer, they would receive \$300 along with bonus points.
2. **Age Discrimination.** The issuer allegedly failed to design and implement a scoring system consistent with the requirements set forth under the Equal Credit Opportunity Act when issuing credit on the basis of age.
3. **Late Fees.** The issuer allegedly imposed late fees in excess of those amounts permitted by law.
4. **Credit Reporting.** The issuer allegedly failed to report consumers' disputes of the issuer's credit reporting to the credit bureaus.



5. **Debt Collection.** Certain of the issuer's affiliated companies allegedly utilized deceptive practices to collect outstanding debt. Specifically, consumers were allegedly told that if they paid off old debt, the payment would be reported to credit bureaus and could improve their credit scores even though the issuer was not reporting the payments and the debts were so old that even if they had tried to report them, the payments may not have appeared on the consumers' credit reports or affected their credit scores.

As a result of these allegations, the Bureau fined the issuer and its affiliates over \$14 million in civil money penalties, and other regulators will impose an additional \$13.4 million penalty. These monetary fines are in addition to ongoing compliance requirements via consent agreements that an independent auditor will monitor.

In addition to the fines, the issuer will return approximately \$85 million to almost 250,000 consumers. The issuer will return the money directly into the accounts of the affected consumers. If the consumer no longer holds the issuer's card, the issuer will mail a check or credit any outstanding balance. The CFPB describes this action as "a message to all entities that provide consumer financial products or services – that there are consequences for violating the law."

SUPERVISORY MANUAL

On October 31, the Bureau published a second version of its *Supervision and Examination Manual*. For the most part, this version includes updated citations for those laws that were transferred to the CFPB's authority last year and reflects the examination procedures for industries that were created and published subsequent to the initial publication of the Manual.

Thus, in its current form, the Manual is 924 pages long and provides for examination procedures for the following "products":

- Consumer reporting (for those entities that constitute larger participants);
- Mortgage origination;
- Mortgage servicing; and
- Small dollar, short-term lenders.

A copy of the Manual is available here:

<http://www.consumerfinance.gov/guidance/supervision/manual/>

The next version of the Manual will contain two important additions.

Examination Procedures for Debt Collectors

Beginning in 2013, for those debt collectors that are "larger participants" in the industry, the CFPB will have direct supervisory authority. Each examination of a debt collector will cover one or more of the following topics as applicable:

- **Entity Business Model.** Assesses whether the entity is a debt collector, as well as vendor and affiliate relationships.
- **Communications in Connection with Debt Collection.** Examines communications with consumers for unfair, deceptive, or abusive practices.



- **Information Sharing, Privacy, and Interactions with Consumer Reporting Agencies.** Addresses requirements relating to privacy and information sharing.
- **Consumer Complaints, Dispute Resolution, and Debt Validation.** Assesses: (i) whether complaints are resolved adequately and in a timely manner, (ii) whether they reflect any potential violations of Federal consumer financial law, and (iii) whether the entity has a process in place to analyze and address any underlying sources or systemic reasons for any law violations revealed by the complaints.
- **Payment Processing and Account Maintenance.** Addresses how consumers' payments are applied to their accounts and other account maintenance issues, including those associated with electronic fund transfers.
- **Equal Credit Opportunity Act.** Credit transactions include collection activities and need to comply with the Act's anti-discrimination provisions.
- **Litigation Practices, Repossession, and Time-Barred Debt.** Examines potential risks to consumers with respect to court actions.

The goals of these examinations are to:

- Assess the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, for its debt collection business;
- Identify acts or practices that materially increase the risk of violations of federal consumer financial laws in connection with debt collection;
- Gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of federal consumer financial laws; and
- Determine, in accordance with CFPB internal consultation requirements, whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

The examination procedure for debt collectors is available here:

<http://www.consumerfinance.gov/guidance/supervision/manual/>

Appeals of Supervisory Matters

The purpose of the appeals process is to promote a constructive supervisory relationship between the CFPB and the financial service providers it oversees.

More specifically, following an examination or targeted review, if a supervised entity disagrees with a less than satisfactory compliance rating (for example, a 3, 4, or 5 rating) or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter, the entity may appeal. An entity, however, may not appeal the following: (i) preliminary supervisory matters (including preliminary findings); (ii) CFPB decisions to initiate supervisory measures, such as requiring memoranda of understanding; enforcement actions, such as cease and desist orders; or (iii) referrals of information to other regulatory agencies. An entity may only appeal a finding once.

A supervised entity may submit a written appeal within 30 business days of the date of the email transmitting an appealable matter. The appeal request should include:

- A description of the issues in dispute, supporting information presented to examination staff, and any supporting information not presented previously to examiners, if any, including the reasons for not having presented it, and



recommendations for resolution;

- A summary of informal efforts made to resolve the dispute with examiners or other CFPB Supervision staff;
- A statement of whether the entity wants to make an oral presentation to the CFPB; and
- A statement that the entity's board of directors or principal(s) has authorized the filing of the appeal.

Within five business days of receipt, the appeal will be assigned to an appellate committee composed of one or more representatives from CFPB Headquarters Supervision management and at least two representatives from CFPB regional management who were not involved in the supervisory matter under appeal.

Upon conclusion of the review, the committee's findings will be summarized in a written decision approved by the Association Director that the CFPB expects would be issued 45 business days from the assignment of the appeal to the committee. The decision of the Associate Director is final and no further attempts to appeal will be accepted.

The appeals process is detailed here: <http://www.consumerfinance.gov/guidance/>

REPORTS

Supervisory Highlights: Fall 2012

On October 31, the Bureau published the first in a series of publications that will advise the industry of the significant issues that the CFPB has identified via its examinations.

Compliance Management Systems

The CFPB reminds the industry of the importance of a strong compliance management system. Without such a system, the CFPB warns that serious and systemic violations of federal consumer financial law are likely to occur.

In its examinations, the CFPB has found situations where the financial institution has articulated many elements of an appropriate compliance policy, but the policy was not followed.

This requirement also extends to third-party service providers. As such, financial institutions and their service providers must develop and implement a comprehensive program that ensures the service providers' compliance with consumer federal protection laws.

The CFPB has found instances where financial institutions have not established formal fair lending compliance systems, and in such instances, the CFPB has directed the institution to establish a program commensurate with the size and complexity of the financial institution.

Significant Violations

The CFPB identifies the following trends in significant violations:

- **Credit Cards.** Credit card lenders cannot, via third-party service providers: (i) misrepresent the cost of the payment protection product; (ii) enroll customers in a



program without their consent; (iii) mislead customers about the benefit of the product; (iv) tell customers they were required to purchase the product in order to receive full information about it; (v) retain, through similar practices, customers who attempted to cancel the product; and (vi) mislead customers about eligibility for payment protection benefits.

Credit card issuers are also reminded that they are required to conduct an ability to repay analysis on existing credit card accounts for all credit line increases. This includes contacting co-applicants when the borrower is under the age of 21.

- **Credit Reporting.** CFPB examiners have discovered one or more instances in which a financial institution's employees did not have sufficient training or familiarity of the FCRA to implement it properly. These deficiencies have resulted in: (i) a failure to communicate appropriate and accurate account information to the credit bureaus; (ii) failure to indicate when account information had been disputed by consumers; and (iii) inability to determine whether disputes had been fully investigated.
- **Mortgage Lending.** Examiners have found instances of significant non-compliance with RESPA and TILA. These lenders have been directed to implement appropriate policies, procedures, and monitoring to prevent recurrence of the violations, and to ensure that any third-party vendors, including mortgage brokers are identified and included in the financial institution's oversight program.

The CFPB also expects lenders to have strong systems in place to ensure HMDA compliance. Weak HMDA compliance may be indicative of a weak compliance management system.

The Supervisory Highlights are available here:

<http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2012/>

Servicing and Service Members

In its report, the CFPB identifies a range of challenging issues for service members with student loans, including:

- **Less favorable repayment plans.** Many service members postpone loan payments through deferment or forbearance, which could cost them tens of thousands of dollars over the lifetime of their loans. Providing information about alternative repayment options could help avoid a significant amount of unnecessary debt.
- **Service members Civil Relief Act.** Many service members may not have access to the full range of benefits afforded to them due to servicing errors and complex eligibility requirements. The student loan servicing complaints and stories received by the Bureau raise concerns that problems confronted by military borrowers are not confined to the mortgage market.

The full report is available here: <http://www.consumerfinance.gov/reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform/>

In light of these concerns, the CFPB is partnering with the Department of Defense to get the word out about military student loan benefits and consumer protections. The agencies have developed a "Guide for Service members with Student Loans" with information on



repayment options, which can be found here:

<http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-report-finds-servicemembers-face-hurdles-in-accessing-student-loan-benefits/>

Annual Report of the CFPB Student Loan Ombudsman

At present, outstanding student loan debt is now over \$1 trillion, with private student loans accounting for more than \$150 billion, and there are at least \$8 billion of private student loans in default, representing more than 850,000 individual loans.

In less than seven months, the CFPB has handled approximately 2,900 private student loan complaints, where the median amount of relief reported to complaining consumers was \$1,572. Most of the complaints related to loan servicing and loan modification issues.

The complaints and input received by the CFPB resemble many of the same issues experienced by mortgage borrowers, such as improper application of payments, untimeliness in error resolution, and inability to contact appropriate personnel in times of hardship. Many borrowers feel overburdened by paperwork and other requirements to activate incentives marketed prior to loan origination.

The Ombudsman's full report can be found here:

<http://www.consumerfinance.gov/reports/annual-report-of-the-cfpb-student-loan-ombudsman/>

COMPLAINT DATABASE

Last month, the Bureau added credit reports to its growing list of complaint databases (credit cards, mortgage loans, bank accounts and services, private student loans, vehicle, and other consumer loans). The types of complaints that the Bureau expects to receive include:

- Incorrect information on a credit report;
- Investigations by consumer reporting agencies;
- Improper use of a credit report;
- Being unable to get a copy of a credit score or file; and
- Problems with credit monitoring or identity protection services.

Before filing a complaint with the CFPB, consumers should begin by filing a dispute with the credit reporting agency itself.

Consumers can submit their credit reporting complaints here:

<https://help.consumerfinance.gov/app/creditreporting/ask>

Also, consumers can access a snapshot report of how the Bureau's Consumer Response Unit handles complaints here: <http://www.consumerfinance.gov/reports/consumer-response-a-snapshot-of-complaints-received/>

REGULATIONS

Credit CARD Act Revisions

The Bureau is proposing to reverse a regulation adopted by its predecessor, the Federal



Reserve Board, related to providing credit card credit to otherwise credit-worthy people who do not have their own income independent of their spouses. At present, Regulation Z requires a credit card issuer to evaluate a consumer's ability to make payments based on his or her independent income or assets before opening a new account. But according to the Census Bureau, over 16 million married people do not work outside the home. That means for approximately one out of three married couples, one spouse could be denied credit under the current rules.

To rectify this situation, the Bureau is proposing to permit a consumer to rely on accessible income from a third party, including his or her partner, when applying for a credit card. Under the proposal, the accessible income must be money that the consumer has a reasonable expectation of being able to use, and it applies to all credit card applicants who are at least 21 years old, whether married or unmarried.

The proposed rule is available here: <http://www.consumerfinance.gov/pressreleases/cfpb-proposes-making-it-easier-for-stay-at-home-spouses-and-partners-to-get-credit-cards/>

Remittances

To assist small businesses with complying with the new remittance rule, the Bureau released a small business compliance guide: http://files.consumerfinance.gov/f/201210_cfpb_small_business_guide.pdf. The purpose of the guide is to provide an easy-to-use summary of the remittance transfer rule and highlight issues that small businesses, and those that work with them, might find helpful to consider when implementing the rule.

The Bureau also issued the following additional guidance to assist with complying with this rule:

- **Countries.** The Bureau has published a list of countries and other areas to which a particular exception to the rule's disclosure requirements apply ("Safe Harbor Countries"): http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf
- **Webinar.** The Bureau hosted a live Webinar on October 16th, which was archived and can be accessed here: <http://www.consumerfinance.gov/blog/remittance-rule-session/>

OUTSTANDING FEDERAL REGISTER PUBLICATIONS

Topic	Comment Deadline	Status	Effective Date
Remittances	N/A	Final Rule	February 7, 2013
Integrated Mortgage Disclosures	November 6, 2012 (certain portions close 09/07/2012)(finance charge comments extended to November 6, 2012)	Proposed Rule	N/A
High Cost Mortgage and Homeownership Counseling	November 6, 2012 (certain portions close 09/07/2012)	Proposed Rule	N/A



Independent Ability to Repay Credit Cards for Individuals Over 21	January 7, 2013	Proposed Rule	N/A

UPCOMING REGULATIONS

Topic	Next Regulatory Release	Anticipated Date of Next Activity
Requirements for Escrow Accounts (Regulation Z)	Final Rule	September 2012
Supervision of Larger Depository Institutions and Affiliates	Pre-Rule Stage	September 2012
Restatement of Regulations	Further Action	September 2012
Amendments to TILA and FIRREA Concerning Appraisals	Further Action	October 2012
Business Lending Data (Regulation B)	Pre-Rule Stage	October 2012
TILA Ability to Repay (Regulation Z)	Final Rule	December 2012
Disclosure of Records	Final Rule	December 2012
Registration of Certain Nondepository Covered Persons	NPRM	January 2013
Home Mortgage Disclosure Act (Regulation C)	Pre-Rule Stage	April 2013
Alternative Mortgage Transaction Parity (Regulation D)	NPRM	June 2013
TILA Amendments (i.e., rescission)	TBD	TBD

Please do not hesitate to contact the attorneys in our CFPB Task Force if you have any questions or concern regarding this update and the potential impacts of CFPB activities on your business.

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