

September 2018

# Supervisory Highlights

Issue 17, Summer 2018



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# 1. Introduction

The Bureau of Consumer Financial Protection (Bureau) is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of automobile loan servicing, credit cards, debt collection, mortgage servicing, payday lending, and small business lending that were generally completed between December 2017 and May 2018 (unless otherwise stated).

It is important to keep in mind that institutions are subject only to the requirements of relevant laws and regulations. The information contained in *Supervisory Highlights* is disseminated to help institutions better understand how the Bureau examines institutions for compliance with those requirements. This document does not impose any new or different legal requirements. In addition, the legal violations described in this and previous issues of *Supervisory Highlights* are based on the particular facts and circumstances reviewed by the Bureau as part of its examinations. A conclusion that a legal violation exists on the facts and circumstances described here may not lead to such a finding under different facts and circumstances.

We invite readers with questions or comments about the findings and legal analysis reported in *Supervisory Highlights* to contact us at [cfpb\\_Supervision@cfpb.gov](mailto:cfpb_Supervision@cfpb.gov).

## 2. Supervisory observations

Recent supervisory observations are reported in the areas of automobile loan servicing, credit cards, debt collection, mortgage servicing, payday lending, and, for the first time, small business lending.

### 2.1 Automobile loan servicing

The Bureau continues to examine auto loan servicing activities, primarily to assess whether servicers have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Consumer Financial Protection Act of 2010 (CFPA). Recent auto loan servicing examinations identified deceptive and unfair acts or practices related to billing statements and wrongful repossessions.

#### 2.1.1 Billing statements showing paid-ahead status after applying insurance proceeds

One or more examinations observed instances in which notes required that insurance proceeds from a total vehicle loss be applied as a one-time payment to the loan with any remaining balance to be collected according to the consumer's regular billing schedule. However, in some instances after consumers experienced a total vehicle loss, the servicers sent billing statements showing that the insurance proceeds had been applied to the loan payments so that the loan was paid ahead and that the next payment on the remaining balance was due many months or years in the future. Servicers then treated consumers who failed to pay by the next month as late and in some cases also reported the negative information to consumer reporting agencies.

The examination found that servicers engaged in a deceptive practice by sending billing statements indicating that consumers did not need to make a payment until a future date when in fact the consumer needed to make a monthly payment.<sup>1</sup> The billing statements

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<sup>1</sup> 12 USC 5531, 5536.

contained due dates inconsistent with the note and the servicer's insurance payment application. Such information would mislead reasonable consumers to think they did not need to make the next monthly payment. The misrepresentation is material because it likely affected consumers' conduct with regard to auto loans. Consumers would have been more likely to make a monthly payment if they knew that not doing so would result in a late fee, delinquency notice, or adverse credit reporting. In response to examination findings, the servicers are sending billing statements that accurately reflect the account status of the loan after applying insurance proceeds from a total vehicle loss.

## 2.1.2 Repossessions

Many auto servicers provide options to consumers to avoid repossession once a loan is delinquent or in default. Servicers may offer formal extension agreements that allow consumers to forbear payments for a certain period of time or may cancel a repossession order once a consumer makes a payment.

One or more recent examinations found that servicers repossessed vehicles after the repossession was supposed to be cancelled. In these instances, the servicers incorrectly coded the account as remaining delinquent or customer service representatives did not timely cancel the repossession order after the consumer's agreement with the servicers to avoid repossession. The examinations identified this as an unfair practice.<sup>2</sup> The practice of wrongfully repossessing vehicles causes substantial injury because it deprives borrowers of the use of their vehicles and potentially leads to additional associated harm, such as lost wages and adverse credit reporting. Such injury is not reasonably avoidable when consumers take action they believed would halt the repossession and there is no additional action the borrower can take to prevent it. Finally, the injury is not outweighed by countervailing benefits to the consumer or to competition. No benefits to competition are apparent from erroneous repossessions. And the expense to better monitor repossession activity is unlikely to be substantial enough to affect institutional operations or pricing. In response to the examination findings, the servicers are stopping the practice, reviewing the accounts of consumers affected by a wrongful repossession, and removing or remediating all

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<sup>2</sup> *Id.*

repossession-related fees.

## 2.2 Credit cards

The Bureau continues to examine the credit card account management operations of one or more supervised entities. Typically, examinations assess advertising and marketing, account origination, account servicing, payments and periodic statements, dispute resolution, and the marketing, sale and servicing of credit card add-on products. With some notable exceptions, the examinations found that supervised entities generally are complying with applicable Federal consumer financial laws.

### 2.2.1 Periodic re-evaluation of rate increases

Regulation Z, as revised to implement the Card Accountability Responsibility and Disclosure (CARD) Act, requires credit card issuers to periodically re-evaluate consumer credit card accounts subjected to certain increases in the applicable Annual Percentage Rate(s) (APR or rate) to assess whether it is appropriate to reduce the account's APR(s).<sup>3</sup> Issuers must first re-evaluate each such account no later than six months after the rate increase and at least every six months thereafter.<sup>4</sup> In re-evaluating each account, the issuer must apply either (a) the factors on which the rate increase was originally based or (b) the factors the issuer currently considers when determining the APR applicable to similar, new consumer credit card accounts.<sup>5</sup>

One or more examinations between January and July 2018 found that entities: (a) failed to re-evaluate all eligible accounts, (b) failed to consider the appropriate factors when re-evaluating eligible accounts, or (c) failed to appropriately reduce the rates of accounts eligible for rate reduction. In one or more instances, the issuers failed to re-evaluate all eligible accounts because they inadvertently excluded some eligible accounts from the pool of accounts they re-evaluated. In one or more instances, the issuers failed to consider the appropriate factors because they inappropriately conflated re-evaluation factors, among other reasons. In one or

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<sup>3</sup> 12 CFR 1026.59(a).

<sup>4</sup> 12 CFR 1026.59(c).

<sup>5</sup> 12 CFR 1026.59(d)(1).

more instances, the issuers failed to appropriately reduce the rates for eligible accounts because they effectively imposed additional criteria for a rate reduction. The issuers have undertaken, or developed plans to undertake, remedial and corrective actions in response to these examination findings.

## 2.3 Debt collection

The Bureau's Supervision program has authority to examine certain entities that engage in consumer debt collection activities, including nonbanks that are larger participants in the consumer debt collection market. Recent examinations of larger participants identified one or more violations of the Fair Debt Collection Practices Act (FDCPA).<sup>6</sup>

### 2.3.1 Failure to obtain and mail debt verification before engaging in further collection activities

Section 809(b) of the FDCPA requires a debt collector, upon receipt of a written debt validation request from a consumer, to cease collection of the debt until it obtains verification of the debt and mails it to the consumer.<sup>7</sup> Examinations found that one or more debt collectors routinely failed to mail debt verifications before engaging in further collections activities. Instead, one or more debt collectors forwarded consumer debt validation requests to originating creditors; the creditors then reviewed the debts and mailed responses directly to consumers. One or more debt collectors accepted creditor determinations that the debt was owed by the relevant consumer for the amount claimed without receiving information verifying the debt and without mailing the required verification to consumers. One or more debt collectors then continued collection activities on accounts in violation of section 809(b) of the FDCPA.<sup>8</sup> In response to these examination findings, one or more debt collectors are revising their debt validation policies, procedures, and practices to ensure both that they obtain appropriate verification of the debt

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<sup>6</sup> 15 USC 1692-1692p.

<sup>7</sup> 15 USC 1692g(b).

<sup>8</sup> *Id.*

when requested and that they mail the verification to consumers prior to engaging in further collection activities.

## 2.4 Mortgage servicing

Bureau examinations continue to focus on the loss mitigation process and, in particular, on how servicers handle trial modifications where consumers are paying as agreed. One or more recent mortgage servicing examinations observed unfair acts or practices relating to conversion of trial modifications to permanent status and initiation of foreclosures after consumers accepted loss mitigation offers. Recent examinations also identified unfair acts or practices when institutions charged consumers amounts not authorized by modification agreements or by mortgage notes.

### 2.4.1 Converting trial modifications to permanent status

Past editions of *Supervisory Highlights* discussed how one or more servicers failed to place consumers who successfully completed trial modifications into permanent modifications in a timely manner.<sup>9</sup> Such delays may harm consumers when interest accrues at a higher non-modified rate or when servicers report consumers as delinquent or still in trial modifications to consumer reporting agencies during the delay. Where a servicer does not provide full financial remediation to the consumer for such a delay, one or more examinations have identified an unfair practice.

One or more recent examinations reviewed the practices of servicers with policies providing for permanent modifications of loans if consumers made four timely trial modification payments. However, for nearly 300 consumers who successfully completed the trial modification, the servicers delayed processing the permanent modification for more than 30 days. During these delays, consumers accrued interest and fees that would not have been accrued if the permanent modification had been processed. The servicers did not remediate all of the affected consumers

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<sup>9</sup> See, e.g., Issue 11 of Supervisory Highlights, section 3.2, available at, [https://www.consumerfinance.gov/documents/509/Mortgage\\_Servicing\\_Supervisory\\_Highlights\\_11\\_Final\\_web.pdf](https://www.consumerfinance.gov/documents/509/Mortgage_Servicing_Supervisory_Highlights_11_Final_web.pdf).



nor did they have policies or procedures for remediating consumers in such circumstances. The servicers attributed the modification delays to insufficient staffing.

As a result, one or more examinations identified an unfair act or practice. Consumers experienced substantial injury that could not be reasonably avoided. The accrued fees and interest that the servicers failed to fully remediate were likely significant because the delays were more than 30 days. And consumers could not reasonably avoid these injuries. They could neither control the processing of their loan modifications nor compel remediation from the servicers. The harm to consumers outweighs the cost to consumers or to competition, given that the servicers acknowledged that the delay was in error and did not indicate that the cost of remediation was burdensome. In response to examination findings, the servicers are fully remediating affected consumers and developing and implementing policies and procedures to timely convert trial modifications to permanent modifications where the consumers have met the trial modification conditions.<sup>10</sup>

In September 2017, examinations also found that one or more servicers mitigated the potential consumer harm associated with trial conversion delays by maintaining communication with consumers during the delay and by proactively remediating individual consumers for the costs associated with the delay after eventually making the consumers' modifications permanent.

## 2.4.2 Charging consumers unauthorized amounts

One or more examinations found instances in which mortgage servicers charged consumers more than the amounts authorized by their loan modification agreements. The overcharges were caused by data errors affecting the modified loan's starting balance, step-rate and interest-rate changes, deferred interest, and amortization maturity date when the loan was entered into the servicing system. The examinations identified this as an unfair practice.<sup>11</sup> The overcharges resulted in substantial injury to consumers when consumers made payments higher than those stipulated in the modification agreements or when they made payments for a term longer than stipulated in the modification agreements. Consumers could not reasonably avoid this injury,

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<sup>10</sup> 12 USC 5531, 5536.

<sup>11</sup> 12 USC 5531, 5536.

which was caused by errors in the servicers' systems. The injury to consumers is not outweighed by any countervailing benefits to consumers or to competition. No benefits to competition are apparent from the systemic errors that resulted in erroneous billing statements. And the expense of instituting validation procedures for loan-modification data is unlikely to be substantial enough to affect institutional operations or pricing. In response to the examination findings, the servicers are remediating affected consumers and correcting loan modification terms in their systems.

### 2.4.3 Representations regarding initiation of foreclosure

When one or more mortgage servicers approved borrowers for a loss mitigation option on a non-primary residence, the servicers represented to borrowers that the servicers would not initiate foreclosure if the borrower accepted loss mitigation offers in writing or by phone by a specified date. However, the servicers then initiated foreclosure even if borrowers had called or written to accept the loss mitigation offers by that date. Examinations identified this as a deceptive act or practice.

The misrepresentations were likely to mislead borrowers when the servicers expressly indicated that the servicers would not initiate foreclosure proceedings if borrowers accepted the loss mitigation offers. The borrowers' interpretation of the misrepresentations was reasonable in this circumstance, i.e., that the servicers would not initiate foreclosure after the borrowers accepted the loss mitigation offers. The misrepresentations were material because they were likely to prompt borrowers to accept the loss mitigation offers to avoid the initiation of foreclosure proceedings.

### 2.4.4 Representations regarding foreclosure sales

Examinations observed that when borrowers submitted complete loss mitigation applications less than 37 days from a scheduled foreclosure sale date, one or more servicers sent the borrowers notices indicating that the applications were complete and stating that the servicer(s) would notify the borrowers of the decision on the applications in writing within 30 days. But after sending these notices, the servicers proceeded to conduct the scheduled foreclosure sales without making a decision on the borrowers' loss mitigation applications.

The examinations did not find that this conduct amounted to a legal violation but observed that it could pose a risk of a deceptive practice. The notices could potentially mislead borrowers by

stating that the borrowers would receive a decision on their loss mitigation applications. Borrowers reasonably could take that statement to mean that foreclosure sales would be postponed until a decision was reached.

## 2.5 Payday lending

The Bureau's Supervision program covers entities that offer or provide payday loans. Examinations of payday lenders identified unfair and deceptive acts or practices as well as violations of Regulation E.<sup>12</sup>

### 2.5.1 Misleading collection letters

Examinations observed one or more entities engaging in a deceptive act or practice in their collection letters. These entities represented in their letters that they will, or may have no choice but to, repossess consumers' vehicles if the consumers fail to make payments or contact the entities. This was despite the fact that these entities did not have business relationships with any party to repossess vehicles and, as a general matter, did not repossess vehicles. Given these facts, the examination concluded that the net impression of these representations in the context of each letter was to mislead consumers to believe that these entities would repossess or were likely to repossess consumers' vehicles. The representations were material because they were likely to affect the behavior of consumers who were misled. The representations were likely to induce consumers to make payments to these entities, as opposed to allocating their funds toward other expenses. In response to the examination findings, the entity or entities are ensuring that their collection letters do not contain deceptive content.

### 2.5.2 Debiting consumers' accounts without valid authorization by using account information previously provided for other purposes

Examinations observed one or more entities using debit card numbers or Automated Clearing House (ACH) credentials that consumers had not validly authorized the entities to use to debit funds in connection with a single-payment or installment loan in default. Upon a consumer's

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<sup>12</sup> 12 CFR 1005.10(b).

failure to repay the loan obligation as agreed, one or more entities attempted to initiate electronic fund transfers (EFTs) using debit card numbers or ACH credentials that borrowers had identified on authorization forms executed in connection with the defaulted loan at issue. If those attempts were unsuccessful, the entities would then seek to collect balances due and owing via EFTs using debit card numbers or ACH credentials that the borrowers had supplied to the entities for other purposes, such as when obtaining other loans or making one-time payments on other loans or the loan at issue. Through these invalidly authorized EFTs, the entities sought payment of up to the entire amount due on the loan.

The examinations identified these as unfair acts or practices and also, in some cases, as violations of Regulation E. With respect to unfairness, the invalidly authorized debits caused substantial injury in the form of debits that consumers could not anticipate, leading to potential fees. Because the credentials were provided to the entities for other purposes, such as account information consumers provided in previous credit applications, consumers could not anticipate that the entities would use them for the defaulted loan at issue and thus could not reasonably avoid such injury. Finally, the injury was not outweighed by any countervailing benefits to consumers, such as satisfying their debts, or to competition, such as passing on lower costs to consumers derived from easier debt collection. By giving an unfair advantage over other entities that obtain authorization to initiate debits from consumers pursuant to clear and readily understandable terms, the unfair acts or practices likely harmed competition.<sup>13</sup>

With respect to loans for which the consumer entered into preauthorized EFTs that recurred at substantially regular intervals, the examinations identified this practice as a violation of Regulation E, which requires that preauthorized EFTs from a consumer's account be authorized only by a writing signed or similarly authenticated by the consumer.<sup>14</sup> Here, the loan agreements and EFT authorization forms failed to provide clear and readily understandable terms regarding the entities' use of debit card numbers or ACH credentials that consumers provided for other purposes. Accordingly, the entities did not obtain valid preauthorized EFT authorizations for the debits they initiated using debit card numbers or ACH credentials consumers provided for other purposes.

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<sup>13</sup> 12 USC 5531, 5536.

<sup>14</sup> 12 CFR 1005.10(b),

In response to examination findings, the entity or entities are ceasing the violations, remediating borrowers impacted by the invalid EFTs, and revising loan agreement templates and ACH authorization forms.

## 2.6 Small business lending

The Equal Credit Opportunity Act (ECOA) prohibition against discrimination is not limited to consumer transactions; it also applies to business-purpose credit transactions, including credit extended to small businesses. In 2016 and 2017, the Bureau began conducting supervision work to assess ECOA compliance in institutions' small business lending product lines, focusing in particular on the risks of an ECOA violation in underwriting, pricing, and redlining. The Bureau anticipates an ongoing dialogue with supervised institutions and other stakeholders as the Bureau moves forward with supervision work in small business lending.

### 2.6.1 Supervisory observations

In the course of conducting ECOA small business lending reviews, Bureau examination teams have observed instances in which one or more financial institutions effectively managed the risks of an ECOA violation in their small business lending programs.

Examinations at one or more institutions observed that the board of directors and management maintained active oversight over the institutions' compliance management system (CMS) framework. Institutions developed and implemented comprehensive risk-focused policies and procedures for small business lending originations and actively addressed the risks of an ECOA violation by conducting periodic reviews of small business lending policies and procedures and by revising those policies and procedures as necessary. Examinations also observed that one or more institutions maintained a record of policy and procedure updates to ensure that they were kept current.

With regard to self-monitoring, one or more institutions implemented small business lending monitoring programs and conducted semi-annual ECOA risk assessments that include assessments of small business lending. In addition, one or more institutions actively monitored pricing-exception practices and volume through a committee.

When examinations included file reviews of manual underwriting overrides at one or more institutions, they found that credit decisions made by the institutions were consistent with the requirements of ECOA, and thus the examinations did not find any violations of ECOA.

At one or more institutions, however, examinations observed that institutions collect and maintain (in useable form) only limited data on small business lending decisions. Limited availability of data could impede an institution's ability to monitor and test for the risks of ECOA violations through statistical analyses.

# 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 Citibank N.A

On June 29, 2018, the Bureau announced an enforcement action against Citibank, N.A., (Citibank or Bank). The Bureau found Citibank violated the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, by failing to properly periodically re-evaluate and reduce the Annual Percentage Rates (rates) applicable to credit card accounts that had been subject to certain rate increases between 2011 and 2017 and by failing to have in place reasonable written policies and procedures to do so.

In 2016, Citibank initiated a significant compliance review program across its credit cards line of business. That review led to Citibank's self-identifying several deficiencies and errors in its rate re-evaluation methodologies. After the Bank promptly self-disclosed the violations, the Bureau ultimately found through its supervisory process that Citibank violated TILA by failing to reevaluate and reduce the APRs for approximately 1.75 million consumer credit card accounts and thereby imposed on those accounts excess interest charges of \$335 million.

Under the terms of the resulting consent order, Citibank was required to correct these practices and pay \$335 million in restitution to the impacted consumers.<sup>15</sup> The Bureau did not assess civil money penalties based on a number of factors, including Citibank's self-identifying and self-reporting the violations to the Bureau and its self-initiating remediation to affected consumers.

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<sup>15</sup> See Citibank Consent Order available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-citibank-na/>.

### 3.1.2 Triton Management Group

On July 19, 2018, the Bureau entered into a consent order with Triton Management Group, Inc., a pay day lender that operates in Alabama, Mississippi, and South Carolina under several names including “Always Money” and “Quik Pawn Shop.” The Bureau found that Triton violated the CFPA and the disclosure requirements of TILA by failing to properly disclose finance charges associated with their auto title loans in Mississippi. The Bureau also found that Triton used advertisements that failed to disclose the annual percentage rate and other information in violation of TILA. The consent order bars Triton from misrepresenting the costs of its loans and requires Triton to remediate consumers \$1,522,298. Based on Triton’s inability to pay, it will remediate consumers \$500,000.<sup>16</sup>

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<sup>16</sup> See Triton Management Group Consent Order available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-triton-management-group/>.



# 4. Supervision program developments

## 4.1 Recent Bureau rules and guidance

### 4.1.1 Mortgage servicing final rule

On March 8, 2018, the Bureau issued a final rule to help mortgage servicers communicate with certain borrowers facing bankruptcy. The final rule gives mortgage servicers a clearer and more straightforward standard for providing periodic statements to consumers entering or exiting bankruptcy by amending the Bureau's 2016 mortgage servicing rule. Specifically, the final rule provides a clear single-statement exemption for servicers to make the transition, superseding the single-billing-cycle exemption included in the 2016 rule. The effective date for the rule was April 19, 2018.<sup>17</sup>

### 4.1.2 2017–2018 amendments of the TILA-RESPA integrated disclosure rule

On August 11, 2017, the Bureau published a final rule<sup>18</sup> in the *Federal Register* amending the Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) as implemented by Regulation Z (2017 TILA-RESPA Rule). These amendments are intended to provide greater certainty and clarity to the 2013 TILA-RESPA Rule, which went into effect on October 3, 2015. Changes and clarifications in the 2017 TILA-RESPA Rule include creating a tolerance for the total of payments disclosure, clarifying the partial exemption for housing assistance lending, expanding coverage of the disclosure rule to include cooperative units regardless of whether State law considers the units real property or personal property, and clarifying when disclosures may be shared with third

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<sup>17</sup> See Mortgage Service Rules under the Truth in Lending Act (Regulation Z), 83 Fed. Reg. 10553 (Mar. 8, 2018), [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage-servicing\\_final-rule\\_2018-amendments.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing_final-rule_2018-amendments.pdf).

<sup>18</sup> Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 82 Fed. Reg. 37656 (Aug. 11, 2017).

parties. Additionally, the 2017 TILA-RESPA Rule includes several additional clarifications and technical changes addressing various parts of the 2013 TILA-RESPA Rule, including the calculating cash to close table, construction-to-permanent lending, principal reductions, rounding requirements, and simultaneous second lien loans. The 2017 TILA-RESPA Rule became effective October 10, 2017. However, compliance with the 2017 TILA-RESPA Rule is mandatory only with respect to transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice<sup>19</sup> and compliance with the partial payment policy disclosure requirements,<sup>20</sup> which will become mandatory on October 1, 2018, regardless of when an application was received).

On May 2, 2018, the Bureau published a final rule in the *Federal Register* amending the Federal mortgage disclosure requirements to address when a creditor may use a Closing Disclosure to determine if an estimated closing cost was disclosed in good faith and within tolerance (2018 TILA-RESPA Rule).<sup>21</sup> The 2013 TILA-RESPA Rule in effect as of October 3, 2015 included a timing restriction limiting the use of the Closing Disclosure to reset tolerances to a period relative to the date of consummation, resulting in a creditor's inability to pass through closing cost increases<sup>22</sup> to the consumer in certain limited circumstances. The 2018 TILA-RESPA Rule removes this timing restriction, permitting the use of the Closing Disclosure to establish good faith and reset tolerances regardless of when the Closing Disclosure is provided relative to consummation. The final rule took effect on June 1, 2018.

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<sup>19</sup> 12 CFR 1026.20(e).

<sup>20</sup> 12 CFR 1026.39(d)(5).

<sup>21</sup> Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 83 Fed. Reg. 19159 (May 2, 2018).

<sup>22</sup> 12 CFR 1026.19(e)(3)(iv).

## 4.2 Fair lending developments

### 4.2.1 HMDA implementation and new data submission platform

On December 21, 2017, the Bureau provided the following statement regarding HMDA implementation:

Recognizing the impending January 1, 2018 effective date of the Bureau's amendments to Regulation C and the significant systems and operational challenges needed to adjust to the revised regulation, for HMDA data collected in 2018 and reported in 2019 the Bureau does not intend to require data resubmission unless data errors are material. Furthermore, the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019. Collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA CMS for future years. Any examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good faith compliance efforts. The Bureau intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points. For data collected in 2017, financial institutions will submit their reports in 2018 in accordance with the current Regulation C using the Bureau's HMDA Platform.<sup>23</sup>

On July 5, 2018, the Bureau provided the following statement regarding recent HMDA amendments:

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<sup>23</sup> *CFPB Issues Public Statement on Home Mortgage Disclosure Act Compliance* (December 21, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/>.

The President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) on May 24, 2018, a section of which amends the Home Mortgage Disclosure Act (HMDA). The Act provides partial exemptions for some insured depository institutions and insured credit unions from certain HMDA requirements.<sup>24</sup> The partial exemptions are generally available to insured depository institutions and insured credit unions:

- For closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years.
- For open-end lines of credit if the institution originated fewer than 500 open-end lines of credit in each of the two preceding calendar years.

For closed-end mortgage loans or open-end lines of credit subject to the partial exemptions, the Act states that the “requirements of [HMDA section 304 (b)(5) and (6)]” shall not apply. Accordingly, for these transactions, those institutions are exempt from the collection, recording, and reporting requirements for some, but not all, of the data points specified in current Regulation C.

The Bureau expects to provide further guidance soon on the applicability of the Act to HMDA data collected in 2018.<sup>25</sup>

For all institutions filing HMDA data collected in 2018, the Act will not affect the format of the LARs:

- LARs will be formatted according to the previously released 2018 Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG).<sup>26</sup>
- If an institution does not report information for a certain data field due to the Act’s partial exemptions, the institution will enter an exemption code for the

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<sup>24</sup> Pub. L. No. 115-174, section 104 (a) (to be codified at 12 USC 2803).

<sup>25</sup> The partial exemptions are not available to insured depository institutions that do not meet certain Community Reinvestment Act performance evaluation rating standards. Guidance will include information on how this provision will be implemented.

<sup>26</sup> <https://s3.amazonaws.com/cfbp-hmda-public/prod/help/2018-hmda-fig.pdf>.

field specified in a revised 2018 FIG that the Bureau expects to release later this summer.

- All LARs will be submitted to the same HMDA Platform. A beta version of the HMDA Platform for submission of data collected in 2018 will be available later this year for filers to test.

#### 4.2.2 Small business lending review procedures

Each ECOA small business lending review includes a fair lending assessment of the institution's CMS related to small business lending. To conduct this portion of the review, examinations use Module II of the ECOA Baseline Review Modules. CMS reviews include assessments of the institution's board and management oversight, compliance program (policies and procedures, training, monitoring and/or audit, and complaint response), and service provider oversight.

Examinations also use the Interagency Fair Lending Examination Procedures, which have been adopted in the Bureau's Supervision and Examination Manual. In some ECOA small business lending reviews, examination teams may evaluate an institution's fair lending risks and controls related to origination or pricing of small business lending products. Some reviews may include a geographic distribution analysis of small business loan applications, originations, loan officers, or marketing and outreach, in order to assess potential redlining risk.

As with other in-depth ECOA reviews, ECOA small business lending reviews may include statistical analysis of lending data in order to identify fair lending risks and appropriate areas of focus during the examination. Notably, statistical analysis is only one factor taken into account by examination teams that review small business lending for ECOA compliance. Reviews typically include other methodologies to assess compliance, including policy and procedure reviews, interviews with management and staff, and reviews of individual loan files.

#### 4.2.3 FFIEC HMDA examiner transaction testing guidelines effective date

On August 22, 2017, the Federal Financial Institutions Examination Council (FFIEC) members, including the Bureau, announced new FFIEC Home Mortgage Disclosure Act (HMDA)

Examiner Transaction Testing Guidelines for all financial institutions that report HMDA data.<sup>27</sup> The Guidelines apply to the examination of HMDA data collected beginning in 2018, which financial institutions must report to the Bureau by March 1, 2019.<sup>28</sup>

#### 4.2.4 Upstart no-action letter

The Bureau is continuing to monitor Upstart Network, Inc. (Upstart) regarding its compliance with the terms of the no-action letter (NAL) it received from Bureau staff. As part of its request for a NAL, Upstart agreed to conduct ongoing fair lending testing of its underwriting model, notify the Bureau before new variables are considered eligible for use in production, and maintain a robust model-related compliance management system.

In addition to the ongoing fair lending testing discussed above, Upstart agreed as part of its request for a NAL to employ other consumer safeguards. These safeguards, which are described in the application materials posted on the Bureau's website, include ensuring compliance with requirements to provide adverse action notices under Regulation B and the Fair Credit Reporting Act and its implementing regulation, Regulation V, and ensuring that all of its consumer-facing communications are timely, transparent, and clear, and use plain language to convey to consumers the type of information that will be used in underwriting. Upstart has committed to monitoring the effectiveness of all safeguards and sharing the results of its testing, along with other relevant information, with the Bureau during the term of the NAL.

On July 18, 2018, the Bureau announced the creation of its Office of Innovation, to foster consumer-friendly innovation, which is now a key priority for the Bureau. The Office of Innovation is in the process of revising the Bureau's NAL and trial disclosure policies, in order to increase participation by companies seeking to advance new products and services.

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<sup>27</sup> The Guidelines were published by the FFIEC member agencies including the Bureau, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Liaison Committee. These new Guidelines are available at [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_ffiec-hmda-examiner-transaction-testing-guidelines.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_ffiec-hmda-examiner-transaction-testing-guidelines.pdf).

<sup>28</sup> For HMDA data collected in 2017 and submitted in 2018, the Bureau will follow the HMDA resubmission guidelines published on October 9, 2013 and available at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_hmda\\_resubmission-guidelines\\_fair-lending.pdf](http://files.consumerfinance.gov/f/201310_cfpb_hmda_resubmission-guidelines_fair-lending.pdf).

# 5. Conclusion

The Bureau expects that the publication of *Supervisory Highlights* will continue to aid Bureau-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily accessible resource for information on the Bureau's guidance documents.