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Supervisory Highlights

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1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The Bureau supervises both bank and nonbank institutions to help meet this goal. In this fifteenth edition of *Supervisory Highlights*, the CFPB shares recent supervisory observations in the areas of mortgage servicing, student loan servicing, mortgage origination, and fair lending. In particular, we describe key new developments around spike and trend monitoring, service provider examinations, and production incentives. The findings reported here reflect information obtained from supervisory activities that were generally completed between September 2016 and December 2016 (unless otherwise stated). Corrective actions regarding certain matters may remain in process at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance management system and compliance with Federal consumer financial laws. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, such as implementing new policies, changing written communications, improving training or monitoring, or otherwise changing conduct to ensure the illegal practices cease. Supervision also directs the entity to send consumers refunds, pay restitution, credit borrower accounts, or take other remedial actions. Recent supervisory resolutions have resulted in total restitution payments of approximately \$6.1 million to more than 16,000 consumers during the review period. Additionally, CFPB's recent supervisory activities have either led to or supported five recent public enforcement actions, resulting in over \$39 million in consumer remediation and an additional \$19 million in civil money penalties.

Please submit any questions or comments to CFPB_Supervision@cfpb.gov.

2. Supervisory observations

Recent supervisory observations are reported in the areas of mortgage origination, mortgage servicing, student loan servicing, and fair lending.

2.1 Mortgage origination

2.1.1 Observations and approach to compliance with the Ability to Repay (ATR) rule requirements

Prior to the mortgage crisis, some creditors offered consumers mortgages without considering the consumer's ability to repay the loan, at times engaging in the loose underwriting practice of failing to verify the consumer's debts or income. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to provide that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, as well as all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.¹ The Dodd-Frank Act also amended TILA by creating a

¹ Section 1411 of the Dodd-Frank Act, Public Law 111-203, adding section 129C(a) to TILA, codified at 15 USC 1639c(a)).

presumption of compliance with these ability-to-repay (ATR) requirements for creditors originating a specific category of loans called “qualified mortgage” (QM) loans.²

To implement these statutory provisions, the Bureau amended Regulation Z to require that a creditor shall not make a loan that is a covered transaction (*i.e.*, in general, a closed-end, dwelling-secured consumer credit transaction) unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms (ATR rule).³ For a QM loan, the rule provides a safe harbor for compliance with the ATR requirement for loans that are not higher-priced covered transactions and a presumption of such ATR compliance for higher-priced covered transactions.⁴ The Bureau’s ATR rule has been in effect since January 10, 2014. Since the effective date of the ATR rule, Supervision has observed that most entities examined by the Bureau are generally complying with the ATR rule.

This section focuses on recent supervisory examination observations and Supervision’s approach to determining compliance with the ATR rule, including general requirements associated with the ATR rule for non-QM loans and verification requirements for information relied upon in making determinations of ability to repay. Specifically, this section discusses how Supervision assesses a creditor’s ATR determination that includes reliance on verified assets and not income. It also explains whether a creditor can make a reasonable and good faith determination of ability to repay based on down payment size for a consumer with no verified income or assets.

² Section 1412 of the Dodd-Frank Act, adding section 129C(b) to TILA, codified at 15 USC 1639c(b).

³ 12 CFR 1026.43(c).

⁴ 12 CFR 1026.43(e).

Reasonable and good faith determination requirement and basis for determination

The ATR rule outlines minimum requirements for making determinations of ability to repay. Specifically, the rule enumerates factors a creditor must consider when making an ATR determination,⁵ but beyond the requirements set forth in the rule, the ATR rule does not establish underwriting standards to which creditors must adhere. Creditors have flexibility in creating their own underwriting standards when making ATR determinations, as long as those standards incorporate the minimum requirements set forth in the rule. Therefore, Supervision evaluates whether a creditor's ATR determination is reasonable and in good faith by reviewing relevant lending policies and procedures and a sample of loan files and assessing the facts and circumstances of each extension of credit in the sample.

Verification using third-party records and verification of income or assets

The ATR rule generally requires that creditors verify the information that they will rely upon to determine the consumer's repayment ability, using reasonably reliable third-party records.⁶ A creditor must verify the amounts of income or assets the creditor relies on to determine a consumer's ability to repay the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets.⁷ The ATR rule does not require that creditors

⁵ 12 CFR 1026.43(c)(2). A creditor must consider: (i) the consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan; (ii) if the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status; (iii) the consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of the ATR rule; (iv) the consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with paragraph (c)(6); (v) the consumer's monthly payment for mortgage-related obligations; (vi) the consumer's current debt obligations, alimony, and child support; (vii) the consumer's monthly debt-to-income (DTI) ratio or residual income, calculated in accordance with paragraph (c)(7); and (viii) the consumer's credit history.

⁶ 12 CFR 1026.43(c)(3).

⁷ 12 CFR 1026.43(c)(4).

adhere to a prescribed method of verifying income or assets. Creditors may refer to the non-exhaustive list of records set forth in the ATR rule in verifying the consumer's income or assets.⁸

When assessing a creditor's compliance with ATR rule requirements, Supervision determines whether the creditor considered the required underwriting factors in determining the ability to repay. Then examiners determine whether the creditor properly verified the information it relied upon in making that determination. Records a creditor uses for verification, including to verify income or assets, must be specific to the individual consumer.⁹ For example, as discussed in the October 2016 issue of *Supervisory Highlights*, a creditor violated the ATR requirements by failing to properly verify income relied upon when considering the consumer's monthly debt-to-income ratio and determining the consumer's ability to repay.¹⁰

Reliance on the consumer's verified assets and not income when making an ATR determination

The ATR rule provides that a creditor may base its determination of ability to repay on current or reasonably expected income from employment or other sources, assets other than the dwelling (and any attached real property) that secures the covered transaction, or both.¹¹ The income and/or assets relied upon must be verified. In situations where a creditor makes an ATR

⁸ 12 CFR 1026.43(c)(4). Creditors may verify the consumer's income by using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's income or assets include: (i) copies of tax returns the consumer filed with the IRS or a State taxing authority; (ii) IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding; (iii) payroll statements, including military leave and earnings statements; (iv) financial institution records; (v) records from the consumer's employer or a third party that obtained information from the employer; (vi) records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements; (vii) receipts from the consumer's use of check cashing services; and (viii) receipts from the consumer's use of a funds transfer service.

⁹ Comment 43(c)(3)-1.

¹⁰ 12 CFR 1026.43(c)(2)(vii), (c)(4), and (c)(7).

¹¹ Comment 43(c)(2)(i)-1.

determination that relies on assets and not income, CFPB examiners would evaluate whether the creditor reasonably and in good faith determined that the consumer's verified assets suffice to establish the consumer's ability to repay the loan according to its terms, in light of the creditor's consideration of other required ATR factors, including: the consumer's mortgage payment(s) on the covered transaction, monthly payments on any simultaneous loan that the creditor knows or has reason to know will be made, monthly mortgage-related obligations, other monthly debt obligations, alimony and child support, monthly DTI ratio or residual income, and credit history. In considering these factors, a creditor relying on assets and not income could, for example, assume income is zero and properly determine that no income is necessary to make a reasonable determination of the consumer's ability to repay the loan in light of the consumer's verified assets.¹²

Reliance on down payment size to support repayment ability for a consumer with no verified income or assets

As an initial matter, a down payment cannot be treated as an asset for purposes of considering the consumer's income or assets under the ATR rule. As described above, the ATR rule requires creditors to consider a consumer's reasonably expected income or assets, "*other than the value of the dwelling, including any real property attached to the dwelling that secures the loan.*"¹³

Additionally, while the size of a down payment generally affects the loan amount, the ATR rule already accounts for this by focusing the relevant inquiry on a consumer's ability to repay the loan according to its terms. All else being equal, a larger down payment will lower the loan size and monthly payment and will in this way improve a consumer's repayment ability. However, the size of a down payment does not directly indicate a consumer's ability to repay the loan

¹² For example, if a creditor considers monthly residual income to determine repayment ability for a consumer with no verified income, it might allocate the consumer's verified assets to offset what would be a negative monthly residual income (given that the ATR rule requires a creditor considering residual monthly income to do so by considering remaining income after subtracting total monthly debt obligations from total monthly income).

¹³ 12 CFR 1026.43(c)(2)(i) (emphasis added).

according to its terms on a going-forward basis because a down payment is not an asset available for this purpose. Therefore, standing alone, down payments will not support a reasonable and good faith determination of the ability to repay. Supervision cannot anticipate circumstances where a creditor could demonstrate that it reasonably and in good faith determined ATR for a consumer with no verified income or assets based solely on the down payment size. This would be the case even where the loan program as a whole has a history of strong performance.

For every mortgage origination examination of Bureau supervised entities where Bureau examiners are assessing compliance with the ATR rule, Supervision will evaluate whether the creditor made a reasonable and good faith determination of the consumer's ability to repay in light of the facts and circumstances specific to each individual extension of credit. For further information on Supervision's approach to the ATR rule, Supervision encourages supervised entities to review the Bureau's Mortgage Origination Examination Procedures¹⁴ and TILA Examination Procedures.¹⁵ For summaries of the ATR rule, creditors can review the Bureau's Readiness Guide¹⁶ and Small Entity Compliance Guide.¹⁷ However, only the regulation and its accompanying commentary can provide complete and definitive information about the requirements.

¹⁴ Mortgage Origination Examination Procedures, available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/mortgage-origination-examination-procedures/>.

¹⁵ TILA Examination procedures, available at http://files.consumerfinance.gov/f/201509_cfpb_truth-in-lending-act-exam-procedures.pdf.

¹⁶ Readiness guide, available at http://files.consumerfinance.gov/f/201509_cfpb_readiness-guide_mortgage-implementation.pdf.

¹⁷ See Ability-to-Repay and Qualified Mortgage Rule – Small Entity Compliance Guide, available at http://files.consumerfinance.gov/f/201603_cfpb_atr-qm_small-entity-compliance-guide.pdf.

2.2 Mortgage servicing

The June 2016 edition of *Supervisory Highlights* discussed how outdated mortgage servicing technology and lapses in auditing and staff training have led to persistent compliance deficiencies with loss mitigation acknowledgement notices, loan modification denial notices, servicing transfers, and in other areas.¹⁸ Supervision continues to observe serious problems with the loss mitigation process at certain servicers, including at one or more servicers that failed to request from borrowers the additional documents and information they needed to obtain complete loss mitigation applications, only to deny the applications for missing those documents.¹⁹ Supervision directed these servicers to enhance policies, procedures, and monitoring to ensure that they promptly address the specific deficiencies found in each exam.

Other issues reviewed during Supervision's most recent mortgage servicing examinations include dual tracking, problems with the maintenance of escrow accounts, and deficient periodic statements.

2.2.1 Dual tracking

Regulation X generally²⁰ prohibits a servicer from making the first notice or filing required by applicable law for any judicial or nonjudicial foreclosure process ("first notice or filing") if a consumer timely submits a complete loss mitigation application, unless certain circumstances

¹⁸ See Supervisory Highlights Mortgage Servicing Special Edition, available at <http://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-mortgage-servicing-special-edition-issue-11/>.

¹⁹ 12 CFR 1024.41(c)(2)(iv).

²⁰ Pursuant to 12 CFR 1024.41(f)(1), the prohibition does not apply in three scenarios: (1) the borrower's mortgage loan obligation is more than 120 days delinquent, (2) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (3) the servicer is joining the foreclosure action of a subordinate lienholder.

are met.²¹ This prohibition on foreclosure filing also extends to certain situations where a consumer timely submits all the missing documents and information as stated in a servicer's loss mitigation acknowledgment notice – that is, it applies to "facially complete" applications.²²

Examiners found that one or more servicers did not properly classify loss mitigation applications as facially complete after receiving the documents and information requested in the loss mitigation acknowledgment notice and failed to afford these eligible consumers with foreclosure protections for facially complete applications as required by Regulation X. The servicer(s) made the first notice or filing even though the consumers had timely submitted facially complete applications and were entitled to Regulation X's foreclosure protections. Supervision also determined that the servicer(s) violated Regulation X by failing to maintain policies and procedures reasonably designed to properly evaluate a borrower who submits a loss mitigation application for all loss mitigation options for which the borrower may be eligible.²³ Supervision directed the servicer(s) to improve policies, procedures, and practices related to facially complete loss mitigation applications to ensure that the servicer(s) will not make a first notice or filing after receiving documents and information from a borrower until the servicer reviews the documents and information and determines that they do not comprise a facially complete application.²⁴ The servicer(s) remediated consumers affected by the improper first

²¹ Pursuant to 12 CFR 1024.41(f)(2), the servicer may make the first notice or filing, stated generally, if the borrower's application is properly denied and the borrower has no further right to appeal, the borrower rejects all the options offered, or the borrower fails to perform under an agreement on a loss mitigation option.

²² 12 CFR 1024.41(c)(2)(iv); 12 CFR 1024.41(f)(2) and comments 41(c)(2)(iv)-1 and -2.

²³ See 112 CFR 1024.38(b)(2)(v) (setting forth the requirement that servicers shall maintain policies and procedures reasonably designed to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of section 1024.41).

²⁴ This excludes circumstances where Regulation X permits a servicer(s) to make a first notice or filing.

notice or filing for fees charged to the consumer in these circumstances, for other economic harms, and non-economic harms such as emotional distress.

2.2.2 Paying the wrong consumer's insurance premiums with escrow funds

One or more servicers disbursed funds from some borrowers' escrow accounts to pay insurance premiums owed by other borrowers. The practice created escrow shortages and increased monthly payments that consumers with affected escrow accounts could not avoid. Supervision cited this practice as unfair and directed that in addition to remediating affected consumers, the servicer(s) adopt policies and procedures to ensure that insurance payments are made properly from escrow accounts.²⁵

2.2.3 Vague periodic statements

In connection with periodic statements required under Regulation Z, examiners found one or more servicers used the phrases "Misc. Expenses" and "Charge for Service" when describing transaction activity that caused a credit or debit to the amount currently due as displayed on periodic statements. Supervision cited the servicer(s) for violating Regulation Z requirements that the transaction activity listed on periodic statements include a brief description of the transactions because the phrases "Misc. Expenses" and "Charge for Service" were not adequate or specific enough to comply with the rule's requirement.²⁶ Supervision directed the servicer(s) to provide more specific descriptions in order to facilitate consumer understanding of the fees and charges imposed.

²⁵ 12 USC 5536(a)(1)(B).

²⁶ 12 CFR 1026.41(d)(4).

2.3 Student loan servicing

The Bureau continues to examine federal and private student loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. Examiners identified an unfair act or practice and a deceptive act or practice relating to payment deferments in the Bureau's recent student loan servicing examinations.

2.3.1 Failing to reverse adverse consequences of erroneous deferment terminations

Many student loan lenders offer deferments during periods in which a borrower is attending school. To manage that benefit, student loan servicers rely on enrollment data supplied by schools via a third-party enrollment reporting company, National Student Clearinghouse. In general, schools regularly provide updated data files on their students' enrollment status to an enrollment reporting company, which in turn, facilitates the updating of enrollment data files that are sent to student loan servicers.²⁷ Each year, data about tens of millions of current and former students pass through this data exchange service. The servicers' automated systems will then trigger changes in a borrower's loan status. For federal loans, a third-party enrollment reporting company often reports information through the Department of Education.

During one or more exams of student loan servicers, examiners found that incorrect information received from a third-party enrollment reporting service provider caused the servicer to automatically terminate deferments prematurely, while borrowers were still enrolled at least half-time in school. Based on subsequent reporting, the servicers corrected the premature

²⁷ For more information on this process, see the Bureau's recent report on the topic. CFPB, Student Data & Student Debt: How student enrollment status problems can make student loans more expensive, Feb. 2017, available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf.

termination and retroactively placed the borrowers back in deferment. However, examiners found that the servicers engaged in an unfair practice because they did not reverse the adverse financial consequences of the erroneous deferment termination, including late fees charged for non-payment during periods when the borrower should have been in deferment, and interest capitalization that occurred because the borrower's deferment was erroneously terminated. This practice was especially harmful to borrowers where the enrollment reporting data resulted in multiple premature deferment terminations, because interest capitalized multiple times, increasing principal balances by thousands of dollars in some instances.

Supervision determined these servicers engaged in the unfair practice of failing to reverse late fees and interest capitalization events after determining that they had erroneously terminated borrowers' in-school deferment based on enrollment reporting data. Supervision directed one or more servicers to engage an independent audit to find accounts that were adversely affected and remediate the resulting harm.

2.3.2 Deceptive statements about interest capitalization during successive deferments

Student loan lenders usually offer a variety of deferment and forbearance options that allow borrowers to cease payments for a brief period of time. Often, when a forbearance or deferment ends, the interest that has accrued during the forbearance or deferment period is capitalized, meaning that the interest is added to the principal amount that accrues interest.

At one or more servicers, examiners found that servicers were placing borrowers into successive periods of forbearance or deferment where a new period immediately followed the previous period. When that happened, the servicers would capitalize interest after each period of deferment or forbearance, instead of capitalizing once when the borrower eventually reentered repayment. Since capitalized interest is added to the borrower's loan balance, capitalizing interest multiple times rather than once increases the amount the borrower ultimately must repay.

Supervision determined that one or more servicers had engaged in deceptive practices by stating that interest would capitalize at the end of the deferment period. Reasonable consumers likely understood this to mean interest would capitalize once, when the borrower ultimately exited deferment and entered repayment. These misleading statements were material because, given the significant financial consequences of interest capitalization, the borrower may have decided

to take a different action. Supervision directed one or more servicers to engage an independent audit to find accounts that were adversely affected and remediate the resulting harm. One or more servicers started capitalizing interest only after the final forbearance or deferment in a series, and reversed past capitalization events based on successive deferrals or forbearances.

2.4 Fair lending

2.4.1 Update to proxy methodology

In the Summer 2014 edition of *Supervisory Highlights*,²⁸ the Bureau reported that examination teams use a Bayesian Improved Surname Geocoding (BISG) proxy methodology for race and ethnicity in their fair lending analysis of non-mortgage credit products. The BISG methodology relies on the distribution of race and ethnicity based on place-of-residence and surname, which are publicly available information from Census. The method involves constructing a probability of assignment to race and ethnicity based on demographic information associated with surname and then updating this probability using the demographic characteristics of the census block group associated with place of residence. The updating is performed through the application of a Bayesian algorithm, which yields an integrated probability that can be used to proxy for an individual's race and ethnicity.²⁹

In December, the U.S. Census Bureau released a list of the most frequently occurring surnames based on the most recent census, which includes values for total counts and race and ethnicity shares associated with each surname. In total, the list provides information on the 162,253

²⁸ See *Supervisory Highlights* (Summer 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

²⁹ For more information on the methodology, see Consumer Financial Protection Bureau, *Using publicly available information to proxy for unidentified race and ethnicity* (Sept. 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

surnames that appear at least 100 times in the most recent census, covering approximately 90% of the population.³⁰ As of April 2017, examination teams are relying on an updated proxy methodology that reflects the newly available surname data from the Census Bureau. The new surname list; statistical software code, written in Stata; and other publicly available data used to build the BISG proxy are available at: <https://github.com/cfpb/proxy-methodology>.

³⁰ The surname data are available on the Census Bureau's website, see Frequently Occurring Surnames from the 2010 Census (last revised Dec. 27, 2016),
https://www.census.gov/topics/population/genealogy/data/2010_surnames.html.

3. Remedial actions

3.1 Public enforcement actions

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

3.1.1 Experian

On March 23, 2017, the Bureau announced an enforcement action against Experian and its subsidiaries for deceiving consumers about the use of credit scores it sold to consumers.³¹ In its advertising, Experian falsely represented that the credit scores it marketed and provided to consumers were the same scores lenders use to make credit decisions. In fact, lenders did not use the scores Experian sold to consumers. In some instances, there were significant differences between the scores that Experian provided to consumers and the various credit scores lenders actually use. As a result, Experian's credit scores in these instances presented an inaccurate picture of how lenders assessed consumer creditworthiness.

³¹ See CFPB Fines Experian \$3 Million for Deceiving Consumers in Marketing Credit Scores, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-experian-3-million-deceiving-consumers-marketing-credit-scores/>.

Experian also violated the Fair Credit Reporting Act (FCRA), which requires a credit reporting company to provide a free credit report once every twelve months and to operate a central source – AnnualCreditReport.com – where consumers can obtain their report. Until March 2014, consumers getting their report through Experian had to view Experian advertisements before they got to the report. This violates the FCRA prohibition of such advertising tactics.

The CFPB ordered Experian to truthfully represent how its credit scores are used and pay a \$3 million civil money penalty.

3.1.2 Prospect Mortgage, Planet Home Lending, Re/Max Gold Coast, and Keller Williams Mid-Willamette

The Bureau entered consent orders against Prospect Mortgage, Keller Williams Mid-Willamette (KW Mid-Willamette), Re/Max Gold Coast (RGC), and Planet Home Lending (Planet) on January 31, 2017.³² The Bureau found that Prospect gave, and KW Mid-Willamette, RGC, and Planet received, a thing of value in exchange for mortgage loan referrals. This arrangement violated Section 8 of the Real Estate Settlement Procedures Act, which prohibits kickbacks for the referral of settlement service business.

Among other things, the Bureau found that KW Mid-Willamette paid a cash equivalent to its agents in return for referrals to Prospect. In addition, as part of its agreement to refer settlement service business to Prospect, RGC required hundreds of consumers to prequalify with Prospect before accepting an offer to buy a property where RGC represented the seller. The Bureau also found that Planet, a mortgage servicer, called consumers in an attempt to steer them to Prospect. Planet provided a ‘warm transfer’ to a Prospect loan agent to facilitate Prospect

³² See CFPB Orders Prospect Mortgage to Pay \$3.5 Million Fine for Illegal Kickback Scheme, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-prospect-mortgage-pay-35-million-fine-illegal-kickback-scheme/>.

receiving the consumers' refinance business. Planet and Prospect split the net proceeds from these refinances.

The Bureau also found that Planet violated the Fair Credit Reporting Act by obtaining consumer reports without a permissible purpose. Finally, as described in the consent order, the Bureau found that Prospect paid hundreds of counterparties for referrals using desk license agreements, marketing services agreements, and lead agreements. These actions illustrate the legal risks associated with these types of agreements — as described in the Bureau's Compliance Bulletin 2015-05 — for both the parties making and the parties receiving payments for referrals of real estate settlement services. Prospect was ordered to pay a \$3.5 million civil penalty, and the real estate brokers and servicer were ordered to pay a combined \$495,000 in consumer relief.

3.1.3 CitiFinancial Servicing and CitiMortgage

On January 23, 2017, the Bureau took separate actions against CitiFinancial Servicing and CitiMortgage, Inc. for giving the runaround to struggling homeowners seeking options to save their homes.³³ Among other things, the Bureau found that CitiFinancial kept consumers in the dark about foreclosure relief options. When borrowers applied to have their payments deferred, CitiFinancial failed to consider it as a request for foreclosure relief options. Such requests for foreclosure relief trigger protections required by CFPB mortgage servicing rules, which include helping borrowers complete their applications and considering them for all available foreclosure relief alternatives. As a result, CitiFinancial violated the Real Estate Settlement Procedures Act and borrowers may have missed out on foreclosure relief options that may have been more appropriate for them.

³³ See CFPB Orders Citi Subsidiaries to Pay \$28.8 Million for Giving the Runaround to Borrowers Trying to Save Their Homes, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-subsidiaries-pay-288-million-giving-runaround-borrowers-trying-save-their-homes/>.

The Bureau also found that some borrowers who asked CitiMortgage for assistance were sent a letter demanding dozens of documents and forms that had no bearing on the application or that the consumer had already provided. Many of these documents had nothing to do with a borrower's financial circumstances and were actually not needed to complete the application. Letters sent to borrowers in 2014 requested documents with descriptions such as "teacher contract," and "Social Security award letter." CitiMortgage sent such letters to about 41,000 consumers. In doing so, CitiMortgage violated the Real Estate Settlement Procedures Act, and the Dodd-Frank Act's prohibition against deceptive acts or practices.

The CFPB order requires CitiMortgage to pay an estimated \$17 million in remediation to consumers, and pay a civil penalty of \$3 million; and requires CitiFinancial Services to refund approximately \$4.4 million to consumers, and pay a civil penalty of \$4.4 million.

3.1.4 Equifax and TransUnion

On January 3, 2017, the Bureau took action against Equifax, and against TransUnion, and their subsidiaries for deceiving consumers about the usefulness and actual cost of credit scores they sold to consumers.³⁴ In their advertising, TransUnion and Equifax falsely represented that the credit scores they marketed and provided to consumers were the same scores lenders typically use to make credit decisions. The companies also claimed that their credit scores and credit-related products were free, or in the case of TransUnion, cost only "\$1." In fact, the scores sold by TransUnion and Equifax were not typically used by lenders to make those decisions. Moreover, consumers who signed up for credit scores or credit-related products received a free trial of seven or 30 days, after which they were automatically enrolled in a subscription program. Unless they cancelled during the trial period, consumers were charged a recurring fee – usually \$16 or more per month.

³⁴ See CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/>.

Equifax also violated the FCRA, which requires a credit reporting agency to provide a free credit report once every 12 months and to operate a central source – AnnualCreditReport.com – where consumers can get their report. Until January 2014, consumers getting their report through Equifax first had to view Equifax advertisements. This violates the FCRA, which prohibits such advertising until after consumers receive their report.

The CFPB ordered TransUnion and Equifax to truthfully represent the value of the credit scores they provide and the cost of obtaining those credit scores and other services. Between them, TransUnion and Equifax must pay a total of more than \$17.6 million in restitution to consumers, and a \$5.5 million civil money penalty.

3.1.5 Moneytree, Inc.

On December 16, 2016, the Bureau took action against Moneytree for misleading consumers with deceptive online advertisements and collections letters, and for making unauthorized electronic transfers from consumers' bank accounts.³⁵ Specifically, the CFPB found that Moneytree deceived consumers about the price of check-cashing services, made false threats of vehicle repossession when collecting overdue unsecured loans, and withdrew funds from consumers' accounts without proper written authorization. The CFPB ordered the company to cease its illegal conduct, provide \$255,000 in refunds to consumers, and pay a civil penalty of \$250,000.

Prior to taking enforcement action, the Bureau identified significant weaknesses in Moneytree's compliance management system through multiple supervisory examinations of Moneytree's lending, marketing, and collections activities. At the time of the violations described in the order, Moneytree had not adequately addressed these issues. Moneytree's failure to adequately

³⁵ See CFPB Takes Action Against Moneytree for Deceptive Advertising and Collection Practices, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-moneytree-deceptive-advertising-and-collection-practices/>.

address CFPB's supervisory concerns was a factor in the Bureau's determination to pursue this matter through a public enforcement action.

3.2 Non-public supervisory actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately \$6.1 million in restitution to more than 16,000 consumers. These non-public supervisory actions generally have been the product of CFPB supervision and examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law during the course of an examination. Recent non-public resolutions were reached in auto finance origination matters.

4. Supervision program developments

4.1 Examination procedures

4.1.1 Overview and examination chapters

The CFPB has updated sections of its Supervision and Examination Manual. These updates include revisions to certain sections of Part I – Compliance Supervision and Examination (Overview and Examination Process).³⁶ The corresponding Scope Summary template has also been updated.³⁷ These revisions were necessitated by the updated Federal Financial Institutions Examination Council (FFIEC) Uniform Interagency Consumer Compliance Rating System, which became effective on March 31, 2017. The revisions also reflect changes in our supervisory program, such as the refinement to our examination prioritization process.

³⁶ See the Overview and Examination Process updates, available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/updated-portions-overview-and-examination-process/>.

³⁷ See Scope Summary template, available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/scope-summary-template/>.

4.1.2 Changes to reporting templates

New reporting templates for Supervisory Letters and Examination Reports (collectively referred to as Reports) are now available on the CFPB website.³⁸ These changes aim to simplify Reports and facilitate follow-up reporting by supervised entities about actions they are taking to address compliance management weaknesses or legal violations found during Bureau examinations.

4.2 Service provider examination program

In bulletins and past issues of *Supervisory Highlights*, the CFPB has emphasized that effective service provider oversight is a crucial component of any compliance management system (CMS).³⁹ The CFPB expects its supervised entities to have an effective process for identifying and managing the risks to consumers created by the choices made to outsource certain activities

³⁸ Report templates are available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/supervisory-report-and-letter-templates/>.

³⁹ See e.g., Supervisory Highlights (Fall 2016), available at http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf; Supervisory Highlights (Summer 2016), available at http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf; and Supervisory Highlights (Spring 2014), available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf. For Bulletins, see Compliance Bulletin and Policy Guidance; 2016-03, Detecting and Preventing Consumer Harm from Production Incentives available at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/cfpb-compliance-bulletin-2016-03-detecting-and-preventing-consumer-harm-from-production-incentives/>; and Compliance Bulletin and Policy Guidance; 2016-02, Service Providers (amends and reissues CFPB Bulletin 2012-03), available at https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.

to service providers.⁴⁰ The CFPB has and will continue to evaluate the oversight of service providers in its compliance management reviews according to these expectations.

At the same time, the CFPB recognizes the potential risks to consumers posed by large service providers,⁴¹ which provide technological support to facilitate compliance with Federal consumer financial law, including software packages, electronic system platforms, and other types of technological tools. These compliance tools are often provided to thousands of participants in a particular market. As such, compliance risks in an entire market may be heightened when regulatory compliance is not considered and integrated throughout the development lifecycle, change, and configuration of these compliance systems.

Because a single service provider might affect consumer risk at many institutions, the CFPB has begun to develop and implement a program to supervise these service providers directly.⁴² Direct examination of key service providers will provide the CFPB the opportunity to monitor and potentially reduce risks to consumers at their source.

In its initial work, the CFPB is conducting baseline reviews of some service providers to learn about the structure of these companies, their operations, their compliance systems, and their

⁴⁰ Compliance Bulletin and Policy Guidance; 2016-02, Service Providers (amends and reissues CFPB Bulletin 2012-03), available at https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.

⁴¹ Compliance information systems are information systems and processes used by financial institutions to produce consumer financial products and services.

⁴² The Dodd-Frank Act grants the Bureau the authority to examine “service providers” to certain entities. More specifically, under Dodd-Frank Act subsections 1024(e) and 1025(d), the Bureau has the authority to examine, in coordination with the appropriate prudential regulator(s), service providers to entities described in Dodd-Frank Act subsections 1024(a)(1) or 1025(a), to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act. And, under Dodd-Frank Act section 1026(e), the Bureau has the authority to examine, in coordination with the appropriate prudential regulator(s), service providers to a substantial number of entities described in Dodd-Frank Act subsection 1026(a), to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act. See Dodd-Frank Act Sections 1024-1026, codified at 12 USC 5514-5516.

CMS. In more targeted work, the CFPB is focusing on service providers that directly affect the mortgage origination and servicing markets. The CFPB will shape its future service provider supervisory activities based on what it learns through its initial work. As with all new examination programs, service provider supervision is folded into the Bureau's overall risk-based prioritization process.⁴³

4.3 Spike and trend monitoring

As a data-driven agency, the Bureau has prioritized detecting issues in the market that could result in risk to consumers. The Bureau has historically incorporated this information about market trends into the risk-based prioritization of examinations.⁴⁴ To this end, the Bureau now continuously monitors spikes and trends in complaints. Our automated capability monitors the volume of consumer complaints for all companies named by consumers in complaint submissions. Our active monitoring algorithms identify short, medium, and long-term changes in complaint volumes in daily, weekly, and quarterly windows. Importantly, the tool works regardless of company size, random variation, general complaint growth, and seasonality.

The tool is intended to be an effective early warning system, helping the Bureau to identify consumer issues quickly and engage with companies earlier. For example, in one instance, the regional exam team, after reviewing complaints associated with a spike in complaint volume, immediately reached out to the company to inform senior management and discuss consumers' concerns. The Bureau was able to engage senior management before they were aware of the matter through their own internal processes. The company quickly developed and implemented

⁴³ See Section 3.2.3, Risk-Based Approach to Examinations, Supervisory Highlights: Summer 2013, available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

⁴⁴ See Section 3.2.3, Supervisory Highlights (Summer 2013), available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

a plan to correct the issues, provided accurate information to customer service representatives, and developed a refund policy and process for affected consumers, minimizing potential harm to consumers and further risk of exposure for the company.

4.4 Recent CFPB guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public.

4.4.1 Compliance and regulatory implementation resources

The Bureau is continuously working to facilitate compliance and empower stakeholders to understand and apply Federal consumer financial laws. In addition to official guidance provided by the Bureau, there are a variety of tools and resources for industry and other stakeholders. These resources include plain-language guides, rules summaries, reference charts, sample forms, interactive webpages, and webinars. The Bureau refers to this ongoing work as “regulatory implementation.” The implementation and guidance webpage⁴⁵ includes links to dedicated webpages for HMDA, the Know Before You Owe mortgage disclosure rule, Prepaid Rule, Title XIV (which includes both mortgage origination and mortgage servicing), remittance transfers, and the rural and underserved counties list. There are also instructions on how to provide feedback on the material and sign up to receive notices on new regulatory implementation efforts and materials.

⁴⁵ These resources are available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/>.

Another tool provided by the Bureau to support compliance and implementation is eRegulations,⁴⁶ a web-based, open source platform that makes regulations easier to find, read, and use. It brings official interpretations, regulatory history, and other information to the forefront to clarify regulations. The eRegulations tool has been updated to include Regulations B, C, D, E, J, K, L, M, X, Z and DD. User feedback consistently indicates that many users have found this platform to be very useful for navigating Bureau regulations.

4.5 Production incentives

On November 28, 2016, CFPB published Compliance Bulletin 2016-03, “Detecting and Preventing Consumer Harm from Production Incentives.” The Bureau recognizes that many supervised entities may choose to implement incentive programs to achieve business objectives. These production incentives can lead to significant consumer harm if not properly managed. However, when properly implemented and monitored, reasonable incentives can benefit consumers and the financial marketplace as a whole.

This bulletin compiles guidance that has previously been given by the CFPB in other contexts and highlights examples from the CFPB’s supervisory and enforcement experience where incentives contributed to substantial consumer harm. It also describes compliance management steps that supervised entities should take to mitigate risks posed by incentives.

The CFPB anticipates that careful and thoughtful implementation of the guidance contained in this bulletin will yield substantial benefits for both bank and nonbank financial institutions, as well as for consumers. In particular, it should help institutions prevent, identify, and mitigate issues that could pose significant legal, regulatory, and reputational risks that could also cause harm for consumers.

⁴⁶ The eRegulations tool is available at <https://www.consumerfinance.gov/eregulations/>.

5. Conclusion

The Bureau recognizes the value of communicating our program findings to CFPB-supervised entities to help them in their efforts to comply with Federal consumer financial law, and to other stakeholders to foster a better understanding of the CFPB's work.

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