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Supervisory Highlights COVID-19 Prioritized Assessments Special Edition

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1. Introduction

The Bureau is publishing this Special Edition of Supervisory Highlights to inform the public of observations in its prioritized assessment (PA) supervisory work conducted last year after the sudden onset of the COVID-19 pandemic. PAs focused on assessing risks to consumers resulting from the pandemic.

1.1 Background

The COVID-19 pandemic had immediate and broad implications for Bureau-supervised entities. In a very short period of time, entities needed to adapt to a number of operational challenges, which included state stay-at-home orders, staffing shortages, transition to partial or total remote work, and business closures.

COVID-19 also deeply impacted consumers. Within three months of the pandemic's start, the unemployment rate jumped to over 11 percent¹ and a significant number of consumers sought unemployment benefits. With large income losses, many households struggled to meet their credit obligations. In the early days of the pandemic, consumer requests for accommodations skyrocketed.

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act),² which included a temporary small business lending program known as the Paycheck Protection Program (PPP). It also amended certain provisions of the Fair Credit Reporting Act (FCRA) and established protections for consumers including homeowners and student loan borrowers. Institutions had to quickly implement the applicable CARES Act provisions.

The Bureau recognized the challenges posed by the pandemic and encouraged supervised entities to focus on assisting consumers. The Bureau issued a number of statements that provided entities with temporary regulatory relief. The Bureau also announced that, in certain instances, the Bureau would take a flexible supervisory and enforcement approach during the pandemic. For more information about these statements please visit the Bureau's website at <https://www.consumerfinance.gov/compliance/supervisory-guidance/>.

¹ U.S. Department of Labor. July 17, 2020. Economics News Release: Employment Situation Summary. Available at: https://www.bls.gov/news.release/archives/laus_07172020.pdf.

² Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020).

1.2 Prioritized Assessments

In May of 2020, the Bureau rescheduled about half of its planned examination work and instead conducted PAs in response to the pandemic. PAs were higher-level inquiries than traditional examinations. They were designed to obtain real-time information from a broad group of supervised entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues.

The Bureau, through its supervision program, analyzed pandemic-related market developments to determine where issues were most likely to pose risk to consumers. The Bureau also prioritized markets where Congress provided special provisions in the CARES Act to help consumers.

The Bureau sent targeted information requests to a significant number of entities to obtain information necessary to assess risk of consumer harm and violation of Federal consumer financial law. Each targeted information request was specific to the product market, that market's attendant risks to consumers, and the institution. The targeted information requests focused on a short period of time, generally from early May 2020 through September 2020.

Typically, targeted information requests sought, as applicable:

- information on how the institution was assisting consumers;
- challenges the institution was facing as a result of the COVID-19 pandemic;
- changes the institution made to its compliance management system (CMS) in response to the pandemic;
- information about the institution's relevant communications with consumers;
- basic data regarding the institution's response to the COVID-19 pandemic; and
- information about service providers.

PAs were not designed to identify violations of Federal consumer financial law, but rather to spot and assess risks and communicate these risks to supervised entities so that they could be addressed to prevent consumer harm. The Bureau sent close-out letters to entities that detailed any observed risks and contained supervisory recommendations, if applicable. The Bureau will be following up on risks identified while conducting PAs in the normal course of the Bureau's supervisory work.

2. General Observations

Many entities offered accommodations to consumers that experienced pandemic-related hardships. The CARES Act mandated forbearance options on federally backed mortgages and placed most student loans owned by the Department of Education into forbearance, and mandated zero interest accrual for all federally-owned student loans. Even where not legally required, many entities also offered accommodations, including expanded payment assistance programs and fee waivers. For example, many auto servicers offered six-month payment deferrals to any consumer with a COVID-19 hardship, and many credit card issuers also offered deferrals that ranged from one to six months.

Some Bureau-supervised entities struggled to adjust to the rapid changes brought on by the pandemic. Many institutions experienced increased call volumes from consumers requesting relief or disputing charges, with corresponding increases in hold times for many consumers. For some entities, the combination of rapid program implementation and operational challenges resulted in elevated risk of consumer harm. For example, several entities experienced a backlog of accommodation requests or provided inaccurate information to consumers about the accommodations they offered.

Other risks observed by Bureau examiners ranged from inaccurate credit reporting to failure to send out timely disclosures. In many cases, staffing shortages or inaccurate training materials led to these issues.

Many institutions created COVID-19 response teams to identify and address consumer and industry challenges caused by the pandemic. Many entities engaged in robust monitoring of key processes, leading them to self-identify issues and implement corrective actions where needed. Other entities made changes in response to risks that Bureau examiners observed. Commonly seen changes made by institutions included:

- providing consumer remediation;
- reversing fees;
- updating scripts to provide accurate information to consumers;
- transitioning from manual to automated processes;
- correcting inaccurate credit reporting; and
- correcting account histories.

Some entities also increased staffing to clear backlogs and to address increased demand for accommodations.

3. Supervisory Observations

Specific PA observations are described in this report in the areas of mortgage, auto and student loan servicing, credit card account management, consumer reporting-furnishing, debt collection, deposits, prepaid cards, and small business lending.³

3.1 Mortgage Servicing

Market Response to Consumers & Industry Challenges

The CARES Act established certain protections for homeowners. For example, for borrowers with federally backed mortgages, borrowers have the right to request and obtain forbearance for up to 180 days and to request and obtain an extension for another 180 days (for a total of 360 days). Since March 2020, millions of borrowers have sought payment relief options and enrolled in CARES Act forbearances.⁴

Servicers faced a number of significant challenges. Beginning in March 2020, they had to quickly implement the CARES Act and make other operational changes in light of evolving investor guidance. Servicers reported taking a variety of steps to address issues related to the pandemic and enroll borrowers into CARES Act forbearances. Many servicers reported operational constraints, resource burdens, and service interruptions. Many servicers also moved employees from other duties to respond to forbearance requests. Some servicers reported disruptions to normal CMS and monitoring processes.

³ This document does not impose any new or different legal requirements. In addition, the risks described in this issue of *Supervisory Highlights* are based on the particular facts and circumstances reviewed by the Bureau as part of its PA work. A conclusion that elevated risk to consumers exists is based on the facts and circumstances described here and may not lead to such a finding under different facts and circumstances.

⁴ According to the Mortgage Bankers Association, an estimated 2.7 million borrowers were in forbearance plans as of December 2020. Mortgage Bankers Association, December 21, 2020. *MBA: Share of Mortgage Loans in Forbearance Increases to 5.49 Percent*. Available at: <https://www.mba.org/2020-press-releases/december/share-of-mortgage-loans-in-forbearance-increases-to-549-percent>.

Consumer Risk

Examiners' review of mortgage servicers' PA responses indicated several issues that raise the risk of consumer harm. Some categories of issues are described below.

Providing incomplete or inaccurate information to consumers about forbearance

Several servicers provided incomplete or inaccurate information to consumers regarding CARES Act forbearances. These issues present a range of potential risks of consumer harm, such as dissuading borrowers from requesting a forbearance and causing borrowers to pursue other options that may be less favorable to them than forbearance. Examiners observed instances of the following:

- Customer service representatives provided inaccurate information regarding forbearances, including the available period for CARES Act forbearances and the interest accrued or amounts owed. Servicers told some borrowers that "lump sum" payment of all missed monthly payments would be required at the end of the forbearance period, when in fact that was not correct.
- Representatives indicated that only delinquent borrowers could qualify for a forbearance, contrary to the CARES Act.⁵ As a result, representatives instructed some current borrowers to call back to request forbearance only after they had failed to make an on-time monthly payment.
- Written materials, such as forbearance approval letters and customer service websites, included inaccurate or potentially misleading information regarding CARES Act forbearance. For example, one servicer suggested that consumers had to pay a fee to receive a forbearance and another provided incorrect due dates for the borrower's next payment.
- A servicer sent borrowers requesting CARES Act forbearances written agreements purporting to require a signature as a condition of enrollment and stating that payments would be due later that month, when in fact they would not be due for 90 or 180 days. The CARES Act requires only that borrowers request a forbearance and attest to a financial hardship due to the pandemic to qualify.

⁵ The CARES Act states that borrowers may request forbearance "regardless of delinquency status." See CARES Act, Section 4022(b)(1).

Sending collections and default notices, assessing late fees, and initiating foreclosures for borrowers enrolled in forbearance

Several servicers took actions on borrowers' accounts that were erroneous or inconsistent with the fact that borrowers were enrolled in CARES Act forbearances. These issues present risks of direct financial harm and significant confusion for borrowers who were enrolled in forbearances. For example, some servicers sent automated collection notices to borrowers in CARES Act forbearances indicating that their accounts were past due and that negative reporting and late fees could result. While collection notices may be required for FHA loans by regulation under some circumstances, they are not required for other loans and may result in confusion for consumers enrolled in CARES Act forbearances. In other cases, system issues resulted in erroneous late fees and default notices for borrowers enrolled in forbearances. Examiners also identified one servicer that erroneously initiated foreclosure actions in violation of the CARES Act's moratorium on foreclosures and assessed related fees on borrowers in the early weeks of the pandemic.⁶

Cancelling or providing inaccurate information about borrowers' preauthorized electronic funds transfers

Several servicers provided inaccurate information or took actions concerning borrowers' preauthorized electronic funds transfers without their knowledge or consent. These issues can result in inadvertent missed payments and other negative consequences for consumers.

Due to manual data entry errors, representatives at one servicer cancelled borrowers' preauthorized electronic funds transfers when they inquired about forbearance options over the phone. In addition, at other servicers, representatives provided inaccurate information to borrowers by stating that they did not need to take steps to cancel their preauthorized electronic fund transfers when they enrolled in forbearance, when in fact they did.

Failing to timely process forbearance requests

Many servicers experienced delays in processing forbearance requests in the early months of the pandemic. These delays were generally brief. However, a few servicers experienced more serious delays or failed to process forbearance requests. As a result, this issue presents a risk to consumers who do not timely receive the benefit of a requested forbearance and experience negative consequences, such as missed payments and negative credit reporting. For example,

⁶ The CARES Act placed a moratorium on certain foreclosures. See CARES Act, Section 4022.

representatives processing borrower requests for forbearance incorrectly used a code indicating only that the borrowers inquired about forbearance, and no forbearance was processed.

Enrolling borrowers in automatic or unwanted forbearances

Many servicers enrolled borrowers in automatic or unwanted forbearances. Examiners observed the following:

- Certain servicers did not effectively communicate to borrowers that they were applying for a forbearance. In some cases, borrowers believed that they were simply reviewing information regarding forbearance on the servicers' website or discussing a financial hardship with representatives on the phone. Those borrowers did not understand that they had applied for, or that the servicer would process, a forbearance.
- Certain representatives used incorrect system codes that placed borrowers' accounts into forbearances that they did not request.
- Certain servicers automatically placed borrowers' accounts into forbearance without their knowledge or approval. When borrowers with multiple loan accounts applied for forbearance on one account, some servicers automatically applied the forbearance to some or all of the borrowers' other accounts. One servicer automatically converted in-process loan modification applications into forbearances without borrowers' consent.⁷
- Several servicers acknowledged that, when accounts were placed in forbearance without borrowers' request or approval, the servicers then furnished information to consumer reporting companies (CRCs)⁸ indicating that the accounts had been placed in forbearance.

Loss mitigation process deficiencies

Some servicers did not take appropriate steps relating to loss mitigation for borrowers in CARES Act forbearances. The risks to consumers from these issues include missed opportunities to pursue and enroll in appropriate repayment options or plans. Issues observed include:

⁷ One servicer informed examiners that automatic forbearances were intended to allow borrowers to avoid the need to separately request forbearance on other loan accounts. However, examiners observed that a significant number of consumers enrolled in automatic forbearances called or submitted complaints seeking removal from forbearance.

⁸ The term "consumer reporting company" means the same as "consumer reporting agency," as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), including nationwide consumer reporting agencies as defined in 15 U.S.C. § 1681a(p) and nationwide specialty consumer reporting agencies as defined in 15 U.S.C. § 1681a(x).

- One servicer enrolled borrowers who submitted incomplete loss mitigation applications in CARES Act forbearances and appropriately sent acknowledgement letters to these borrowers but failed to include a statement that the consumer will be evaluated for all options upon submitting a completed loss mitigation application, as required by Regulation X.
- One servicer had no process in place to evaluate whether borrowers who submitted complete loss mitigation applications qualified for CARES Act forbearances because they were experiencing a pandemic-related hardship. Some borrowers were instead enrolled in forbearances that lacked CARES Act protections – such as a term up to 360 days and credit reporting protections. The servicer received complaints from borrowers who missed payments while in a loss mitigation process, when they likely could have been offered the protections of the CARES Act.

3.2 Auto Loan Servicing

Market Response to Consumers & Industry Challenges

Auto servicers reported large numbers of pandemic-related payment assistance requests beginning in early March 2020. Many servicers expanded existing payment assistance programs to help borrowers who were having trouble making payments. The changes included waiving late fees, permitting non-delinquent as well as delinquent borrower enrollments, and providing longer payment deferrals.

The payment assistance programs generally offered loan payment deferment on a case-by-case basis, with most borrowers receiving a payment deferral period of three or more months. In the majority of cases, the payment deferrals extended the loan term by the same number of months. Most servicers continued to charge interest during the deferral period.

Servicers generally suspended repossession between mid-March and early-May 2020, because state stay-at-home orders halted repossession efforts. While some states may have imposed repossession moratoria, there was no Federal moratorium.

Consumer Risk

Examiners' review of auto loan servicers' PA responses indicated several issues that present risk of consumer harm, including the following:

Many servicers provided information to consumers about the impact of interest accrual during deferment periods on the final loan payment amount that might not have been sufficiently precise for consumers to understand how much their payments would increase. For example, consumers who would face final payments that were more than double their regular payments may not have reasonably anticipated this result when servicers described the final payment as “substantially larger than your regular monthly payment.” More specific information about the final payment may allow consumers to budget and plan for future large payments and mitigate the risks that consumer could not make that payment. Servicers have various options to better disclose the long-term payment obligations, such as estimating final payment amounts.

Some servicers continued to withdraw funds for monthly payments after servicers had agreed to deferments. And some servicers failed to process certain payment assistance requests.

One servicer sent borrowers notices warning them of possible repossession when, in fact, the servicers had suspended repossession operations during the relevant time period. This practice likely affected whether some borrowers, threatened by repossession, spent discretionary money on their car payments instead of other financial necessities during the pandemic.

3.3 Student Loan Servicing

Market Response to Consumers & Industry Challenges

The CARES Act provided certain student loan borrowers with a range of protections. It temporarily reduced interest rates to zero for all federal loans owned by the U.S. Department of Education (ED) and suspended monthly payments for most of these loans. To facilitate the suspension, servicers placed most loans in repayment status into an administrative forbearance. In addition, the suspended monthly payments are considered eligible payments toward the total number of qualifying payments necessary for forgiveness under the Public Service Loan Forgiveness program and various income-driven repayment plans. Servicers reported that between March and May 2020 the number of delinquent accounts in the William D. Ford Federal Direct Loan Program (Direct loans) decreased from 1.9 million to fewer than 150 accounts.

Many loan holders of commercial Federal Family Education Loan Program (FFELP) loans directed servicers to use the natural disaster forbearance provisions to provide payment relief for consumers impacted by the pandemic. These provisions did not provide the forgiveness or interest rate features of the CARES Act relief afforded to borrowers with Direct loans and ED-held FFELP loans.

Private student loan holders and lenders managed the early response to the pandemic with a variety of different payment relief options. Certain private student loan holders relied on options provided in the terms of the original note like economic hardship or natural disaster forbearances. Still others created new short-term payment relief options for consumers. Private loan forbearance options and implementation of FFELP disaster forbearance programs often evolved as the extent of the economic impacts from the pandemic became more apparent. In general, servicers did not require any documentation to enroll borrowers into COVID-19 related forbearances. Between March and May 2020, servicers reported that the number of delinquent commercial FFELP and private student loans across all servicers reviewed fell from 270,000 to 146,000.

Servicers faced a number of significant challenges. In March and April 2020, they quickly implemented the CARES Act for federally owned loans, identified and made available a variety of private and commercial FFELP payment relief options, and complied with local shelter-in-place or stay-at-home orders. Many servicers reported operational constraints and service interruptions, consistent with other servicing sectors. Finally, examiners observed that a large percentage of calls from commercial FFELP and private student loan borrowers related to the CARES Act even though they were not eligible for the benefits. For example, consumers often expressed confusion and frustration after receiving bills when they believed their loans should have been automatically placed into CARES Act forbearances. Other consumers inquired about how to enroll in the forbearances they heard about in the news.

Consumer Risk

Examiners' review of student loan servicers' PA responses, which related to federal and private student loans, indicated several issues that raise the risk of consumer harm, described below.

One servicer provided incorrect or incomplete information about available payment relief options in written communications to numerous consumers. For example, some borrowers received inaccurate notices indicating that interest would capitalize at the conclusion of the natural disaster forbearances when, in fact, it would not. In another instance, private student loan borrowers received notices suggesting that they were eligible for natural disaster forbearances with certain terms when, in fact, the borrowers receiving these notices were ineligible. In both of these situations the servicer sent written communications informing affected borrowers of the error.

Multiple servicers failed to routinely discuss all available repayment options with borrowers requesting payment assistance. While borrowers were eligible to enroll in various forbearances in the wake of the COVID-19 pandemic, they have other options as well. For example, commercial FFELP borrowers are eligible for income-based repayment, which may be a better

option for many borrowers. Additionally, private loan borrowers may also be eligible for non-standard repayment plans that can provide long-term payment relief. In these cases, consumers were never informed about alternative repayment options when they requested payment assistance.

Operational challenges resulted in one servicer failing to maintain regular call center hours. While operational disruptions were common across the industry, during this period most call centers stayed open at least part of the time. The complete or partial closure of call centers created a range of problems for consumers who were unable to talk with representatives, particularly in connection with payment relief-specific guidance.

One private loan holder was not responding to consumers' forbearance extension requests. Many loan holders authorize servicers to grant initial forbearances for consumers that call to request payment assistance. However, some loan holders require that servicers seek their approval for any forbearance extension. Examiners observed that thousands of extension requests were delayed and ultimately denied because the loan holder never responded. This challenge needlessly hinders consumers' abilities to make broader financial decisions and may cause certain consumers to believe the loan holder will evaluate the applications and that extensions are likely.

One servicer provided inaccurate information related to the number of payments eligible for repayment, rehabilitation, or forgiveness programs. Unlike under most forbearances, months that federally owned loans are enrolled in the forbearance authorized by the CARES Act are considered eligible under a variety of programs. However, when providing information to consumers about the total number of eligible payments, one servicer failed to include these months in the count.

Examiners observed some payment allocation errors when servicers applied voluntary payments to accounts enrolled in CARES Act forbearances. The servicers allow consumers to direct payments to individual loans within their accounts through individual instructions or standing orders. Many consumers use standing orders to establish a payment methodology that directs payments to loans with the highest interest rates. When consumers do not provide allocation instructions, servicers use their own default methodologies. Some servicers' default methodologies allocate payments based on the interest rates of the loans. The CARES Act stopped all interest accrual on loans owned by ED, and in these loans, some servicers failed to comply with allocation methodologies or instructions that relied on loan-level interest rates. In one situation, a servicer did not comply with consumers' standing payment instructions to allocate payments towards the highest interest rate loan first. Rather, representatives incorrectly used the CARES Act temporary interest rates and split payments evenly across the consumers' loans despite underlying differences in interest rates. While the error was not systematic in that

case, if uncorrected, consumers' highest interest rate loans will not be paid down as much as they would be if servicers applied payments based on the permanent interest rate, so when payments and interest accrual resume, these borrowers would end up paying more over time.

Some servicers failed to prevent preauthorized electronic funds transfers following forbearance approval for loans that are not federally owned. For example, due to manual errors, one servicer failed to timely enroll consumers in forbearances that they approved over phone calls and failed to cancel the relevant preauthorized fund transfers as well. In other examples, servicers failed to cancel preauthorized electronic funds transfers when consumers requested and were granted forbearances that halted all required payments.

One servicer provided inaccurate information to consumers regarding the information required to evaluate forbearance applications for loans that are not federally owned. The servicer advised consumers that providing the date range related to the COVID-19 impact was acceptable. In fact, the servicer denied forbearance requests for consumers who provided date ranges rather than precise dates of COVID-19 impact.

Certain servicers allow commercial FFELP consumers to enroll in natural disaster forbearances through their websites or automated phone systems. Examiners observed that one servicer failed to prevent certain ineligible borrowers in technical default (more than 270 days delinquent) from enrolling in forbearances. This resulted in the servicer confirming enrollment in forbearances that were not actually provided to consumers. Consumers may have believed that they did not need to take any actions until the forbearance periods ended. However, these consumers in fact needed to make payments or, at a minimum, talk with representatives to resolve the issues.

3.4 Credit Card Account Management

Market Response to Consumers & Industry Challenges

Credit card issuers generally provided some form of relief to consumers experiencing hardships as a result of the COVID-19 pandemic. The most common relief was allowing consumers to skip a payment or to defer payments for one to six months. While some issuers waived interest along with payment deferrals, interest continued to accrue on accounts at most issuers. Other relief options included lowered interest rates, waivers of annual and other fees, and extended deferred interest periods for credit card accounts that already had deferred interest on certain purchases. A few issuers made changes to manage credit risk. Some issuers tightened underwriting standards, stopped proactive score-based credit limit increases, reduced credit

limits, or closed some accounts. Some issuers also halted marketing campaigns to acquire new accounts and paused direct marketing campaigns due to uncertainty in the market.

Issuers generally experienced some operational challenges as a result of the COVID-19 pandemic, such as increased call volume. The compliance-related challenges included:

- Difficulty in meeting written disclosure timing requirements; or obtaining necessary consumer consent for electronic disclosures (e.g., for change-in-terms letters and statement messaging);
- Meeting regulatory requirements to address customer disputes, sometimes resulting from business partner and merchant closures; and
- Adjustments in regular monitoring and testing schedules for credit card operations.

In responding to challenges, some issuers deployed their existing disaster preparedness and business continuity management plans to address some of the operational challenges related to the COVID-19 pandemic. However, several issuers had to modify existing programs and business line processes, and revise policies and procedures to respond to the unique operational challenges posed by the COVID-19 pandemic.

Consumer Risk

Examiners' review of issuers' PA responses indicated several issues that raise the risk of consumer harm. These issues are described below.

Implementation and System Deficiencies

Certain issuers reported problems implementing relief programs, and these problems may have caused consumer harm. These issuers relied on manual processes to handle high volumes of requests for relief and did not provide adequate employee training about relief programs.

Some issuers that used manual processes to handle the high volumes of requests for relief reported significant backlogs in processing such requests. Due to these backlogs, accounts became delinquent between the time of consumers' requests for relief and the actual processing of requests, exposing consumers' accounts to potential negative credit reporting, charge-offs, or account closures.

In some instances, consumers who requested relief were erroneously told that they would receive immediate relief as of the date of their request. In fact, these consumers would not

receive relief until the consumer's request was manually entered into the issuer's system, which occurred days, or even weeks, later. In some cases, consumers were never manually enrolled in relief programs. Consequently, fees and interest that were supposed to be waived, along with the payment deferrals, were not waived.

Some issuers also reported that employees provided inaccurate information to consumers in order to collect payments from them. For instance, representatives told consumers that they had to pay their past due amount to enroll in the payment deferment program when in fact, paying the past due amount was not a requirement for enrollment.

Auto Pay Process Deficiencies

Several issuers advised consumers who requested to skip or defer credit card payments pursuant to a pandemic relief program that they must adjust or separately cancel any preauthorized credit card payments (including preauthorized transfers from an external financial institution) that were set up to make their periodic credit card payments. Examiners observed that the instructions given to consumers in certain cases, including going through additional steps to cancel or defer payments after completing the pandemic relief request process, posed a risk of consumer harm.

Some issuers did not immediately suspend preauthorized transfers upon enrolling consumers in pandemic relief programs, despite making representations to consumers that payments would be suspended as of the date the consumer enrolled. Rather, the issuers' systems were programmed to suspend preauthorized transfers as of the date that the consumer's request for relief was manually processed by the issuer. Because of processing backlogs, suspension of transfers did not occur until several days or weeks after the consumer's oral request. Due to these processing backlogs, examiners observed that several consumers' accounts were debited in error.

Timing of Delivery of Disclosures

At several issuers, some consumers who had not previously opted to receive electronic disclosures requested COVID-19 relief telephonically. For these consumers, the issuers had no practical way to provide written disclosures without delaying relief or obtaining the consumer's consent to electronic disclosure. Rather than delay relief, the issuers provided immediate relief to cardholders and delivered written disclosures by letter or statement notice.⁹

⁹ CFPB. May 13, 2020. *Open-End (not Home-Secured) Rules FAQs related to the Covid-19 Pandemic*. Available at: https://files.consumerfinance.gov/f/documents/cfpb_faqs_open-end-rules-covid-19_2020-05.pdf

Billing Disputes

Some issuers reported that they failed to resolve billing disputes by the regulatory deadline. This failure was attributed to the increased volume of error notices and merchant closures which increased the amount of time to investigate and resolve such errors.

3.5 Consumer Reporting and Furnishing

Consumer reporting plays a critical role in consumers' financial lives. CRCs assemble or evaluate consumer information for the purpose of furnishing consumer reports to third parties. Such consumer reports can determine a consumer's eligibility for credit cards, car loans, and home mortgage loans – and they often affect how much a consumer is going to pay for that loan. Furnishers of information provide information to CRCs and thus play a crucial role in the accuracy and integrity of consumer reports. Inaccurate information on consumer reports can lead to market harm. For example, inaccurate information on a consumer report can impact a consumer's ability to obtain credit or open a new deposit or savings account. Moreover, furnishers have an important role when consumers dispute the accuracy of information in their consumer reports. Consumers may dispute information that appears on their consumer report directly with furnishers ("direct disputes") or indirectly through CRCs ("indirect disputes"). When CRCs and furnishers receive disputes, they are required to investigate the disputes to verify the accuracy of the information furnished.¹⁰ A timely and responsive reply to a consumer dispute may reduce the impact that inaccurate negative information in a consumer report may have on the consumer.

Market Response to Consumers & Industry Challenges

The CARES Act amended Section 623(a)(1) of the FCRA (CARES Act FCRA amendment). This amendment applies if a furnisher makes an accommodation with respect to one or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make one or more payments pursuant to the accommodation. For accounts where the CARES Act FCRA amendment applies, if the credit obligation or account was current before the accommodation, during the accommodation the furnisher must continue to report the credit obligation or account as current. If the credit obligation or account was delinquent before the accommodation, during the accommodation the furnisher cannot advance

¹⁰ 15 U.S.C. § 1681i(a), 15 U.S.C. § 1681s-2(a)(8), 15 U.S.C. § 1681s-2(b); 12 C.F.R. § 1022.43.

the delinquent status.¹¹ For more examples regarding the applicability of the CARES Act FCRA amendment, the Bureau has published detailed FAQs.¹²

Furnishers and CRCs faced challenges in responding to the pandemic and the new requirements of the CARES Act FCRA amendment. Several furnishers and CRCs reported temporary staffing challenges that affected the entities' ability to complete reasonable dispute investigations within the time periods specified in the FCRA and Regulation V. Many furnishers also adapted to consumer need by offering new or expanded payment accommodations to consumers, which required changes in staffing to handle request volume. In light of the new statutory requirements for furnishing under the CARES Act FCRA amendment, these new or expanded accommodations also required that furnishers make changes in procedures to appropriately code accounts so that they would be furnished correctly according to the statute's new requirements. Notwithstanding these challenges, most CRCs and furnishers provided information indicating that they have adapted to meet their FCRA and Regulation V obligations. This is consistent with the findings of the CFPB's Office of Research that, in several credit markets including mortgage loans, auto loans, and student loans, the reported rate of new delinquencies, as well as the reported share of existing delinquencies that became more delinquent, decreased between March and June 2020.¹³

Consumer Risk

Examiners' review of furnishers' and CRCs' PA responses indicated several issues that present risk of consumer harm.

Inaccurate Reporting of Accommodations

Some entities furnished new and/or advancing delinquency information to CRCs after making an accommodation. As noted above, if a furnisher makes an accommodation, the furnisher must under certain conditions report the credit obligation or account as current, or if the credit obligation or account was delinquent before the accommodation, not advance the delinquent status during the period of the accommodation.¹⁴ Certain furnishers made accommodations, and communicated to the consumer that the accommodation had been made immediately after the consumer submitted the application. These furnishers then delayed processing accommodations

¹¹ CARES Act, Pub. L. No. 116-136, § 4201 (2020) (amending Section 623(a)(1) of the FCRA subject to certain exceptions).

¹² CFPB. June 16, 2020. *Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic*. Available at: https://files.consumerfinance.gov/f/documents/cfpb_fera_consumer-reporting-faqs-covid-19_2020-06.pdf.

¹³ CFPB. August 31, 2020. *The Early Effects of the COVID-19 Pandemic on Consumer Credit*. Available at: https://files.consumerfinance.gov/f/documents/cfpb_early-effects-covid-19-consumer-credit_issue-brief.pdf.

¹⁴ CARES Act, Pub. L. No. 116-136, § 4201 (2020) (amending Section 623(a)(1) of the FCRA).

due to backlogs created by the volume of accommodation requests. This resulted in: (i) reporting some consumers who were current as delinquent, and then improperly advancing and reporting their incorrect delinquency status, or (ii) improperly advancing the delinquency status of other consumers who were delinquent at the time of the accommodation.

Insufficient Furnishing Policies and Procedures

Examiners observed that insufficient furnishing policies and procedures caused an entity to furnish inaccurate account information to CRCs related to the practice of home pickups of leased vehicles.

Furnishers are required to “establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.”¹⁵

An auto furnisher failed to update furnishing policies and procedures to address the furnisher’s changed leased vehicle return practices. This caused the furnisher to erroneously report consumers as delinquent for leased vehicles that had, in fact, been returned. As a result of the pandemic, many auto dealerships were closed, so vehicles were picked up from consumers’ homes. This created delays or errors in the processing of lease termination, causing auto furnishers to report accounts as delinquent even though consumers had returned their vehicles on time.

After making changes to accommodation programs offered to consumers during the pandemic, a number of furnishers did not update their written policies and procedures regarding the accuracy and integrity of the information related to consumers that they furnish to CRCs. Accommodation programs offered by furnishers may affect how the furnishers report information about its accounts to CRCs. Accordingly, there is a risk of furnishing inconsistent with the CARES Act FCRA Amendment if furnishers have made changes to accommodation programs without updating related furnishing policies and procedures.

¹⁵ Regulation V, 12 C.F.R. § 1022.42(a).

Untimely Dispute Investigations

CRCs and furnishers are required to conduct an investigation with respect to the disputed information, review all relevant information provided by the consumers with the dispute, and respond with the results of the dispute investigation.¹⁶

In the second quarter of 2020, staffing challenges due to the pandemic impacted dispute investigation capacity at one or more furnishers and CRCs. As a result of these staffing challenges, some furnishers and CRCs were unable to timely conduct investigations of disputed tradelines in the months of April and May. However, examiners observed data indicating that, by the end of June 2020, the average time to resolve disputes by furnishers had returned to the average time from prior years.

Some CRCs and furnishers that experienced this problem in the Spring of 2020 took steps to reduce the risk of inaccurate consumer information caused by these staffing challenges. Specifically, these CRCs and furnishers continued to investigate the disputes and subsequently furnished updated or corrected information about such disputed items after completing their dispute investigations. CFPB Supervision is continuing to monitor dispute timeliness at CRCs and furnishers.

3.6 Debt Collection

Market Response to Consumers & Industry Challenges

During the review period, some participants in the debt collection industry reported an increase in consumer contacts and payments, which several attributed to more consumers being at home, reduced spending, and the resources provided by pandemic assistance programs.

Debt collectors altered their work practices in response to the pandemic to comply with state orders and reduce their employees' risk of infection. In general, collectors responding to the PAs indicated that they transitioned partially or entirely to remote work during the review period. Other workplace changes were reported, including the implementation of remote call-monitoring tools and modifications to telework policies.

Some states instituted pandemic measures that impacted the debt collection industry and consumers. These measures include prohibitions on new wage garnishments or bank

¹⁶ 15 U.S.C. § 1681i(a), 15 U.S.C. § 1681s-2(b)(1).

attachments, and a requirement that consumers be offered the option to defer scheduled payments.

Consumer Risk

Examiners' review of debt collectors' PA responses indicated several issues that raise the risk of consumer harm, discussed below.

In certain instances, there were delays in processing suspensions of administrative wage garnishments (AWG), followed by attempts by collectors to rectify the effects of those delays. Several servicers of commercially-owned federal student loans voluntarily suspended AWG collections. However, some employers did not promptly suspend garnishment of consumer wages. As a result, collectors made additional efforts to contact the employers and to provide refunds for wages garnished after the suspension.

Examiners reviewed the potential for FDCPA compliance risks associated with new restrictions on wage garnishment and bank attachments. FDCPA violations can occur independent of whether state law has been violated. Nonetheless, when evaluating whether an action taken to enforce a judgment violates FDCPA section 808's prohibition of "unfair or unconscionable" debt collection practices, one fact the Bureau may consider is whether applicable law permits resort to garnishment or attachment of a consumer's assets in a particular set of circumstances. Several state laws or regulations promulgated during the review period appear to prohibit debt collectors from imposing new attachments on bank accounts or new wage garnishments on employers. Of the examined debt collectors that engage in litigation and judgment enforcement activities, several voluntarily stopped imposing new bank attachments and/or wage garnishments during the review period. Due to significant complexities and a rapidly shifting landscape of state restrictions, continued litigation and judgment enforcement during the pandemic could still pose compliance risks and, as a result, risks to consumers.

There were payment processing delays for some entities caused by the transition to remote work. Certain collectors experienced delays in processing payments that were sent by mail and received at a physical location which was temporarily inaccessible due to the pandemic. In those instances, examiners generally observed the entity retroactively posting payments effective on the date payment was delivered.

3.7 Deposits

Market Response to Consumers & Industry Challenges

As part of the CARES Act, Congress authorized direct monetary payments, known as Economic Impact Payments (EIPs), to many consumers. The CARES Act also increased the amount of state unemployment insurance consumers might receive. Direct deposit was the primary method of distribution for EIPs. Direct deposit was and is a significant distribution method for state unemployment insurance benefits. Due to the economic hardship caused by the pandemic, consumers' ability to access these benefits was critical.

Depository institutions responded to the challenges posed by the pandemic in several ways. Many institutions closed physical branch locations to protect the health of both their staff and customers. A number of institutions transitioned staff to remote work, increased call center staffing in order to deal with the influx of customer questions, and increased ATM deposit and withdrawal limits to maintain consumers' access to their funds.

In response to the pandemic, a number of institutions activated their existing disaster relief programs. Numerous institutions made temporary changes to existing policies and procedures and documented those changes in informal documents, including job aids, playbooks, and FAQs issued to employees. A few institutions also made changes to formal policies and procedures. Whether through existing disaster relief programs, temporary changes, or formal policy and procedure updates, many institutions reported taking actions to reach out to consumers to offer assistance and provide resources in connection with pandemic-related hardships.

Consumer Risk

Examiners' review of institutions' PA responses found several issues that elevate the risk of harm to consumers.

The most commonly observed risks arose from the failure of institutions to fully implement the protections states put in place to protect consumers' access to the full amount of their government benefits, specifically EIPs and unemployment insurance benefits. Some states prohibited institutions from using EIPs or unemployment insurance benefits to cover charged-off loan obligations, fees owed to the institutions, or overdrawn account balances. Other states limited actions to garnish government benefits to satisfy judgments, attachments, or levies for

third-party creditors.¹⁷ These state actions took a number of different forms, including executive orders, emergency legislation, court orders, and state attorney general guidance.

Many institutions sought to identify, analyze, and, as appropriate, ensure compliance with state measures that imposed legal obligations on the institutions. But based on the limited information obtained through the PAs, examiners could not determine that all the institutions identified and/or analyzed compliance obligations under state laws with respect to exercising setoff rights and/or garnishing government benefits. Failure to properly identify, analyze, and, as applicable, comply with state actions poses a risk that consumers might be deprived of the full use of government benefits. Such a failure could, in turn, under certain circumstances, constitute an act or practice that violates Federal consumer financial law.

For those institutions that did waive setoff rights in response to state actions discussed above or on their own initiative, other consumer risks were identified. Institutions used a variety of methods to waive setoff rights. These methods included refunding fees that contributed to a consumer's account being overdrawn, permanently forgiving overdrawn account balances, and issuing checks to consumers with overdrawn accounts for the full amount of their EIPs or protected unemployment insurance benefits. Institutions most frequently waived setoff rights through the issuance of provisional credits in the amount of the overdrawn account balances. These credits would then be revoked at a later date, potentially leaving some consumers with a negative account balance.

Waiver of setoff rights allowed consumers access to the full amount of government benefits. At several institutions, examiners found risk when the institutions failed to clearly communicate to consumers how and when provisional credits would be revoked. This risk was exacerbated if the institutions lacked a clear policy preventing assessment of an overdraft fee when the revocation of provisional credit resulted in a negative account balance. Consumer complaints indicated confusion about the use and revocation of provisional credits. Examiners also observed a risk with respect to policies and procedures around the waiver or refund of account fees. In response to COVID-19, some institutions expanded existing account fee waiver or refund policies either through a blanket waiver or upon consumer request. These institutions informed consumers of the changes on their websites or via press releases. However, examiners observed a risk when the institutions failed to implement policies and procedures that clearly and consistently operationalized account fee waivers and refunds.

¹⁷ The Coronavirus Response and Relief Supplemental Appropriation Act of 2021 provides many consumers with a second Economic Impact Payment. The legislation authorizing the payments directs financial institutions to treat these EIPs as exempt from garnishment orders.

3.8 Prepaid Accounts

Market Response to Consumers & Industry Challenges

Pandemic-related business closures led to millions of consumers receiving state unemployment insurance benefits. For a period of time, the CARES Act enhanced the amount of unemployment insurance benefits that consumers received. Many states issue prepaid cards as a method for disbursing unemployment insurance benefits. Aside from unemployment insurance benefits, some consumers received EIPs on prepaid cards. As a result, prepaid accounts experienced an unexpected spike in demand.

This rapid growth caused issues related to transaction and maintenance fees, service availability, and continuity. The industry encountered difficulty in fully staffing call centers to quickly answer questions and resolve conflicts relating to the significant increase in volume and number of prepaid accounts. Although depository institutions issue prepaid accounts, they often contract with third-party service providers to assist in managing the accounts. The compliance infrastructure at these third parties is generally less mature, which exacerbates the potential for consumer harm caused by unforeseen changes in the prepaid marketplace.

Consumer Risk

Prepaid account issuers generally made changes to address staffing challenges and operational difficulties caused by the COVID-19 pandemic and the significant rise in volume and number of accounts. Nonetheless, examiners highlighted a few key COVID-19 related risks with respect to issuers of unemployment insurance benefit prepaid accounts.

Due to surge in demand, one institution lacked sufficient supply of the required disclosures and privacy notices and, rather than delay account access, mailed the prepaid account information to consumers without the required disclosures and privacy notices. To mitigate the lack of paper written disclosure, the institution included the address of a website where consumers could review the information online. The lack of paper disclosures presented a risk of harm as these consumers did not receive disclosures that included the terms of use and privacy notices as required by law.¹⁸ These required disclosures cover, among other things, the fee schedule and error resolution rights associated with the prepaid accounts. The institution addressed this issue by subsequently mailing the required disclosures and privacy notices to impacted consumers.

¹⁸ Electronic Fund Transfer Act, 12 U.S.C. § 1693 *et seq.*; Regulation E, 12 C.F.R. § 1005.15(c)(1); Regulation P, 12 C.F.R. Part 1016.

3.9 Small Business Lending

The Bureau has supervisory authority over large insured depository institutions and insured credit unions, many of which have originated PPP loans. Consistent with its authority to ensure compliance with the Equal Credit Opportunity Act (ECOA), the Bureau conducted PAs to assess potential fair lending risks attendant to the institutions' participation in the program. Below are the supervisory observations resulting from these PAs.

Market Response to Consumers & Industry Challenges

The COVID-19 pandemic had a swift and dramatic impact on small businesses. Many small businesses were forced to shut down temporarily or reduce operations in response to mandatory state and local stay-at-home orders issued to reduce exposure to, and transmission of, COVID-19. Small businesses also experienced a significant drop in demand for goods and services and disruptions in their supply chains. Because of these impacts, many small businesses experienced a sharp drop in revenue and increased economic stress.

To address this problem, section 1102 of the CARES Act amended Section 7(a) of the Small Business Act, 15 U.S.C. § 636(a), to create a temporary small business lending program known as the PPP. Under the PPP, small businesses could receive loans from private lender to cover eligible payroll, costs, business mortgage payments and interest, rent, and utilities for either an 8- or 24-week period after disbursement. Each loan is fully guaranteed by the Small Business Administration (SBA), which administers the PPP; small business borrowers do not have to make any payments during the first six months of the loan term and may receive a deferral up to one year; and small businesses may receive complete or partial forgiveness of their loans if they use their loans to cover certain expenses and meet other requirements. A wide range of financial institutions were eligible to participate as lenders in the PPP, including institutions that normally do not participate in the SBA's 7(a) lending program.¹⁹ This includes federally insured depository institutions, credit unions, and nonbanks.²⁰

When the PPP opened on April 3, 2020, demand for PPP loans far exceeded the initial \$349 billion of funding for PPP loans and those funds were exhausted in less than two weeks. Congress subsequently provided another \$310 billion (including \$60 billion specifically to be lent by smaller banks and credit unions), bringing the total funding for the PPP to \$659 billion.

¹⁹ The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. The program's name comes from section 7(a) of the Small Business Act, 15 U.S.C. § 636(a). The SBA offers several different types of loans through the program.

²⁰ Institutions that were not SBA-certified did have to apply to the SBA and receive delegated authority to process PPP loan applications.

The second round of funding became available on April 27, 2020 and was not exhausted. When the PPP closed on August 8, 2020, \$133 billion remained available.

While the PPP was active, Congress made additional funds available, changed the term for new PPP loans, and revised other program requirements. The SBA also issued numerous interim final rules related to the program and lenders. PPP lenders were responsible for ensuring that their participation in the PPP complied not only with the CARES Act and SBA rules, but also with other applicable laws, including ECOA.

Fair Lending Risk

Examiners' review of small business lenders' PA responses identified certain issues that may pose fair lending risks.

In implementing the PPP, multiple lenders adopted a policy that restricted access to PPP loans beyond the eligibility requirements of the CARES Act and rules and orders issued by the SBA (an "overlay"). Specifically, several small business lenders restricted access by limiting eligibility for PPP loans to existing customers (an "existing customer overlay"). The Bureau's PA work in this area revealed that the existing customer overlay fell into two general categories:

- (1) restrictive policies that allowed only small businesses with a pre-existing relationship (or certain type of pre-existing relationship) with the institution the opportunity to apply for a PPP loan; and
- (2) less restrictive policies that required small businesses without a pre-existing relationship to first become customers of the financial institution (usually by opening a business deposit account) and then apply for a PPP loan.

Examiners determined that an overlay restricting access to PPP loans for small businesses that do not have an existing relationship with the institution, while neutral on its face, may have a disproportionate negative impact on a prohibited basis and run a risk of violating the ECOA and Regulation B. The small business lenders provided business justifications for their use of existing customer overlays, with the majority of institutions noting that they adopted such overlays because of Know Your Customer legal requirements, the prevention of fraud, or both. Several institutions also offered other, operational reasons for adopting this overlay, including managing extreme demand and enabling the institution to process as many applications as possible before funds were depleted. Examiners noted the challenges faced by small business lenders in implementing the PPP during a nationwide emergency and found that the institutions' stated reasons for adopting their overlays reflected legitimate business needs during part or all of the review period. Examiners did not, however, conduct a full analysis of any institution's overlay, and did not make any determination about whether an institution's use

of the overlay complies with ECOA or Regulation B. Examiners encouraged the small business lenders to consider the fair lending risks associated with participation in the PPP, in further implementation of the PPP, and in any new lending program and to evaluate and address any risks.

4. Conclusion

The Bureau is committed to being as transparent as possible about its supervisory findings and will continue to publish *Supervisory Highlights* to aid Bureau-supervised entities in their efforts to comply with Federal consumer financial law. While the Bureau’s PA reviews are substantially complete, in some instances, examiners identified issues that require follow up. The Bureau will follow-up on risks identified during PAs in the course of its regular supervisory work and findings may be shared in future editions of *Supervisory Highlights*.