

CFPB Highlights COVID-19-Fueled Regulatory Risks for Examined Industries in Special Edition of Supervisory Highlights

4 min read

Feb 17, 2021

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In its recent Special Edition of [Supervisory Highlights on COVID-19 Prioritized Assessments](#), the Consumer Financial Protection Bureau (CFPB) summarized challenges and risks with respect to several industries it had informally examined since the start of the pandemic. Beginning in May 2020, the Bureau rescheduled about half of its planned examinations and instead conducted “prioritized assessments” in response to the pandemic. These assessments included seeking information on how institutions were responding and communicating with consumers, and also examining how institutions were confronting and adapting compliance in response to the pandemic.

The Bureau made several specific observations regarding core examined industries, which offer insight into future areas for continued examination or enforcement.

We’ve outlined the key takeaways by industry below.

Mortgage Servicing

The Bureau cautioned servicers to monitor several issues, including: providing complete and accurate information to consumers about forbearance options; sending collection and default notices, assessing late fees, and initiating foreclosures for borrowers enrolled in forbearance; enrolling borrowers in automatic or unwanted forbearances; and, reviewing loss mitigation procedures for borrowers in CARES Act forbearances.

Auto Loan Servicing

The Bureau called for auto servicers to provide more specific information about the final payment when offering loan payment deferments or extending such deferments, noting that auto servicers have various options, such as estimating final payment amounts. Describing the final payment as “substantially larger than your regular monthly payment” may not be sufficient to reasonably put consumers on notice that their final payments may double. Explicit direction on acceptable communication was not provided.

Student Loan Servicing

Several challenges in the student loan marketplace were amplified by the COVID-19 pandemic including borrowers not being certain whether they have Direct, FFELP, or private loans and thus what repayment options were available to them; inability of servicers clearly communicating consequences of repayment options, including forbearance, payment allocation errors; and issues with preauthorized funds transfers.

Credit Card Account Management

As with all products, the increased volume of requests for relief resulted in a number of issues that risked consumer harm. These included a lack of adequate training, manual processes and the resulting delays, which exposed consumers to potential negative credit reporting, charge-offs, or account closures. The Bureau also identified instances of deceptive communications and deficiencies in autopay processes, disclosure delivery and billing disputes.

Consumer Reporting and Furnishing

Furnishers making accommodations should anticipate backlogs created by the volume of accommodation requests and take steps to avoid inaccurate reporting. They should also update their written policies and procedures to reflect compliance with the CARES Act’s Fair Credit Report Act (FCRA) amendment. Finally, consumer reporting companies (CRCs) and furnishers should continue to investigate disputes and subsequently furnish updated or corrected information about such disputed items, even if investigations cannot occur timely.

Debt Collection

First, debt collectors should monitor state-issued remote work guidance and consider whether current licenses permit associates who engage in servicing and/or collection activities to work remotely from home without obtaining a branch license for that location. Second, they should continue to track state prohibitions on debt collectors from imposing new attachments on bank accounts or new wage garnishments on employers to mitigate against potential Fair Debt Collection Practices Act (FDCPA) exposure. Finally, collectors should

anticipate payment processing delays caused the pandemic and develop a plan to respond—such as retroactively posting payments effective on the date payment was delivered.

Deposits

The Bureau noted failures by some institutions to fully implement state actions aimed at ensuring consumers received full Economic Impact Payments (EIPs) and unemployment insurance benefits—specifically, prohibitions on using benefits to cover charged off loan obligations, fees, or overdrawn account balances; or garnishing benefits to satisfy judgements, attachments, or levies for third-party creditors. In addition, the Bureau observed that institutions who waived setoff rights in response to state actions typically did so by issuing provisional credits in the amount of a consumer's overdrawn account balance to be revoked at a later date. In many cases, however, institutions failed to clearly communicate to consumers how and when provisional credits would be revoked. They also lacked clear policies to prevent assessment of overdraft fees where a revocation of provisional credit may result in a negative account balance.

Prepaid Accounts

Many consumers received both enhanced state unemployment insurance benefits and EIPs from Congress on prepaid cards, and this surge in demand resulted in issues related to transaction and maintenance fees, service availability, and continuity. Failure to include required disclosures and privacy notices, were noted among the issues. Even though the institution included the address of a website to review the required disclosures, the Bureau noted that this did not comply with the law.

Small Business Lending

When offering Paycheck Protection Program (PPP) loans, several lenders restricted access to the PPP by limiting eligibility to existing customers. The Bureau determined that 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 Equal Credit Opportunity Act (ECOA) and Regulation B. The Bureau's analysis signals its renewed focus on fair lending risks, not only under the PPP, but also any new lending programs, so lenders must review such programs to evaluate and address any fair lending risks.

In each industry sector, the Bureau's findings and observations are critical to analyze as servicing during COVID-19 continues. Testing, auditing, and implementation of risk management in the areas identified are recommended.

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Topics

Student Loans, FDCPA, Debt Collection, CFPB, FCRA, COVID-19, Coronavirus, CARES Act, Mortgage Servicers, Regulatory Compliance, Furnishers, ECOA, PPP, Economic Impact Payment

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