# A Review of the CFPB's Latest Supervisory Highlights

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The Consumer Financial Protection Bureau (CFPB) recently released its Summer 2019 Supervisory Highlights, which includes key findings from the CFPB's exams for the most part between December 2018 to March 2019. In each edition, the Bureau chooses the areas where it has seen the most supervisory activity, and for this one, it highlighted auto loan origination, credit card account management, debt collection practices, FCRA information furnishing, and mortgage loan origination.

## Auto Loan Origination

In the auto loan origination space, the CFPB called out lenders who sell "GAP insurance" to consumers with low loan-to-value ratios because they likely would not benefit from the additional coverage. If the vehicle were stolen or damaged, the difference in the amount owed on the loan and the amount obtained from the insurance company is likely to be low. As such, the Bureau found that consumers showed "that they lacked an understanding of a material aspect of the product" by purchasing a product they would not benefit from, and that lenders had enough information to know this and sold the insurance to them anyway. This was considered an "abusive" practice because it took "unreasonable advantage" of this lack of understanding, and needless to say, a lot of GAP insurance was refunded.

## Credit Card Account Management

The first issue in this area was with so-called "triggering terms" found in Reg. Z, 12 CFR 1026.16(b). In some exams, institutions included triggering terms in their advertisements and simply failed to provide some or all of the required additional disclosures. In others, there were issues with the "one click away" rule. Not only were some disclosures multiple clicks away, but some were not properly labeled at all or were not conspicuous. I'll note that these issues often come up in Compliance Alliance's document reviews, so it would be worthwhile to do a double check of your credit card ads before they're published.

This wasn't the end of the credit card issues either. In general, 12 CFR 1026.12(d) prohibits credit card issuers from offsetting credit card debt with a consumer's deposit account. However, there's an exception for a security interest in a deposit account if the consumer affirmatively agrees in the account-opening disclosures. The hang up is that the security interest cannot be effectively the same as the right of offset, so an institution that just routinely includes a security interest provision in the cardholder agreement would generally not qualify for the exemption.

The Bureau highlighted that the consumer must be aware that granting a security interest is a condition for the credit card (or for more favorable terms on the account) and must specifically intend to grant a security interest in the account. Some indicators of the consumer awareness and intent mentioned were: (1) separate signature or initial lines on the agreement indicating that a security interest is being given; (2) placement of the security agreement on a separate page from any other disclosures; and (3) referencing a specific amount of deposited funds or a specific deposit account number.

## Debt Collection Practices

The Fair Debt Collection Practices Act (FDCPA) of course prohibits using any false, deceptive, or misleading representation or means in the process of collecting any debt. Specifically, Section 807(2)(A) of the FDCPA prohibits falsely representing the character, amount, or legal

status of any debt. Examiners found that certain debt collectors claimed that interest was owned on debts when, in fact, it was not authorized by the underlying contracts between the debt collectors and the creditors. In doing so, the debt collectors falsely represented to consumers the amount due and ultimately had to provide remediation. As a side note, a "debt collector" for FDCPA purposes generally does not include a bank that collects its own debts in its own name, but we've talked to many Compliance Alliance members who follow the FDCPA rules as guidelines, even though they technically do not apply as a matter of law.

FCRA Information Furnishing

The Fair Credit Reporting Act (FCRA) requires that when a bank that is acting as an information "furnisher" receives a notice of a dispute from a consumer reporting agency (CRA), that it complete its own investigation generally within 30 days. Not only did some institutions miss this deadline, but others failed to conduct an investigation or respond at all. In addition, if a furnisher determines that previously furnished information is not complete or accurate, the furnisher must promptly let the CRA know and provide any corrections or additional information to make the reporting complete and accurate. Some failed to provide these corrections or updates, while others did so, but subsequently continued reporting inaccurate information after the correction.

Another issue cropped up with accounts that were paid-in-full or settled-in-full. Certain institutions had a practice of deleting the identification number when an account was paid in full, and this practice changed the search key that the furnishers used for matching when making account updates. As a result, the CFPB found that almost two thousand accounts were not updated to reflect the correct paid-in-full or settled-in-full status.

Finally, the Bureau found that when some institutions received consumer disputes, they continued furnishing information about the disputed accounts for several months without providing the CRA with notice that the information was disputed, in clear violation of the FCRA. In response to these findings, the CFPB required them to set up enhanced monitoring activities, as well as policies and procedures on compliance with furnisher-specific requirements of the FCRA, in addition to providing evidence of corrective actions.

Mortgage Loan Origination

The focus of this section was on the inaccurate disclosure of annual percentage rates and total annual loan costs in reverse mortgage transactions. While most of our members do not originate reverse mortgages, this is still a sobering reminder of how pervasive a failure to properly calculate the APR can be, and the very high cost of consumer restitution.

So this covers the key takeaways that are most likely to affect our community bank members, but if you're interested in reviewing the review in its entirety, you can access it at: https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf