



Supervisory Highlights from the Bureau

Earlier this month, the **Consumer Financial Protection Bureau** published another issue of **Supervisory Highlights, Winter 2020**.

The Bureau's report provides us with a nice snapshot of findings from recent examinations. Receiving information on compliance-related weaknesses in the industry can be used to consider weaknesses in your own program. Using this information proactively can yield great benefits. In this particular issue, findings centered on the following areas:

- Debt Collection
- Mortgage Servicing
- Payday Lending
- Student Loan Servicing

Summary of Examination Findings

The findings for each of the four categories mentioned above were detailed in the report and are summarized below.

Debt Collection – Examinations of consumer debt collectors revealed violations of the Fair Debt Collection Practices Act (FDCPA). Communication-related violations were noted where certain communications did not disclose that they were from a debt collector and written validation notices were not sent when required.

Mortgage Servicing – In examinations of RESPA and loss mitigation processes, various violations were observed that related to the failure to provide certain notices, providing incomplete notices, or not providing notices on a timely basis. It was observed that some violations were caused when servicers were dealing with high volumes of applications related to natural disasters.

Payday Lending – In examinations of payday lending, the Bureau noted various compliance violations in connection with Regulations B and Z, as well as unfair acts or practices. Noted violations included the failure to apply payments, APR and finance charge inaccuracies, failure to comply with record retention requirements, inadequate notices of adverse action, and imposition of fees that were unauthorized and undisclosed.

Student Loan Servicing – Noted violations in examinations of student loan servicing were tied to unfair practices related to monthly payments. The Bureau observed that in connection with servicing transfers, ineffective data mapping resulted in inaccurate payment calculations. This in turn caused loan statements to over disclose the amount due, which negatively impacted borrowers.

Online Compliance Consulting Update!

The Online Compliance Consulting Dashboard has been enhanced!

- Updated HMDA Resources –
 - *NEW HMDA Getting it Right! Guide*
 - *NEW Bureau HMDA Compliance Guide*
 - *NEW Bureau HMDA Reporting Overview*
- Updated Compliance Calendar
- January 2020 News

To access this information and all other compliance features, go to:

<http://compliance.smslp.com/>

Compliance stakeholders are encouraged to read the Supervisory Highlights, which also includes information on recent Bureau rules and guidance as well as enforcement actions. Interested parties may read the Bureau's report in its entirety [here](#).



MARK YOUR CALENDARS!

Our next quarterly **Be Prepared! webinar** is quickly approaching. The primary focus for this presentation is the **Community Reinvestment Act**. We'll cover a wide variety of issues and observations and also provide information on the proposed CRA rules. Other current

hot topics will be discussed.

Please join us on March 18th for this informative discussion. Details may be found on BankersWeb, [here](#).

FinCEN – New Administrative Ruling on CTRs

Earlier this month, the Financial Crimes Enforcement Network (FinCEN) issued a new administrative ruling. The ruling, FIN-2020-R001, is entitled “**Reporting of Certain Currency Transactions for Sole Proprietorships and Legal Entities Operating Under a “Doing business As” (“DBA”) Name.**”

This currency transaction reporting-related issuance provides clarification on how to complete the CTR FinCEN Form 112 that involves a DBA. The guidance is broken out into two categories – Sole Proprietorships and other Legal Entities.

Some of the most impactful changes as part of this ruling include the following:

- **Sole Proprietors**
 - If the individual owner is operating the business under a different name (a “doing business as” or “DBA” name), then such name should appear in Item 8 “Alternate name,” and the rest of Part I (other than Items 4-6, 7, and 17 identifying the individual owner) be completed with reference to the DBA name.
 - If there are multiple alternate names (Item 8) involved in the transactions, additional Part I’s are required to record the additional alternate names.
 - The amount and account number(s) entered in Item 21 “Cash in amount...” or Item 22 “Cash out amount...” will be the amount and account number(s) associated with the specific location corresponding to the reported transaction.

- **Legal Entities**
 - A Part I section should be prepared containing the home office/headquarters data (address, telephone number, identification number, etc.) of the entity.
 - The initial Part I section on the entity home office/headquarters will show the total amount and all account numbers involved in Item 21 or 22.
 - When multiple entity locations are involved in an aggregated CTR, a separate Part I section should be prepared for each location involved. Each additional Part I section should include the entity’s legal name in Item 4 and alternate name, if any, in Item 8.

Calendar Reminders

- **1/30** – Quarterly HMDA LAR Update Deadline
- **3/1** – HMDA LAR Submission Due
- **3/18** – Quarterly Be Prepared Webinar
- **4/1** – CRA Public File Update

The issuance reflects that the ruling is effective **April 6, 2020**, except for BSA E-filing batch filers for which the effective date is **September 1, 2020**.

BSA Officers and supporting staff are encouraged to read the administrative ruling in its entirety, which can be found [here](#).

An Abusive Act or Practice... What is it?

While compliance stakeholders have several different regulations to juggle, they also need to be on the lookout for acts or practices that are unfair, deceptive or abusive. As those concepts of UDAAP can sometimes be elusive, the industry has always wanted more guidance that will help clarify how a certain practice could be at a higher UDAAP risk. In addressing this need for clarity, the Bureau of Consumer Financial Protection issued a policy statement in January 2020. The policy statement is focused on the scope and meaning of **abusiveness**.

To address this, it's important to first understand some background. It is the Dodd-Frank Act that gives the Bureau supervisory authority to cover UDAAP. That authority can be used to prevent a service provider from UDAAP in connection with a **consumer transaction** for a financial product or service, or the **offering to a consumer** of a financial product or service.

So, what is the abusive standard?

The abusive standard, first, is referenced within the Dodd Frank Act. At a high level, the Act references that the Bureau will have no authority to declare an act or practice abusive unless certain criteria are met. Those include something that: 1) materially interferes with the consumer's ability to understand a term or condition, or 2) takes unreasonable advantage of a consumer's lack of understanding; the inability of the consumer to protect their interests; or the reliance by the consumer on a covered person to act in the consumer's interest.

In helping to clarify this standard, the Bureau's 2020 policy statement is intended to provide greater certainty and to foster a clearer standard. The statement includes discussion on how an abusive claim has often historically been accompanied by related claims of unfairness or deception. However, the Bureau makes clear than it intends to allege "stand-alone" abusiveness violations, where appropriate. The Bureau also states that future "Supervisory Highlights" will describe with greater clarity any basis for abusiveness citations.

The Bureau's statement also clarifies three principles that will be applied in citing or challenging conduct as abusive, as follows:

- focus citations when the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers;
- generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that are alleged as unfair or deceptive; and
- generally avoid monetary relief for violations in situations where good faith efforts are made to comply with the abusiveness standard.

Compliance stakeholders wanting to learn more about UDAAP are encouraged to review the Bureau's examination manual [here](#). Also, interested persons wanting to read the entire 2020 Policy Statement may find it [here](#).



Mark your calendar for our next **Be Prepared!** Compliance Update webinar. It is scheduled for **March 18, 2020**.

Details may be found on BankersWeb, [here](#).

Convenient and Affordable Compliance Assistance

Do you need help preparing for the upcoming regulatory requirements? SC+S can help with our Online Compliance Consulting services, which combines the ease of online tools with the guidance of a compliance expert.

You will have access to an online compliance expert who will:

- Answer all of your compliance questions;
- Review your new policies and disclosures for compliance; and
- Train your Board of Directors on upcoming regulatory requirements.

You will also receive access to our online tools, including:

- Our Compliance Calendar;
- Our Dashboard Feature and Progress List, that enables you to determine what steps you will need to take to comply with the requirements and track your progress as you implement them;
- Our exclusive Knowledge Base of compliance Q&As; and
- FREE access to our quarterly Be Prepared! webinar series.

For more information or a free demo, contact Rhonda Coggins at 512-703-1509.

Contact Us

Sheshunoff Consulting + Solutions
901 S. Mopac Expressway
Barton Plaza V, Suite 140
Austin, TX 78746

© 2020 SCSR, L.L.C.

No further reproduction or distribution is allowed outside your organization without permission.
