

Supervisory Highlights: Fall 2012

EXECUTIVE SUMMARY

The Consumer Financial Protection Bureau (CFPB or Bureau) supervises certain financial institutions and service providers to determine their compliance with applicable Federal consumer financial laws and to help ensure that markets for financial products and services work in a fair and transparent way for consumers. The CFPB communicates findings to the supervised entities and directs corrective action where appropriate, all within the traditional supervisory framework of institutional confidentiality, unless the matter rises to the level of becoming a public enforcement action. More broadly, the CFPB is also committed to a policy of transparency that informs the public of its supervisory goals, work, and accomplishments, while maintaining the confidentiality of the conduct and results of individual examinations.

As part of that commitment, the CFPB will periodically issue *Supervisory Highlights*, through which it will apprise the public and the financial services industry about its examination program, including the concerns that it finds during the course of its completed work, and the remedies that it obtains for consumers who have suffered financial or other harm. This document will not refer to any specific institution but signal to all institutions the kinds of activities that should be carefully scrutinized for compliance with the law. The CFPB believes that *Supervisory Highlights* will help providers of financial products and services better understand the CFPB's supervisory expectations so that they can take action to comply with Federal consumer financial laws and serve their customers in a fair and transparent way.

The issues and problems detected in key product areas are discussed in *Supervisory Highlights: Fall 2012*, as well as the corrective actions and remedies that financial institutions have been directed to undertake. With respect to credit cards, the report discusses both public enforcement actions and non-public supervisory actions that the CFPB has taken to address violations of Federal consumer financial laws. The public actions, taken in conjunction with other federal regulators, have yielded \$435 million in restitution for approximately 5.75 million consumers. The violators have been ordered to pay, in aggregate, \$101.5 million in civil money penalties.

As *Supervisory Highlights: Fall 2012* explains, the CFPB's non-public supervisory actions against financial institutions participating in the credit card, credit reporting, and mortgage markets have confirmed remedial relief to 1.4 million consumers, and caused the affected financial institutions to correct illegal practices, adopt effective policies and procedures to ensure that violations do not recur, and implement robust compliance management systems (CMS). As *Supervisory Highlights: Fall 2012* describes in more detail, an effective CMS is a critical component of a well-run financial institution.

SUPERVISORY HIGHLIGHTS: FALL 2012

I. INTRODUCTION:

A. CFPB's Commitment to Transparency: *Supervisory Highlights*

The primary mission of the CFPB is to ensure that markets for financial services and products work in a fair and transparent way for consumers. Consequently, the CFPB expects providers of consumer financial products and services to conduct their businesses responsibly, and in a manner that fully complies with Federal consumer financial law.¹ To facilitate financial institutions' compliance, the CFPB intends to be transparent about the goals of its supervision program and the steps being taken to achieve those goals, while protecting the confidentiality of the underlying financial institution-specific information.²

As part of its commitment to transparency, the CFPB expects to regularly inform the financial services industry about its supervisory program and point out some of the significant issues that it is finding and resolving through the supervisory process. In CFPB's view, it is best to help financial institutions avoid compliance problems before they start, or to correct emerging issues at the earliest possible date. Through these supervisory reports, CFPB will provide financial institutions with clear guidance about the standards of conduct expected of them and highlight its commitment to work with financial institutions to facilitate compliance with regulatory requirements.

B. CFPB's Supervisory Program

1. Legal Authority

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act or the Act) transferred to the CFPB the authority to supervise the provision of many consumer financial products and services previously housed in other Federal agencies. Consequently, the CFPB has the authority to examine depository institutions with over \$10 billion in assets, and their affiliates, to assess their compliance with Federal consumer financial law, evaluate their compliance management systems, and detect and assess risks to consumers and markets for consumer financial products and services.³

The Act also gave the CFPB the authority to examine and require reports from certain non-depository institutions.⁴ Generally, this authority includes nonbanks of all sizes that offer or provide residential mortgage loans and certain related services, private education loans, and payday loans, as

¹ "Federal consumer financial law" is defined in section 1002(14) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

² The CFPB considers all supervisory information, including examination reports and ratings, to be confidential. See CFPB's interim final rule on the *Disclosure of Records and Information*, 12 CFR 1070.40 *et seq.*

³ Banks, saving associations, credit unions, and their affiliates are generally referred to as "depository institutions." Other companies that provide consumer financial products and services, but are not affiliates of large depository institutions, are referred to as "non-depository institutions" or "nonbanks." The term "financial institution" refers to both depository and non-depository institutions collectively.

⁴ Dodd-Frank Act, section 1024(b)(1), 12 U.S.C. 5514(b)(1).

well as “larger participants” in markets for other consumer financial products or services, as the Bureau defines by rule. It also includes other nonbanks that the Bureau determines by order pose risks to consumers with respect to consumer financial products and services. So far, the CFPB has adopted final “larger participant” rules which allow it to supervise larger participants in the consumer reporting market⁵ and the debt collection market.⁶

Finally, the Dodd Frank Act also provides the CFPB with specific authority to examine and require reports from supervised financial institutions to assess their compliance with Federal consumer financial law and for other purposes.⁷ Among other things, the CFPB uses the information it receives in such reports to set the scope of its examinations.

2. Focus on Consumer Protection, Data, and Consistency

The three principles guiding the CFPB supervisory process are:

- Focus on consumers. The CFPB’s reviews of financial institutions will focus on their ability to detect, prevent, and correct practices that present a significant risk of violating law and causing consumer harm.
- Data driven. The CFPB’s supervision function rests firmly on analysis of available data about the activities of entities it supervises, the markets in which they operate, and risks to consumers posed by activities in these markets.
- Consistency. The CFPB will apply consistent standards to its supervision of all financial institutions to the extent possible, and will use the same procedures to examine all supervised entities that offer the same types of consumer financial products or services, or conduct similar activities.

With respect to its consumer focus, CFPB examinations of all financial institutions emphasize areas that pose the greatest risk for consumers to potentially suffer economic loss or other legally-cognizable injury from a violation of Federal consumer financial law. To refine this analysis, the CFPB considers the asset size of a firm, the volume of its transactions involving consumer financial products or services, the risks posed to consumers through the provision of the firm’s products and services, the extent of state oversight, and other factors.⁸ The CFPB is continually gathering and analyzing information and data from a variety of sources to better assess consumer risk. In all cases, however, the CFPB expects supervised entities to conduct their businesses in compliance with Federal consumer financial law.

⁵ 77 FR 42874 (July 20, 2012).

⁶ 77 FR 65775 (October 31, 2012).

⁷ Dodd-Frank Act, sections 1024(b)(1) and 1025(b)(1), published at 12 U.S.C. 5514(b)(1) and 5515(b)(1).

⁸ The Dodd-Frank Act requires the CFPB to take such risk factors into consideration as part of its larger directive that the CFPB must exercise its nonbank supervisory authority in a manner that is based on risks to consumers. As a matter of policy, the CFPB also considers the risk factors noted above as it supervises all financial institutions.

3. Current Findings

Since the launch of its supervisory program, CFPB examiners have been actively reviewing the operations of financial institutions throughout the country. In the course of this work, the CFPB has identified a number of concerns. The most critical of these are the focus of this issue of *Supervisory Highlights*, which discusses work completed by the CFPB between July 2011 and September 30, 2012. They include deficient compliance management systems, and regulatory violations related to credit cards, credit reporting, and mortgage lending. When the CFPB finds violations of applicable Federal consumer financial law, it directs them to be corrected. Where consumers have experienced harm, it generally directs restitution. As appropriate, the CFPB may also pursue other relief.

II. Compliance Management Systems

A critical component of a well-run financial institution is a robust and effective compliance management system (CMS), designed to ensure that the financial institution's policies and practices are in full compliance with the requirements of Federal consumer financial law.⁹ Consequently, one of the most important responsibilities of the CFPB supervisory program is assessing the quality of the compliance management systems employed by the financial institutions under the CFPB's jurisdiction. To do so, CFPB examiners consider whether financial institutions have effectively addressed internal controls and oversight, training, internal monitoring, consumer complaint response, independent testing and audit, third-party service provider oversight, recordkeeping, product development and business acquisition, and marketing practices. As explained in the CFPB's *Supervision and Examination Manual*,¹⁰ each supervised entity should develop and maintain a sound CMS that is integrated into its overall framework, and applied to its entire product and service lifecycle. Without such a system, serious and systemic violations of Federal consumer financial law are likely to occur. Further, a financial institution with a deficient CMS may be unable to detect its own violations. As a result, it will be unaware of resulting harm to consumers, and will be unable to adequately address consumer complaints.

A. Comprehensive CMS Deficiencies Found Through CFPB Supervisory Activities

The CFPB has found one or more situations in which an effective CMS was lacking across the financial institution's entire consumer financial portfolio, or in which the financial institution failed to adopt and follow comprehensive internal policies and procedures, resulting in a significant breakdown in compliance and numerous violations of Federal consumer financial law. In such situations, the financial institution has no ability to address risks presented by its lines of business. To prevent such failures, the CFPB has directed financial institutions to adopt appropriate policies

⁹ The CFPB understands that compliance management will be handled differently by large, complex financial organizations at one end of the spectrum, and small entities that offer a narrow range of financial products and services at the other end. While the characteristics and manner of organization will vary from entity to entity, the CFPB expects compliance management activities to be a priority and to be appropriate for the nature, size, and complexity of the financial institution's consumer business.

¹⁰ The *Supervision and Examination Manual* can be found in the Guidance section of the CFPB's website at <http://www.consumerfinance.gov/guidance/supervision/manual/examinations>.

and procedures, and establish an effective CMS to ensure legal compliance, including enhancement of financial institutional regulatory knowledge and expertise to help ensure proper monitoring of business activities and prompt identification of potential risks to consumers.

It is critically important for financial institutions to ensure that the policies and procedures that they adopt are clearly communicated to employees, fully implemented, and regularly followed. A financial institution's CMS is inadequate where appropriate policies have been adopted, but management fails to take measures to ensure compliance with those policies. In a typical CMS examination, the CFPB evaluates both the understanding and application of the financial institutions' compliance management program by its managers and employees. The CFPB has found one or more situations in which the financial institution had articulated many elements of an appropriate compliance policy, but the policy was not followed. This has occurred, for example, where the necessity of an effective CMS is not fully appreciated by management or employees of the financial institution, or where a compliance department is not given access to the information, resources, and personnel necessary to carry out its compliance duties. In such situations, the CFPB has expected the financial institution to take action to ensure that its CMS is effectively understood and implemented.

B. Deficiencies Related to Failure to Oversee Affiliate and Third-party Service Providers

The CFPB recognizes that the use of affiliate and third-party service providers or vendors (service providers) is often an appropriate business decision for supervised financial institutions. The CFPB considers oversight of service providers to be a key component of an effective CMS, and expects supervised entities that retain or operate through service providers to have an effective process for managing the risks of those relationships to ensure compliance with applicable Federal consumer financial law. The mere fact that a financial institution enters into a business relationship with a service provider does not absolve the financial institution of responsibility for complying with Federal consumer financial law and does not give it license to "turn a blind eye" to violations of Federal consumer financial laws and regulations by the entity that is acting on its behalf. Depending upon the circumstances, responsibility for legal violations by a service provider may lie with the financial institution as well as with the service provider.

The CFPB has noted instances in which a financial institution has failed to establish a comprehensive service provider management program or failed to effectively manage service providers acting on its behalf to ensure compliance with Federal consumer financial law. Such situations have occurred, for example, when a financial institution and a service provider fail to adequately coordinate their correspondence with consumers, causing conflicting interest rate information to be mailed to delinquent credit card holders, accompanied by improper application of a penalty rate to the consumers' outstanding balances, in violation of the Truth in Lending Act (TILA).

Where such situations have occurred, the CFPB has directed financial institutions to develop and implement a comprehensive program that ensures the service providers' compliance with Federal consumer financial law. Such programs typically include consistent, risk-based procedures governing the retention and monitoring of service provider relationships, as well as policies and

procedures to monitor and test for compliance with Federal consumer financial law by service providers acting on behalf of the financial institution.¹¹

C. Deficient Fair Lending Compliance Programs

The Equal Credit Opportunity Act (ECOA) makes it unlawful for any creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age. ECOA also provides that the creditor may not discriminate based on the fact that all or part of an applicant's income derives from a public assistance program, or the fact that an applicant has in good faith exercised any right under the Consumer Credit Protection Act. In order to avoid potential fair lending compliance issues, every financial institution should establish fair lending policies, procedures and internal controls to ensure that it is operating in compliance with ECOA, and its implementing Regulation B, in all of the financial institution's relevant lines of business. While the appropriate program will vary from financial institution to financial institution, the CFPB's examiners have found the following common features at financial institutions with well developed fair lending compliance programs:

- An up-to-date fair lending policy statement;
- Regular fair lending training for all employees involved with any aspect of the institution's credit transactions, as well as all officers and Board members;
- Ongoing monitoring for compliance with fair lending policies and procedures;
- Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion);
- Review of lending policies for potential fair lending violations, including potential disparate impact;
- Depending on the size and complexity of the financial institution, regular statistical analysis of loan data for potential disparities on a prohibited class basis in pricing, underwriting, or other aspects of the credit transaction, and including both mortgage and non-mortgage products, such as credit cards, auto lending, and student lending;
- Regular assessment of the marketing of loan products; and
- Meaningful oversight of fair lending compliance by management and where appropriate, the financial institution's board of directors.

The CFPB has found instances in which financial institutions lack any formal fair lending compliance system or in which financial institutions have implemented fair lending compliance systems that are sufficient with respect to some product lines, but exclude compliance oversight for other major lending products. In such situations, the CFPB has directed financial institutions to establish fair lending compliance programs commensurate with the size and complexity of the financial institution and its lines of business. If fair lending violations have occurred, the CFPB has directed remediation that included adoption of comprehensive policies and procedures, allocation of

¹¹ Further details about service provider relationships and the CFPB's expectations for financial institutions in managing those relationships, as well as CFPB's supervisory authority over service providers, can be found in CFPB Bulletin 2012-03, issued April 13, 2012. See: http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

sufficient resources to employee training and oversight, and review of adverse action letters to ensure they provide applicants with the required information. In some cases, financial institutions have been directed to expand their internal fair lending regression analysis, monitor compliance through special reports and certifications, or take other steps to address the potential existence of discrimination against applicants on a prohibited basis and to verify full compliance with ECOA.

III. Significant Violations Detected

In the course of its supervisory activities, the CFPB has discovered numerous violations of Federal consumer financial law. In each case, it has directed the financial institution that committed violations to take corrective action. Where warranted, restitution or other relief to consumers has also been provided. As a result of CFPB supervisory activity,¹² financial institutions have been directed to correct violations of a broad spectrum of Federal consumer financial laws and regulations. Examples of the types of violations detected through the CFPB's review of financial institutions' credit card, credit reporting, and mortgage origination activities are discussed below. In connection with these matters, the CFPB has confirmed that financial institutions have provided remedial relief to 1.4 million consumers, stopped illegal practices, adopted effective policies and procedures to ensure that violations do not recur, and implemented robust compliance management programs.

The CFPB, in conjunction with other financial regulators, has also completed three public enforcement actions against three credit card issuers based in part on the findings of CFPB examinations. These actions have terminated misleading and deceptive marketing and collection practices, improper fees, violations of credit reporting requirements, and other practices that have harmed consumers. As a result of these actions, \$435 million in relief has been provided to approximately 5.75 million consumers. In addition, the violators will pay civil money penalties of approximately \$101.5 million. To help specifically address the use of deceptive practices by credit card issuers to market credit card add-on products, the CFPB has outlined its supervisory expectations with respect to these products in Compliance Bulletin 2012-06.¹³

A. Violations by Credit Card Issuers.

1. Public Enforcement Actions

The CFPB has taken public enforcement actions to correct illegal practices by three credit card issuers. These practices include deceptive marketing of credit card add-on products, misleading consumers about fees or the benefits associated with such products, retaining customers who attempted to cancel such products, enrolling customers in products without their knowledge or consent, unlawful age discrimination against certain credit card applicants, deceptive debt collection practices, and others.¹⁴

¹² See footnote 2.

¹³ See: http://files.consumerfinance.gov/f/201207_cfpb_marketing_of_credit_card_addon_products.pdf

¹⁴ Financial institutions violate sections 1031 and 1036 of the Dodd-Frank Act when they engage in any unfair, deceptive, or abusive act or practice ("UDAAP") in connection with offering or providing financial products or services to consumers. See 12 U.S.C. 5531 and 5536. Such acts or practices may cause significant financial harm to consumers, erode consumer confidence, and impede competition in the financial marketplace by inserting unfair competitive conditions or decreasing consumer willingness to engage in transactions.

a. Capital One Bank (U.S.A.) N.A.:

Through supervisory work, CFPB's examiners discovered that the call center vendors retained by Capital One Bank (U.S.A.) N.A. (Capital One) to promote its credit card programs engaged in deceptive practices in marketing the company's credit card add-on products.¹⁵ These products include "payment protection" which provides for debt reduction or forgiveness for the consumer under certain circumstances, such as unemployment or disability, and "credit monitoring" which provides identity-theft protection and, in some cases, access to "credit education specialists" and daily monitoring and notification.

The CFPB determined that prospective customers with low credit scores or low credit limits who sought to activate a Capital One credit card were referred to a third-party call center where they were subjected to deceptive tactics to induce them to buy an add-on product. The deceptive marketing practices used to sell these products included the following:

- Misrepresenting the cost of the payment protection product;
- Enrolling customers in a program without their consent;
- Misleading customers about the benefits of the product;
- Telling customers they were required to purchase the product in order to receive full information about it;
- Retaining, through similar practices, customers who attempted to cancel the product;
- Misleading customers about eligibility for payment protection benefits.

As a result of the CFPB's enforcement action, Capital One will take a number of corrective steps. To ensure that all affected customers are repaid and that customers are no longer subjected to these misleading tactics, Capital One has agreed to end deceptive marketing and to undergo an independent audit to ensure compliance with the terms of the Consent Order with the CFPB. Pursuant to orders of the CFPB and the Office of the Comptroller of the Currency (OCC), it will also pay an estimated \$150 million to approximately 2 million consumers who were affected by these practices. In addition, the CFPB and the OCC together have required Capital One to pay \$60 million in civil money penalties.¹⁶ Out of that total, \$25 million has been paid into the CFPB's Civil Penalty Fund.

¹⁵ This matter provides another example of failure to implement a comprehensive and effective vendor risk management program.

¹⁶ Additional information about the Capital One matter, including the full text of the Consent Order, can be found on the CFPB's website at: www.consumerfinance.gov/pressreleases/cfpb-capital-one-probe.

b. Discover Bank

The CFPB and the Federal Deposit Insurance Corporation (FDIC) jointly determined that Discover Bank used deceptive telemarketing practices to sell the following add-on products to customers: (1) Discover Payment Protection, which was marketed as a product that allowed consumers to put their payments on hold for two years in the event of unemployment, hospitalization, or other qualifying life events; (2) Credit Score Tracker, which was marketed as providing a customer unlimited access to his or her credit reports and credit score; (3) Wallet Protection, which was sold as a service that helped a customer cancel credit cards in the event they were lost or stolen; and (4) Identity Theft Protection, which was marketed as providing daily credit monitoring.

The CFPB and the FDIC also determined that Discover, acting through telemarketers, misled consumers about the fact that they would be charged for the products, enrolled consumers in one or more programs without their consent, often falsely suggested that consumers would not be charged for the products until after having a chance to review printed materials from Discover, and withheld material information about eligibility requirements for certain benefits. These practices violated sections 1031 and 1036 of the Dodd-Frank Act, as well as section 5 of the Federal Trade Commission Act (FTCA).¹⁷

To settle these charges, Discover has agreed to: stop deceptive marketing practices; pay at least \$200 million in restitution to the more than 3.5 million customers who purchased one or more credit card add-on products over the telephone between December 1, 2007 and August 31, 2011; and pay a \$14 million civil money penalty. The CFPB's Civil Penalty Fund¹⁸ will receive \$7 million of this penalty amount.

Discover also agreed to undertake certain corrective actions that include reviewing, revising, or developing, as necessary, a risk-based compliance management system that will ensure that similar violations will not recur in the future. The compliance management system must provide for an effective training and compliance management program for all employees and service providers, including its telemarketers and telemarketing vendors. In addition, Discover must revise advertising and marketing materials so that they disclose clearly and prominently all material conditions, benefits, and restrictions; develop an internal control system to ensure future compliance with applicable laws and regulations; and submit to an independent audit which will report Discover's compliance with certain terms of this settlement to the FDIC and CFPB.¹⁹

c. American Express Companies

This enforcement action stemmed from examinations by the FDIC and the Utah Department of Financial Institutions, later joined by the CFPB, the Federal Reserve Board, and the OCC, regarding the American Express companies. The action encompassed violations of various Federal consumer financial laws and compliance management deficiencies at American Express Company and three American Express subsidiaries: American Express Centurion Bank, a state-

¹⁷ 15 U.S.C. 45(a)(1).

¹⁸ The civil penalty amount constitutes a penalty for over 3.5 million separate legal violations.

¹⁹ Additional information about the Discover matter, including the full text of the Consent Order, can be found on the CFPB's website at: <http://www.consumerfinance.gov/pressreleases/discover-consent-order>.

chartered non-member bank; American Express Bank, FSB, a nationally-chartered savings association; and American Express Travel Related Services, a registered bank holding company and parent company of the two American Express banks (collectively, Amex).

The regulatory agencies found violations that occurred at various times from 2003 through the spring of 2012 in virtually every stage of the consumer experience. The enforcement action was based on the following practices:

Deceptive Marketing. American Express Centurion Bank undertook a direct mail credit card solicitation program that promised, but did not deliver, a cash bonus to consumers who met certain conditions. These actions were deceptive.²⁰

Unlawful Age Discrimination. American Express Centurion Bank used a credit scoring system that unlawfully discriminated against certain charge card applicants on the basis of age, in violation of ECOA.²¹

Unlawful Fees on Existing Accounts. American Express Centurion Bank and American Express Bank, FSB, charged certain credit card customers an improper late fee, in violation of TILA, as amended by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act).²²

Consumer Disputes. American Express Centurion Bank and American Express Bank, FSB, created a system that failed to properly report certain consumer disputes of credit information to credit reporting agencies, in violation of the Fair Credit Reporting Act (FCRA).²³

Deceptive Debt Collection Practices. Amex solicited debt payments from certain customers whose debt was in collection or charged off by misrepresenting to these customers that settlement of their debt would be reflected on their credit report and thus potentially improve their credit score. Additionally, Amex entered into debt settlement agreements with certain customers by misrepresenting that the customers' remaining debt would be "waived" or "forgiven." These practices were deceptive.²⁴

To resolve all of these matters, Amex has agreed to refund approximately \$85 million to 250,000 consumers, and take all actions necessary to ensure that it does not engage in deceptive practices, charge illegal fees, or unlawfully discriminate based on age in credit decisions. Amex has also agreed to properly report consumer disputes to credit reporting agencies and ensure that customers are told about their rights in the event of a dispute. It will take all necessary action to ensure that all credit scoring models applied to card applicants comply with the requirements of ECOA, and will certify that all qualified customers who suffered unlawful age discrimination were given an opportunity to reapply for credit. Finally, Amex will pay a civil money penalty in the total

²⁰ 12 U.S.C. 5531 and 5536. The FDIC also determined that these actions violate section 5 of the FTC Act, 15 U.S.C. 45(a)(1).

²¹ 15 U.S.C. 1691(a); 12 C.F.R. 1002.6.

²² 15 U.S.C. 1601 *et seq.*, and section 1026.52(b)(1) of Regulation Z, 12 C.F.R. 1026.52(b)(1).

²³ 15 U.S.C. 1681 *et seq.*

²⁴ See 12 U.S.C. 5531 and 5536, as well as the FTC Act, 15 U.S.C. 45(a)(1).

amount of \$27.5 million to the CFPB, FDIC, OCC, and Federal Reserve Board. The CFPB's portion of the total, \$14.1 million, will be paid into the CFPB's Civil Penalty Fund.

Amex will also be required to review, revise, develop, and/or implement a comprehensive compliance risk management program to ensure future compliance with all applicable Federal consumer financial laws. The program must include policies and procedures designed to prevent violations of Federal consumer financial law and associated harm to consumers; an effective training program; an enhanced CMS monitoring process; and an effective consumer complaint monitoring process. Additionally, Amex must develop and implement effective oversight of service provider agreements and services. Compliance with the terms of the consent orders will be verified through the work of an independent auditor.²⁵

2. Non-Public Supervisory Actions to Address CARD Act Violations

The CARD Act was signed into law in 2009. It protects consumers from inaccurate and unfair credit card practices, prohibits certain misleading terminology in communications with cardholders, provides protections against certain interest rate increases and excessive late fees, requires financial institutions to fairly credit and allocate payments, and generally requires 45 days' notice of interest rate increases.

CFPB examiners have found one or more situations in which requirements of the CARD Act have not been followed. For example, the "Ability to Pay" provisions of the CARD Act²⁶ prohibit issuers from opening accounts or increasing credit lines for consumers who lack the financial capacity to repay the credit that would be extended to them. In some situations, credit lines associated with credit card accounts issued to consumers under the age of 21 based on the ability to pay of co-applicants age 21 or older were increased without the financial institution having received written authorization from the co-applicants. To ensure compliance, the CFPB has directed that co-applicants be contacted and that necessary written authorizations be obtained. Where written agreement cannot be obtained, the financial institutions must take corrective action, including reducing the credit line or the co-applicant's liability to the original credit line. Finally, because such violations typically occurred as a result of inadequate internal controls, the CFPB has directed affected financial institutions to reevaluate the process for addressing credit line increase requests on co-applicant accounts where one party is under the age of 21, ensure authorizations are sent and received prior to approving credit line increase requests on co-applicant accounts, and provide additional employee training.

Separately, the CFPB has found one or more situations in which a financial institution has failed to comply with the rate reevaluation requirements of the CARD Act and its implementing regulation, by failing to perform a rate review of an acquired portfolio within 6 months,²⁷ and failing to establish written policies for rate reevaluation practices.²⁸ In response to such conduct, the CFPB has directed that policies and procedures ensuring compliance be established. The CFPB also has

²⁵ Additional information about the American Express matter, including the full text of the Consent Orders, can be found on the CFPB's website at: <http://www.consumerfinance.gov/pressreleases/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices>.

²⁶ As implemented by Regulation Z, 12 CFR 1026.51(b)(2).

²⁷ As required by 12 CFR 1026.59.

²⁸ As required by 12 CFR 1026.59(b).

directed performance of rate reevaluation for any acquired portfolio, appropriate rate adjustments, and reimbursements, including interest, to all affected customers.

B. Violations That Relate to Credit Reporting

Credit bureaus assemble, maintain, and communicate reports with information about American consumers' credit activities to financial institutions and other parties. Often these reports include a credit score, which is a numerical risk assessment of the credit information in the credit bureau's file about a consumer. Creditors use this information to identify consumers eligible for credit offers, make eligibility and account review decisions, and pursue collection activities. A good credit report and high credit score can provide a consumer with greater access to credit and eligibility for a lower interest rate, which usually translates into smaller monthly payments. Inaccurate negative information in a consumer's credit report may cause a consumer to pay more for credit than would otherwise be the case or be unjustifiably denied credit altogether. Inaccurate negative credit report information also may unfairly impact an individual's ability to buy a home, obtain a job, or engage in other transactions.

The FCRA regulates the collection, use, and dissemination of consumer report information, and promotes the accuracy, fairness, and privacy of information held by the nation's credit bureaus. As noted above, the CFPB has issued a final rule defining the larger participants in the market for consumer reporting who are now subject to the CFPB's supervisory authority.

The CFPB also examines financial institutions for their compliance with the FCRA's requirements for handling consumers' credit information. Among other things, the FCRA and its implementing regulation, Regulation V, generally require entities that provide consumer information to credit bureaus to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information they furnish to these entities.²⁹ A party's failure to comply with the FCRA may cause significant consumer harm.

CFPB examiners have discovered one or more instances in which a financial institution's employees did not have sufficient training or familiarity with the requirements of the FCRA to implement it properly. Such deficiencies have resulted in failure to communicate appropriate and accurate account information to the credit bureaus, failure to indicate when account information had been disputed by consumers, and inability to determine whether disputes had been fully investigated. Such failures caused the financial institutions to be unaware of and therefore repeatedly fail to respond to communications from consumers about their accounts. In such situations, the relevant financial institutions were directed to take action to correct these FCRA violations. Such actions included implementing procedures for properly reporting consumer credit disputes to all credit bureaus, taking action on all disputes reported directly to the financial institution and correcting errors where appropriate, and deleting information regarding customers, as appropriate, upon completion of their credit dispute investigations.

C. Violations by Mortgage Originators

The Real Estate Settlement Procedures Act (RESPA), TILA, and other statutes are intended to protect consumers engaged in residential real estate mortgage transactions. Among other things,

²⁹ 12 CFR 1022.42.

RESPA requires residential mortgage lenders to provide consumers with clear and timely disclosures regarding the nature and costs of the real estate settlement process. TILA's implementing Regulation Z also requires certain disclosures by creditors about a loan transaction and prohibits payments to a loan originator that are based on the terms or conditions of the loan, other than the amount of credit extended. It also prohibits steering a consumer to a loan in order to increase the loan originator's compensation, unless the loan is otherwise in the consumer's interest.

During examinations, the CFPB has noted instances of significant non-compliance with these statutes. Violations under RESPA have included failures to make proper and complete disclosures to consumers of costs and other terms of a transaction due to inadequate or improper completion of the Good Faith Estimate and the HUD-1 settlement statement. Violations under TILA have included failures to provide accurate interest rate disclosures, and payment amounts and schedules, as well as disclosures regarding late payments, security interests, and assumption policies. The CFPB expects that all covered institutions under its jurisdiction will maintain the policies and procedures necessary to ensure full compliance with RESPA and TILA, and will require employees to know and follow these laws.

Where financial institutions have violated RESPA and/or TILA, they have been directed to implement appropriate policies, procedures, and monitoring to prevent recurrence of the violations, and to ensure that any third-party vendors, including mortgage brokers, are identified and included in the financial institution's oversight program and in relevant policies and procedures, in order to ensure that proper Good Faith Estimate and HUD-1 disclosures are provided to consumers, and that consumers are not improperly charged. Where appropriate, the CFPB has directed that consumers receive a corrected HUD-1. Where customers are improperly charged, the financial institution has been directed to provide reimbursement.

Another area of concern is mortgage originator compliance with the Home Mortgage Disclosure Act (HMDA). HMDA requires certain lenders to report specific information about their mortgage lending activity to regulators and the public. HMDA plays a key role in the work of the CFPB's examination teams and its Office of Fair Lending and Equal Opportunity, as well as other regulatory agencies. HMDA data helps the CFPB and other agencies ensure that credit is provided fairly and without illegal discrimination. Lenders that do not accurately report data as HMDA requires hinder regulators' and the public's ability to compare mortgage data across the industry in a meaningful way.

The CFPB expects financial institutions to have strong systems in place to ensure HMDA compliance. CFPB examiners have identified several financial institutions with significant error rates in data reported pursuant to HMDA. Failure to capture and accurately report HMDA data is a violation of legal requirements, and can also be an indicator of a weak CMS. Where the CFPB has found deficiencies, it has directed resubmission of HMDA data to correct errors. The CFPB has also directed financial institutions to improve their HMDA data collection and reporting systems, for example, by modifying policies and procedures to provide proper guidance to employees who prepare and submit HMDA data. The CFPB may also seek other corrective action or relief, as appropriate.

IV. Conclusion

Through its supervisory program, the CFPB examines financial institutions to determine their compliance with Federal consumer financial law, and addresses risks to consumers or markets for consumer financial products and services presented by the financial institutions' business practices. The CFPB expects to periodically publish *Supervisory Highlights* to provide general information about its supervision program without identifying specific institutions (except for enforcement actions already made public) and to help communicate the standards of conduct expected of supervised financial institutions. The CFPB's goal is to help ensure a financial services marketplace that operates in accordance with Federal consumer financial law and works well for both consumers and the businesses that serve them.