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CFPB Publishes Summer Edition of Supervisory Highlights*

The CFPB recently issued the Summer 2023 edition of its Supervisory Highlights publication, which summarizes the Bureau's UDAAP-related exam findings from July 2022 to March 2023. The publication touches upon UDAAP findings across a number of consumer financial products, services, and related practices, including mortgage servicing, auto loan origination and servicing, deposit accounts, debt collection, and consumer reports. Below is a summary of a few of the more noteworthy findings from the report.

Deposit Accounts. Recently, returned transaction fees, commonly known as insufficient funds fees (NSF) fees, have been a hot-button item. The CFPB's report has added a somewhat new twist on potential UDAAP risk related to "double dipping" NSF fees. According to the report, charging both an NSF fee and an overdraft line of credit transfer fee on the same transaction could be seen as a UDAAP. The CFPB identified as an unfair practice the following scenario:

An overdraft line of credit did not have sufficient funds to cover a transaction, and the institution denied the transaction and assessed an NSF fee on the denied transaction. Because the transaction was declined, no funds from the line of credit were transferred to pay the transaction. However, if there were insufficient funds in the consumer's checking account to pay the NSF fee and that NSF fee overdrew the consumer's account, the institutions would automatically transfer funds from the line of credit to the consumer's checking account and assess a line of credit transfer fee. The CFPB explained that consumers who enrolled in the line of credit product were charged two fees instead of the single fee charged to those who were not enrolled, even though in both cases the transaction was returned unpaid. The CFPB explained that a consumer would not reasonably expect that enrolling in a program meant to prevent overdraft and decrease fees related to denied transactions would instead increase them. In response to these findings, the institutions made system changes and performed remediation to impacted consumers.

Fair Lending. The CFPB's examiners identified a number of fair lending-related weaknesses in its report. For example, the CFPB stated that certain mortgage lenders violated ECOA and Regulation B by discriminating in the incidence of granting pricing exceptions across a range of ECOA-protected characteristics, including race, national origin, sex, or age. The CFPB examiners identified ECOA-related weaknesses in these lenders' exception policies and procedures, as well as lack of adequate staff training and appropriate board and management oversight. The CFPB's report also outlined how underwriting policies that take an applicant's criminal history into consideration could have a disparate impact based on race and national origin. Thus, the CFPB stated that the use of criminal history in credit decisioning may create a heightened risk of violating ECOA and Regulation B. The CFPB stated its examiners had identified this issue across several business lines, including mortgage origination, auto lending, and credit cards, but "most notably within small business lending." The CFPB stated that the common denominator identified by

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examiners was that the discovery of criminal records often triggered enhanced or second-level underwriting review. However, according to the CFPB, several institutions' policies and procedures did not outline how that review should be conducted, which constituted fair lending risk regarding how the person conducting the review would exercise discretion.

Auto Loan Servicing. Among other findings, the CFPB explained that in the context of auto loan servicing, certain cross-collateralization practices constituted UDAAPs. The CFPB explained that its examiners found that when certain servicers repossessed vehicles, they accelerated both the amount due on the vehicle finance contract and also accelerated any other amounts the consumer owed to the institution. When consumers called to recover the vehicles, the servicers required consumers to pay the full amount on all accelerated debts, which included both debt for the vehicle and other debts. The CFPB explained that the practice of cross-collateralizing loans and requiring consumers to pay other debts to redeem their repossessed vehicles could be seen as a UDAAP.

Consumer Reporting. The CFPB stated that its examiners have continued to find that furnishers are violating the FCRA duty to conduct a reasonable investigation of direct disputes. For example, the CFPB's examiners recently found that certain mortgage furnishers failed to conduct any direct dispute investigations that were received at an address provided by the furnishers to credit bureaus and listed on consumer reports. Instead of investigating direct disputes sent to these addresses, the furnishers responded to the disputes by instructing the consumers to re-send their direct disputes to certain other addresses of the furnishers and only investigated the disputes to the extent the consumers resent them. The CFPB's report also identified other common furnisher-related FCRA violations, including the furnisher's failure to send any notice to consumers whose direct disputes were determined to be frivolous or irrelevant, and a failure to inform consumers of information needed to investigate a direct dispute.

Information Technology. The CFPB stated that inadequate security for sensitive consumer information, weak password management controls, untimely software updates, or failing to implement multi-factor authentication or a reasonable equivalent could constitute UDAAPs.

Mortgage Servicing. Among other things, CFPB examiners found RESPA/Regulation X violations where certain servicers failed to evaluate complete loss mitigation applications within 30 days of receipt. The CFPB also alleged that certain servicers engaged in UDAAPs by delaying the processing of certain borrower requests for certain loss mitigation options, including COVID-19 pandemic-related forbearance extensions, based on incomplete applications. The CFPB examiners also identified UDAAPs where servicers informed consumers that they would evaluate their complete loss mitigation applications within 30 days, but then moved toward foreclosure without completing the evaluations.

The Summer 2023 Supervisory Highlights may be viewed at <https://www.consumerfinance.gov/compliance/supervisory-highlights/>.