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To: Clients and Friends

From: David F. Dulock

Subject: CFPB Supervisory Highlights: Consumer Reporting Special Edition

The following are excerpts taken from the CFPB’s fourteenth edition of its Supervisory Highlights published in the April 6, 2017, issue of the *Federal Register* (82 FR 16808, [click here](#)), which includes findings from examinations at consumer reporting companies (“CRCs”) and at companies (“furnishers”) that furnish information to CRCs. These excerpts only pertain to furnishers that supply the information about consumers’ financial behavior to CRCs and are redacted and modified for clarity and length.

Supervisory Observations at Furnishers

The FCRA (Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*) and Regulation V (12 CFR Part 1022, [click here](#)) set forth requirements for furnishers concerning both accuracy and dispute handling. To ensure compliance with these requirements, Supervision has conducted a number of reviews at a variety of furnishers subject to its supervisory authority. Supervision found CMS (“compliance management systems”) weaknesses and numerous violations of the FCRA and Regulation V that required corrective action by furnisher(s).

CMS/Data Governance

As the CFPB has emphasized, we expect institutions subject to our supervisory authority to structure their CMS in a manner sufficient to comply with Federal consumer financial laws and appropriately address associated risks of harm to consumers. This expectation includes ensuring the furnisher implements and maintains a CMS sufficient to ensure compliance with furnisher obligations required under the FCRA, as appropriate. In one or more reviews of furnisher(s), examiners found several weaknesses in CMS, including the following:

- weak oversight by management and the Board of Directors over furnishing practices;
- no formal data governance program;
- failure to update policies and procedures;
- weak training of employees who conduct furnishing and dispute handling operations; and
- weak monitoring and corrective action, including failure to conduct follow up testing on consumer account files submitted to and rejected by one or more CRAs.

Supervision directed the furnisher(s) to take appropriate action to address these weaknesses in their CMS programs as they relate to their actions in furnishing information to CRCs.

Reasonable Written Policies and Procedures Requirement

Regulation V requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they provide to CRCs. (12 CFR 1022.42(a).) Such policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher’s activities. Supervision found that one or more furnisher(s) failed to meet this

requirement by failing to have policies and procedures:

- for handling and investigating direct disputes from consumers;
- for the creation and retention of documentation to substantiate final dispute decisions;
- to prevent duplicative or mixed file reporting;
- to instruct how to conduct reasonable investigations of consumer disputes, including directing dispute handling agents to compare the disputed information to all available information in all systems of record that could contain information relevant to a consumer's dispute;
- to prevent dispute-handling agents from responding "verified" immediately upon receipt of a dispute, instead of ensuring a reasonable reinvestigation was completed timely; and
- for the third-party service providers conducting the furnishing on behalf of the furnisher(s).

Guidelines for Furnishers in Appendix E of Regulation V

Regulation V requires furnishers, as they create policies and procedures, to consider and incorporate, as appropriate, the guidelines of Appendix E to Regulation V. (12 CFR 1022.42(b).) These guidelines address key business functions, such as record retention, training, third-party oversight, and receipt of feedback from CRCs and others that contribute to a furnisher's ability to ensure the accuracy and integrity of the data furnished to CRCs. In the past year, examiners evaluated furnishers' consideration and incorporation of the Appendix E guidelines as appropriate to each institution. As a result of the reviews, examiners observed the following failures of furnisher(s) to meet this requirement of Regulation V and required the corrective actions described below.

Accuracy With Respect to Transferred Accounts (Date of First Delinquency)

Appendix E of Regulation V states that a furnisher's policies and procedures should be reasonably designed to promote furnishing information that is accurate, which includes furnishing information that reflects the terms of and liability for accounts, as well as consumers' performance on such accounts. (12 CFR 1022.42, Appendix E, I(b)(1).) Appendix E also states that a furnisher's policies and procedures should address furnishing information about consumers following transfers of accounts in a manner that prevents re-aging of accounts and other problems that may affect the accuracy or integrity of the information furnished. (12 CFR 1022.42, Appendix E, III(g).)

Examiners found that one or more furnishers' written policies and procedures for furnishing did not address situations where information is absent on incoming loan servicing data transfers. Specifically, if a transferor's servicer did not provide the date of first delinquency (DOFD), the policies and procedures did not require follow-up to obtain and accurately report the DOFD. The DOFD affects consumers because the FCRA directs that certain negative information not be included on consumer reports for longer than a specified period of time. (15 U.S.C. 1681c(a).) If the DOFD date is incorrect, the negative information associated with the specific tradeline may persist in the consumer file longer than legally permissible. The policies and procedures of the furnisher(s) directed agents to furnish information about such accounts even though the DOFD was not known. Supervision directed furnisher(s) to revise their written policies and procedures to ensure the DOFD from the transferor servicer was obtained and the furnishing of payments received on charged-off loans was updated accordingly.

Maintaining Records

In developing its policies and procedures, a furnisher should address how to "maintain[]

records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.” (12 CFR 1022.42, Appendix E, III(c).)

Examiners found at one or more furnishers that the policies and procedures for handling direct and indirect disputes¹ required only the retention of certain documents. Examiners found that the retained documents did not substantiate the accuracy of the furnishers’ decision as to the dispute. Deficient documentation included the failure to memorialize what the agent reviewed or the logic of the agent’s investigation. Examiners attributed these failures to the weak policies and procedures and the failure to conduct monitoring or a compliance audit to identify the inadequate record retention. Examiners also found that when furnisher(s) processed an indirect dispute, they did not retain a copy of the attachments submitted by consumers to the CRC in connection with the dispute. By not retaining attachments, a furnisher compromises its ability to conduct ongoing quality checks of its dispute investigations. Supervision directed furnisher(s) to retain attachments submitted with indirect disputes for a reasonable amount of time.

Additionally, examiners found that furnisher(s) did not have adequate written policies and procedures in place to properly identify and track direct disputes. Accordingly, examiners were unable to verify that the furnisher(s) undertook a reasonable reinvestigation within the legally required timeframe. Supervision directed the furnisher(s) to ensure records related to disputes are maintained for a reasonable amount of time. Supervision made this direction to rectify the furnisher(s)’ failure to consider the guidelines as required by Regulation V in developing their policies and procedures.

Feedback From Consumer Reporting Companies

In establishing and implementing its policies and procedures, a furnisher should consider any feedback received from CRCs, consumers, or other appropriate parties. (12 CFR 1022.42, Appendix E, II(a)(3).) The feedback may indicate compliance gaps or persistent violations that the furnisher should address. (*Id.*) Examiners found instances where furnisher(s) failed to:

- have policies or procedures for the handling of feedback received from CRCs related to data quality;
- review exception reports or identify, correct, and resubmit invalid data identified by the exception reports; and
- have policies and procedures that provide sufficient guidance to dispute-handling agents on how to proceed when the information provided by the consumer is inconsistent with the information contained in the furnisher’s system.

Oversight of Service Providers

Furnishers’ policies and procedures should address appropriate and effective oversight of relevant service providers whose activities may affect the accuracy and integrity of information furnished to CRCs. (12 CFR 1022.42, Appendix E, III(f).) Examiners found that furnisher(s)’ policies and procedures failed to ensure appropriate oversight of their service provider(s). The lack of policies and procedures resulted in the improper sale to one or more debt buyers of consumer deposit accounts that were erroneously charged off. Supervision directed the furnisher(s) to ensure that the written policies and procedures consider and address, as appropriate, the oversight of service providers and other guidance provided in Appendix E of Regulation V.

Quality Control

Appendix E of Regulation V states that a furnisher, in developing its policies and procedures, should specify how it will establish and implement appropriate internal controls for the accuracy of information furnished. These controls can include implementing standard procedures and verifying random samples of information provided to CRCs. (12 CFR 1022.42, Appendix E, III(d).) Internal controls can identify data accuracy issues early on and lead to appropriate corrective action to address such issues.

In one or more reviews, examiners found the following deficiencies in quality control:

- failure to perform quality checks on the data furnished to CRCs;
- failure to test for the accuracy of the information after it is furnished, such as whether the amount furnished as charged off is correct or whether the name or other identifying information of the account holder is correct;
- failure to conduct ongoing periodic evaluations or audits of furnishing practices, or data furnished to CRCs; and
- failure to conduct audits of dispute information to identify and correct root causes of any inaccurate furnishing.

Reasonable Investigations of Disputes

Appendix E of Regulation V provides that furnishers' policies and procedures should be reasonably designed to promote reasonable investigations of consumer disputes and take appropriate action based on the outcome of such investigations. (12 CFR 1022.42, Appendix E, I(b)(3).) Examiners found that one or more furnishers' policies and procedures failed to promote reasonable investigations of disputes.

Training of Staff

In developing their policies and procedures, furnishers should address how they will train the staff that participates in activities related to the furnishing of information on how to implement the policies and procedures. (12 CFR 1022.42(b), Appendix E, II(e).) Examiners found that one or more furnishers established policies and procedures that failed to address training related to furnishing. At one or more furnishers of consumer deposit account data, examiners also found no evidence that furnisher(s) provided training to employees related specifically to furnishing of consumer deposit-related data or dispute handling and resolution. Supervision directed one or more furnishers to update and conduct training to ensure adequate handling of direct and indirect disputes of consumer deposit account information.

Periodically Review and Update Furnishing Policies and Procedures

Regulation V requires furnishers to review their policies and procedures "periodically and update them as necessary to ensure their continued effectiveness." (12 CFR 1022.42(c).) CFPB examiners found that furnisher(s) did not review and update their furnishing policies and procedures as necessary for compliance with this requirement. Supervision directed furnisher(s) to update and implement revisions to their policies in accordance with Regulation V.

Data Accuracy Requirements of Furnishers

Reporting Information With Actual Knowledge of Errors

Section 623(a)(1)(A) of the FCRA requires that a furnisher shall not furnish any information relating to a consumer to any CRC if the furnisher knows or has reasonable cause to believe that

the information is inaccurate. (15 U.S.C. 1681s-2(a)(1)(A).) Examiners found one or more furnishers provided consumer information to CRCs while knowing or having reasonable cause to believe that the information was inaccurate because the information furnished did not accurately reflect the information in the furnisher(s)' systems. The types of information inaccurately furnished included that:

- consumers were delinquent;
- consumers had no payment history;
- consumers had a "\$0" actual payment amount;
- consumers had an unpaid charged-off balance when consumers had, in fact, settled the account in full; and
- amounts past due and bankruptcy status.

A furnisher is not subject to Section 623(a)(1)(A) if the furnisher clearly and conspicuously specifies an address for consumers to provide notice that they dispute specific information as inaccurate. (15 U.S.C. 1681s-2(a)(1)(C).) However, the FCRA does not require a furnisher to specify such an address. (*Id.*) Supervision determined that one or more furnishers did not clearly and conspicuously specify such an address to consumers.

Date of First Delinquency

The date of first delinquency is important for CRCs, creditors, and consumers because it determines when information on a consumer report becomes obsolete and may no longer be reported. (15 U.S.C. 1681c(a)-(b).) The FCRA requires furnishers of information regarding delinquent accounts to report the date of delinquency to the CRC within 90 days.² In one or more reviews, furnisher(s) failed to report accurate dates of first delinquency on accounts when consumers who had been delinquent filed for bankruptcy. Specifically, one or more furnishers updated the date of delinquency when consumers filed for bankruptcy to reflect the date of bankruptcy filing as the date of first delinquency. Supervision directed furnisher(s) to reevaluate the accounts with bankruptcy, charge-off, and other applicable post-delinquency statuses to confirm the date of first delinquency was reported accurately and to promptly correct and update the dates of first delinquency with the CRCs, as necessary.

Failure To Update and Correct Inaccurate Information

When furnishers become aware of inaccurate information previously furnished to a CRC, the furnisher must inform the CRC that the previously furnished information is incorrect and promptly update the information. (15 U.S.C. 1681s-2(a)(2).) Examiners found that one or more furnishers violated this requirement in the following ways:

- failing to promptly update the information provided to CRCs after determining that consumer information was not complete or accurate;
- failing to promptly update payment information for charged-off accounts when consumers made payments under payment plans;
- lacking oversight of the furnisher's service providers, who delayed updating incomplete or inaccurate consumer information from a range of 190 days up to 337 days; and
- failing to update reports to reflect delinquencies that had been cured when a consumer had a qualifying deferment during the period of delinquency.

Supervision directed the furnisher(s) to correct these violations to ensure prompt updating and correcting of inaccurate or incomplete information.

Dispute Handling Requirements

Notice That Dispute Is Frivolous or Irrelevant

Regulation V requires furnishers to conduct a reasonable investigation of a direct dispute and report the results of the investigation to the consumer. (12 CFR 1022.43(e).) There are exceptions to this requirement, including where a furnisher is unable to investigate the dispute due to the consumer not providing sufficient information, or providing substantially the same information as a previously submitted dispute, when the furnisher can make a reasonable determination that the dispute is frivolous or irrelevant. (12 CFR 1022.43(f)(1).) In those instances, the furnisher must notify the consumer of the determination no later than five business days after making the determination. (12 CFR 1022.43(f)(2).) The notice must include the reasons for such determination and identify any information required to investigate the disputed information. (12 CFR 1022.43(f)(3).) In one or more reviews, furnishers decided not to investigate consumer disputes, having determined that certain consumers did not provide sufficient information to investigate the disputed information. When the furnisher(s) made this determination, they failed to provide proper notice to consumers of a reasonable determination that a dispute was frivolous or irrelevant, in violation of Regulation V. Supervision directed furnisher(s) to provide proper notice to consumers of a frivolous or irrelevant dispute determination.

Failure To Report the Results of Direct Dispute Investigations to Consumers

The FCRA and Regulation V require furnishers to complete their investigations of direct disputes received from consumers and to report the results to the consumer before the applicable expiration period. (15 U.S.C. 1681s-2(a)(8)(E)(iii); 12 CFR 1022.43(e)(3).) Examiners found that one or more furnisher(s) conducted an investigation of disputes and sent the consumers response letters, but the letters did not adequately address the actual substance of the disputes. For example, if a consumer disputed that the furnisher(s) had reported the consumer as delinquent during a particular time frame, the furnisher(s) sent a form letter in response that contained only a payment history of the account, including for the time period at issue in the dispute. Supervision determined that the furnisher(s)' policies and procedures did not provide sufficient guidance on the content of resolution letters for disputes and directed the furnisher(s) to evaluate and improve the clarity of dispute resolution letters to ensure the results are more clearly reported to consumers.

Examiners also found that furnisher(s) failed to provide the results of direct dispute investigations to consumers in bankruptcy. Examiners determined that the furnisher(s) had system errors, which misinterpreted the automatic stay provision of the bankruptcy code and suppressed result letters to consumers. Supervision directed furnisher(s) to rectify these issues.

Failure To Comply With Indirect Dispute Handling Requirements

The FCRA requires furnishers, after receiving notice of a dispute of the completeness or accuracy of any information from a CRC, to conduct an investigation with respect to the disputed information. (15 U.S.C. 1681s-2(b)(1)(A).) This includes a review of all relevant information provided by the CRC and reporting the results of the investigation to the CRC within required time periods. (15 U.S.C. 1681s-2(b)(1)(B)-(D).) Examiners found that furnisher(s) failed to complete their dispute investigations within the time periods required by the FCRA. Examiners found that furnisher(s), in order to meet the timing requirements, responded to notice of disputes from CRCs by verifying the information when, in fact, the furnisher(s) had not completed the

investigations and had not determined the accuracy of the information disputed by the consumer. Supervision directed furnisher(s) to investigate such disputes in compliance with the FCRA, which requires furnishers to complete an investigation and provide the results of that investigation to the consumer and to the CRCs.

Examiners also found that one or more furnishers failed to conduct an investigation of indirect disputes. Supervision directed furnishers to update and implement dispute handling policies and procedures to ensure disputes are handled in accordance with FCRA requirements.

Permissible Purpose

The FCRA prohibits a person from obtaining a consumer report unless the consumer report is obtained for a purpose authorized by the FCRA. (15 U.S.C. 1681b(f).) Examiners found that one or more institutions obtained consumers' consumer reports by falsely representing to CRCs that those consumers had applied for a loan and that the institution(s) thus had permissible purposes to obtain the reports. Supervision directed the institution(s) to:

- establish and implement effective policies and procedures to ensure the consumer's report is not obtained without a permissible purpose;
- strengthen the monitoring and testing function to respond to agent violations more quickly; and
- report to the board quarterly on the number of complaints and disputes involving consumer reports obtained without a permissible purpose.

Conclusion

Consumer reporting companies and furnishers have an obligation to maintain the accuracy of consumer data, but experience indicates that they lack incentives and underinvest in accuracy. Indeed, these most recent supervisory findings underscore Supervision's concern about the lack of resources that furnishers in particular have devoted to this important function and the resulting violations of law.

Supervision will continue to conduct reviews at a wide range of furnishers subject to our authority and expects furnishers to evaluate carefully their entire operations as they relate to their furnishing practices in light of the FCRA and Regulation V's requirements.

¹ Consumers may dispute information that appears on their consumer report directly to furnishers ("direct disputes") or indirectly through CRCs ("indirect disputes"), and furnishers are required to investigate both types of consumer disputes to verify the accuracy of the information furnished. (15 U.S.C. 1681s-2(a)(8) and 15 U.S.C. 1681s-2(b). 12 CFR 1022.43.)

² 15 U.S.C. 1681s-2(a)(5)(A). This provision applies to accounts placed for collection, charged to profit or loss, or subjected to similar action. The date of delinquency is the month and year of the commencement of the delinquency on the account that immediately preceded the action (*e.g.*, placement of the account for collection).

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