recreational shark fisheries to identify main areas of success and concerns with conservation and management measures and find potential ways to improve management of the shark fishery.

Atlantic shark fisheries have been federally managed since 1993. Unlike stock assessments, which focus on abundance of stocks and their status, SHARE focuses on the overall state of these fisheries to assist in determining potential next steps for management. In the document, NMFS refers to ''the Atlantic shark fishery'' to collectively encompass all of the commercial and recreational fisheries and gear types managed by NMFS HMS Management Division. NMFS began this review after noticing concerning trends in the fishery. In the commercial fishery, trends include reduced landings, a decrease in active vessels, and an increase in shark discards. In the recreational fishery, trends include an increase in catch and release rates, an increase in effort by state-water or shore-based fishermen, increased numbers of shark depredation events, and a decrease in targeted pelagic shark trips. Through the SHARE process, NMFS explored various aspects of the Atlantic shark fisheries to improve stability and resiliency within the fisheries and address the following objectives:

- Review the current state of the Atlantic shark fishery;
- Identify areas of success in the fishery;
- Identify areas of concern in the fishery; and
- Identify potential ways to improve the fishery and potential future shark management actions or measures.

NMFS published a Notice of Availability of the draft SHARE document on October 25, 2021 (86 FR 58891). A public webinar was conducted on December 8, 2021, and the public comment period closed on January 3, 2022. NMFS received 47 written comments and a variety of verbal comments regarding the draft SHARE document. A summary of public comments received is included in the Appendix of the final SHARE document which may be accessed at *https://www.fisheries.noaa.gov/action/atlantic-shark-fishery-review-share.*

After consideration of public comments, NMFS has finalized the SHARE document. Based on findings outlined in the document, NMFS believes changes to shark fishery management are warranted to improve its overall performance and the health of shark stocks.

As part of SHARE, NMFS reviewed information regarding commercial shark fishery vessel permits, trips targeting or retaining sharks, shark landings, dealer permits, and markets. These data indicate that catch of available quota and participation in the commercial shark fishery have dramatically declined from historical levels. In addition, NMFS anticipates further declines in the future, due to the adoption, in November 2022, of a proposal under CITES to list many shark species in CITES Appendix II. In the recreational shark fishery, NOAA Fisheries reviewed the number of recent permits with shark endorsements, fishing effort, survey data, and tournament landings. These data indicate increased shark fishing effort by state-water and shore-based fishermen, along with increased numbers of sharks being caught and released. Directed trips targeting pelagic sharks and tournament landings have declined since shortfin mako shark size limits were implemented, and are likely to decline further due to the current zero retention limit for shortfin mako sharks. Additionally, shark depredation, which occurs when a shark eats or preys upon fish that are caught on fishing gear, has been a growing concern in a wide variety of commercial and recreational fisheries. While the number of reports of depredation have increased, the underlying cause of the increase is uncertain—it could be due to an increase in the number of sharks as stocks rebuild; a learned behavior by sharks as they recognize motors, fishing techniques, or shark feeding locations as a source of food; an increase in the number of people using social media to report the depredation; or any combination of the above. Lastly, in the SHARE document, NMFS analyzed factors beyond the Federal shark fishery, including other fisheries, Federal and state shark fin sale prohibitions, and binding international recommendations.

Overall, this review has found that NMFS is sustainably managing shark stocks; however, catch and participation in the commercial shark fishery is in decline in terms of the extent of available quota use and the number of participants. This decline is happening despite fishermen having available quotas for many species, and, in most regions, an open season year-round. The review has also identified a need in the recreational fishery to improve species identification, which could improve shark fishery data, thus improving management overall. Additionally, it is likely that other fisheries, state shark fin sale prohibitions, and binding international recommendations directly and indirectly affected fishing effort and landings from 2014 through 2019. Recently enacted Federal shark fin sale prohibitions also are likely to have further impacts on the shark fishery, though the impacts of those prohibitions are unknown at this time. Possible changes that could increase the productivity of the commercial shark fishery while remaining consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments could include modifications to:

- Vessel permit structure, including shifting incidental permits to open-access permits;
- Commercial vessel retention limits for large coastal sharks, blacknose, and other shark management groups;
- Authorized gear types, by including additional gear types to retain sharks in the commercial fishery;
- Regional and sub-regional quotas, to better match regional expectations and opportunities;
- Recreational size and bag limits; and,
- Reporting mechanisms, to improve data collection of recreational shark species and shark depredation events.

NMFS anticipates that management revisions such as those above would occur via future rulemaking to modify HMS regulations, as applicable, with appropriate opportunity for public comment. Making any such changes would take time, but regardless of timing, NMFS believes changes to the shark fishery are warranted to improve the overall health of the fishery and shark stocks.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights Junk Fees Special Edition, Issue 29, Winter 2023

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its twenty-ninth edition of Supervisory Highlights.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on March 8, 2023. The findings in this report cover examinations

involving fees in the areas of deposits, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing completed between July 1, 2022, and February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

This special edition of *Supervisory Highlights* focuses on the Bureau's recent supervisory work related to violations of law in connection with fees.[1] As part of its emphasis on fair competition the CFPB has launched an initiative, consistent with its legal authority, to scrutinize exploitative fees charged by banks and financial companies, commonly referred to as ''junk fees.''

Junk fees are unnecessary charges that inflate costs while adding little to no value to the consumer. Theses unavoidable or surprise charges are often hidden or disclosed only at a later stage in the consumer's purchasing process or sometimes not at all.

The CFPB administers several laws and regulations that may touch on fees including, but not limited to, the Credit Card, Accountability, Responsibility and Disclosure Act of 2009 (CARD Act),[2] the Fair Debt Collection Practices Act (FDCPA),[3] Regulation Z,[4] and the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP) under the Consumer Financial Protection Act of 2010 (CFPA).[5]

The findings in this report cover examinations involving fees in the areas of deposits, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing completed between July 1, 2022, and February 1, 2023. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and the related findings may pertain to one or more institutions.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at *CFPB_Supervision@cfpb.gov.*

[1] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

[2] 12 CFR 1026.

[3] 15 U.S.C. 1692.

[4] 12 CFR 1026.

[5] 12 U.S.C. 5531, 5536.

2. Supervisory Observations

2.1 Deposits

During examinations of insured depository institutions and credit unions, Bureau examiners assessed activities related to the imposition of certain fees by the institutions. This included assessing whether entities had engaged in any UDAAPs prohibited by the CFPA.[6]

2.1.1 Unfair Authorize Positive, Settle Negative Overdraft Fees

As described below, Supervision has cited institutions for unfair unanticipated overdraft fees for transactions that authorized against a positive balance, but settled against a negative balance (*i.e.,* APSN overdraft fees). They can occur when financial institutions assess overdraft fees for debit card or ATM transactions where the consumer had a sufficient available balance at the time the financial institution authorized the transaction, but given the delay between authorization and settlement of the transaction the consumer's account balance is insufficient at the time of settlement. This can occur due to intervening authorizations resulting in holds, settlement of other transactions, timing of presentment of the transaction for settlement, and other complex processes relating to transaction order processing practices and other financial institution policies. The Bureau previously discussed this practice in Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Overdraft Circular).[7]

Supervision has cited unfair acts or practices at institutions that charged consumers APSN overdraft fees. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[8]

While work is ongoing, at this early stage, Supervision has already identified at least tens of millions of dollars of consumer injury and in response to these examination findings, institutions are providing redress to over 170,000 consumers. Supervision found instances in which institutions assessed unfair APSN overdraft fees using the consumer's available balance for fee decisioning, as well as unfair APSN overdraft fees using the consumer's ledger balance for fee decisioning. Consumers could not reasonably avoid the substantial injury, irrespective of account-opening disclosures. As a result of examiner findings, the institutions were directed to cease charging APSN overdraft fees and to conduct lookbacks and issue remediation to consumers who were assessed these fees.

[6] 12 U.S.C. 5531, 5536.

[7] Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022) (Overdraft Circular) at 8–12, available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.*

[8] 12 U.S.C. 5531(c).

Supervision also issued matters requiring attention to correct problems that occurred when institutions had enacted policies intended to eliminate APSN overdraft fees, but APSN fees were still charged. Specifically, institutions attempted to prevent APSN overdraft fees by not assessing overdraft fees on transactions which authorized positive, as long as the initial authorization hold was still in effect at or shortly before the time of settlement. There were some transactions, however, that settled outside this time period. Examiners found evidence of inadequate compliance management systems where institutions failed to maintain records of transactions sufficient to ensure overdraft fees would not be assessed, or failed to use some other solution to not charge APSN overdraft fees. In response to these findings, the institutions agreed to implement more effective solutions to avoid charging APSN overdraft fees and to issue remediation to the affected consumers.

The Bureau has stated the legal violations surrounding APSN overdraft fees both generally and in the context of specific public enforcement actions will result in hundreds of millions of dollars of redress to consumers.[9] As discussed in a June 16, 2022 blog post, Supervision has also engaged in a pilot program to collect detailed information about institutions' overdraft practices, including whether institutions charged APSN overdraft fees.[10] A number of

[9] *See* Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf;* CFPB Consent Order 2022–CFPB–008, In the Matter of Regions Bank (Sept. 28, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf;* CFPB Consent Order 2022–CFPB–0011, In the Matter of Wells Fargo Bank (Dec. 20, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.*

[10] Measuring the impact of financial institution overdraft programs on consumers (June 16, 2022), available at: *https://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/.*

banks that had previously reported to Supervision engaging in APSN overdraft fee practices now report that they will stop doing so. Institutions that have reported finalized remediation plans to Supervision state their plans cover time periods starting in 2018 or 2019 up to the point they ceased charging APSN overdraft fees.

2.1.2 Assessing Multiple NSF Fees for the Same Transaction

Supervision conducted examinations of institutions to review certain practices related to charging consumers non-sufficient funds (NSF) fees. As described in more detail below, examiners conducted a fact-intensive analysis at various institutions to assess specific types of NSF fees. In some of these examinations, examiners found unfair practices related to the assessment of multiple NSF fees for a single transaction.

Some institutions assess NSF fees when a consumer pays for a transaction with a check or an Automated Clearing House (ACH) transfer and the transaction is presented for payment, but there is not a sufficient balance in the consumer's account to cover the transaction. After declining to pay a transaction, the consumer's account-holding institution will return the transaction to the payee's depository institution due to non-sufficient funds and may assess an NSF fee. The payee may then present the same transaction to the consumer's account-holding institution again for payment. If the consumer's account balance is again insufficient to pay for the transaction, then the consumer's account-holding institution may assess another NSF fee for the transaction and again return the transaction to the payee. Absent restrictions on assessment of NSF fees by the consumer's account-holding institution, this cycle can occur multiple times.

Supervision found that institutions engaged in unfair acts or practices by charging consumers multiple NSF fees when the same transaction was presented multiple times for payment against an insufficient balance in the consumer's accounts, potentially as soon as the next day. The assessment of multiple NSF fees for the same transaction caused substantial monetary harm to consumers, totaling millions of dollars. These injuries were not reasonably avoidable by consumers, regardless of account opening disclosures. And the injuries were not outweighed by countervailing benefits to consumers or competition.

Examiners found that institutions charged several million dollars to tens of thousands of consumers over the course of several years due to their assessment of multiple NSF fees for the same transaction. The institutions agreed to cease charging NSF fees for unpaid transactions entirely and Supervision directed the institutions to refund consumers appropriately. Other regulators have spoken about this practice as well.[11]

In the course of obtaining information about institutions' overdraft and NSF fee practices, examiners obtained information regarding limitations related to the assessment of NSF fees. Supervision subsequently heard from a number of institutions regarding changes to their NSF fee assessment practices. Virtually all institutions that Supervision has engaged with on this issue reported plans to stop charging NSF fees altogether.

Supervision anticipates engaging in further follow-up work on both multiple NSF fee and APSN overdraft fee issues. In line with the Bureau's statement regarding responsible business conduct, institutions are encouraged to ''self-assess [their] compliance with Federal consumer financial law, self-report to the Bureau when [they identify] likely violations, remediate the harm resulting from these likely violations, and cooperate above and beyond what is required by law'' with these efforts.[12] As the statement notes, ''. . . the Bureau's Division of Supervision, Enforcement, and Fair Lending makes determinations of whether violations should be resolved through non-public supervisory action or a possible public enforcement action through its Action Review Committee (ARC) process.'' For those institutions that meaningfully engage in responsible conduct, this ''could result in resolving violations non-publicly through the supervisory process.''

2.2 Auto Servicing

During auto servicing examinations, examiners identified UDAAPs related to junk fees, such as unauthorized late fees and estimated repossession fees.[13] Additionally, examiners found that servicers charged unfair and abusive payment fees.

2.2.1 Overcharging Late Fees

Examiners found that servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts allowed by consumers' contracts. Auto contracts often contain language that caps the maximum late fee amounts servicers are permitted to assess. The servicers coded their systems to assess a $25 late fee even though some consumers' loan notes capped late fees at no more than 5% of the monthly payment amount. The $25 late fee exceeded 5% of many consumers' monthly payment amounts. Excessive late fees cost consumers money and thus constitute substantial injury. Consumers could not reasonably avoid the injury because they do not control how servicers calculate late fees, had no reason to anticipate that the servicers would impose excessive late fees, and could not practically avoid being charged a fee. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, the servicers ceased the practice and refunded late fee overcharges to consumers.

2.2.2 Charging Unauthorized Late Fees After Repossession and Acceleration

Examiners found that servicers engaged in unfair acts or practices by assessing late fees not allowed by consumers' contracts. Specifically, the contracts authorized the servicers to charge late fees if consumers' periodic payments were more than 10 days delinquent. But, under the terms of the relevant loan agreements, after the servicers accelerated the loan balance, the entire remaining loan balance became immediately due and payable, thus terminating consumers' contractual obligation to make further periodic payments and eliminating the servicers' contractual right to charge late fees on such periodic payments. Despite this, the servicers continued to collect late fees even after they repossessed the vehicles on periodic payments scheduled to occur subsequent to the date on which the loan balances were accelerated. When consumers redeemed their vehicles by paying the full balance, they also paid these unauthorized late fees; these unauthorized fees caused substantial injury to consumers. Consumers could not reasonably avoid the late fees because they had no control

[11] NYDFS, Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees (July 12, 2022), available at: *https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220712_overdraft_nsf_fees;* FDIC, Supervisory Guidance on Multiple Re-Presentment NSF Fees (Aug. 2022), available at: *https://www.fdic.gov/news/financial-institution-letters/2022/fil22040a.pdf.*

[12] CFPB Bulletin 2020–01, Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating (Mar. 6, 2020), available at: *https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.*

[13] Note that while involuntary fees are often unfair when they are not authorized by a consumer contract, fees that are disclosed in the contract can also be unfair, depending on the circumstances.

over the servicers' late fee practices. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, servicers ceased the practice and refunded late fees to consumers.

2.2.3 Charging Estimated Repossession Fees Significantly Higher Than Average Repossession Costs

Examiners found that, where servicers allowed consumers to recover their vehicles after repossession by paying off the loan balance or past due amounts, servicers charged a $1,000 estimated repossession fee as part of the amount owed. This estimated repossession fee was significantly higher than the average repossession cost, which is generally around $350. By policy, the servicers returned the excess amounts to the consumer after they received the invoice for the actual cost from the repossession agent.

Examiners found that the servicers engaged in unfair acts or practices when they charged estimated repossession fees that were significantly higher than the costs they purported to cover. The relevant contracts permitted the servicers to charge consumers default-related fees based on actual cost, but here the fees significantly exceeded the actual cost. Charging the fees caused or was likely to cause substantial injury in the form of concrete monetary harm. For consumers who paid the amount demanded, deprivation of these funds for even a short period constituted substantial injury. Furthermore, some consumers may have been dissuaded from recovering their vehicles because the servicers represented that consumers must pay a $1,000 estimated repossession fee in addition to other amounts due. Some consumers may have been able to afford a $350 fee but not a $1,000 fee, and therefore did not pay and permanently lost access to their vehicles. Consumers could not reasonably avoid the injury because they did not control the servicers' practice of charging unauthorized estimated repossession fees. And the injury was not outweighed by countervailing benefits to consumers or competition because the fee exceeded costs necessary to cover repossession.

In response to these findings, the servicers ceased the practice of charging estimated repossession fees that were significantly higher than the actual average amount and provided refunds to affected consumers.

2.2.4 Unfair and Abusive Payment Fees

An act or practice is abusive if it "takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service."[14]

Examiners found that servicers engaged in unfair and abusive acts or practices by charging and profiting from payment processing fees that far exceeded the servicers' costs for processing payments, after the consumer was locked into a relationship with a servicer chosen by the dealer. Examiners observed that the servicers only offered two free payment options—pre-authorized recurring ACH and mailed checks—which are only available to consumers with bank accounts. Approximately 90 percent of payments made by consumers incurred a pay-to-pay fee. The servicers received over half the amount of these fees from the servicers' third-party payment processor as incentive payments, totaling millions of dollars.

Examiners concluded that these practices took unreasonable advantage of consumers' inability to protect their interests by charging consumers fees to use the most common payment methods to pay their auto loans, after the consumer was locked into a relationship with a servicer, that far exceeded the servicers' costs. Servicers leveraged their captive customer base and profited off payment fees through kickback incentive payments. These consumers were unable to protect their interests in selecting or using a consumer financial product or service because the dealer, not the consumer, selected the servicer. Consumers thus could not evaluate a servicer's payment processing fees, bargain over these fees, or switch to a servicer with lower-cost or more no-fee payment options.

In addition, examiners found that these practices were unfair. The payment processing fees constituted substantial injury. Because consumers did not choose their auto loan servicers, they could not reasonably avoid these costs by bargaining with the servicer over the fees or switching to another servicer; moreover, consumers without bank accounts, who were unaware of the payment structure, or who have other obstacles to ACH or check payments, could not use the free payment methods and thus could not reasonably avoid paying the fees. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, Supervision directed the servicers to cease the practice.

2.3 Mortgage Servicing

In conducting mortgage servicing examinations, examiners identified a number of UDAAPs and a Regulation Z violation related to junk fees. Examiners found that servicers charged consumers junk fees that were unlawful related to late fee amounts, unnecessary property inspection visits, and private mortgage insurance (PMI) charges that should have been billed to the lender. Servicers also failed to waive certain charges when consumers entered permanent loss mitigation options and failed to refund PMI premiums. And servicers charged consumers late fees after sending periodic statements representing that they would not charge late fees.

2.3.1 Overcharging Late Fees

Examiners found that servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts allowed by their loan agreements. Specifically, where loan agreements included a maximum permitted late fee amount, the servicers failed to input these late fee caps into their systems. Because the systems did not reflect the maximum late fee amounts permitted by their loan agreements, the servicers charged the maximum allowable late fees under the relevant State laws, which frequently exceeded the specific caps in the loan agreements. The servicers caused substantial injury to consumers when they imposed these excessive late fees. Consumers could not reasonably avoid the injury because they do not control how servicers calculate late fees and had no reason to anticipate that servicers would impose excessive late fees. Charging excessive late fees had no benefits to consumers or competition. Examiners concluded that servicers also violated Regulation Z[15] by issuing periodic statements that included inaccurate late payment fee amounts, since they exceeded the amounts allowed by the loan agreements. In response to these findings, servicers waived or refunded late fee overcharges to consumers and corrected the periodic statements.

2.3.2 Repeatedly Charging Consumers for Unnecessary Property Inspections

Mortgage investors generally require servicers to perform property inspection

[14] 12 U.S.C. 5531(d)(2)(B).

[15] 12 CFR 1026.41(d)(1)(ii).

visits for accounts that reach a specified level of delinquency. Generally, servicers must complete these property inspections monthly. To satisfy this requirement, servicers hire a third party that sends an agent to physically locate and view the property. The servicers then pass along the cost of the property inspection to the consumer, with fees ranging from $10 to $50.

Examiners found that in some instances a property inspector would report to servicers that an address was incorrect, and that the inspectors could not locate the property because of this error. Despite knowing that the address was incorrect, the servicers repeatedly hired property inspectors to visit these properties. Examiners found that servicers engaged in an unfair act or practice when they charged consumers for repeat property preservation visits to known bad addresses. Charging consumers for property inspection fees to known bad addresses caused consumers substantial injury. Consumers were unable to anticipate the fees or mitigate them because they have no influence over the servicers' practices, and the servicers did not inform consumers that they had bad addresses. And the injury caused by the practice was not outweighed by countervailing benefits to consumers or competition.

In response to the findings, the servicers revised their policies and procedures and waived or refunded the fees.

2.3.3 Misrepresenting That Consumers Owed PMI Premiums

Examiners found that servicers engaged in deceptive acts or practices by sending monthly periodic statements and escrow disclosures that included monthly private mortgage insurance (PMI) premiums that consumers did not owe. These consumers did not have borrower-paid PMI on their accounts; instead, the loans were originated with lender-paid PMI, which should not be billed directly to consumers. After receiving these statements and disclosures some consumers made overpayments that included these amounts.

A representation, omission, act, or practice is deceptive when: (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material.[16] The servicers' statements were likely to mislead consumers by creating the false impression that PMI payments were due. It was reasonable for consumers to rely on the servicers' calculations to determine the appropriate monthly payment amount. Finally, the misrepresentations were material because they led to overpayments. In response to these findings, the servicers refunded any overpayments.

2.3.4 Charging Consumers Fees That Should Have Been Waived

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) directs servicers of federally backed mortgages to grant consumers a forbearance from monthly mortgage payments if the consumer is experiencing a financial hardship as a result of the COVID–19 emergency. During the time a consumer is in forbearance, no fees, penalties, or additional interest beyond scheduled amounts are to be assessed. While the CARES Act prohibits fees, penalties, or additional interest beyond scheduled amounts during a forbearance period, consumers sometimes accrue these amounts during periods when they are not in forbearance. For example, a servicer could appropriately charge a late fee if a consumer was delinquent in May 2020 and then entered a forbearance in June 2020.

When consumers with Federal Housing Administration-insured loans exited CARES Act forbearances and entered certain permanent loss mitigation options, the Department of Housing and Urban Development (HUD) required servicers in certain circumstances to waive late charges, fees, and penalties accrued outside of forbearance periods.

Examiners found that servicers engaged in unfair acts or practices when they failed to waive certain late charges, fees, and penalties accrued outside forbearance periods, where required by HUD, upon a consumer entering a permanent COVID–19 loss mitigation option.[17] Failure to waive the late charges, fees, and penalties constituted substantial injury to consumers. This injury was not reasonably avoidable by consumers because they had no reason to anticipate that their servicer would fail to follow HUD requirements, and consumers lacked reasonable means to avoid the charges. This harm outweighed any benefit to consumers or competition. In response to the finding, the servicers improved their controls, waived all improper charges, and provided refunds to consumers.

2.3.5 Charging Consumers for PMI After It Should Have Been Removed

The Homeowners Protection Act (HPA) requires that servicers automatically terminate PMI when the principal balance of the mortgage loan is first scheduled to reach 78 percent of the original value of the property based on the applicable amortization schedule, as long as the borrower is current.[18] Examiners found that servicers violated the HPA when they failed to terminate PMI on the date the principal balance of the mortgage was first scheduled to reach 78 percent loan-to-value on a mortgage loan that was current. As a result, consumers made overpayments for PMI that the servicers should have cancelled. In response to these findings, the servicers refunded excess PMI payments and implemented additional procedures and controls to enhance their PMI handling.[19]

2.3.6 Charging Late Fees After Sending Periodic Statements Listing a $0 Late Fee

Examiners found that servicers sent periodic statements to consumers in their last month of forbearance that incorrectly listed a $0 late fee amount for the subsequent payment, when a late fee was in fact charged if a payment was late. For example, consumers whose loans were in a forbearance period that ended on October 31st received a periodic statement during October billing for the November 1st payment; the periodic statement listed a $0 late fee amount. But because the November 1st payment was due after the forbearance period ended, the servicers then charged these consumers their contractual late fee amount if they missed the November 1st payment, despite sending statements listing a $0 late fee.

Examiners found that this practice was deceptive. Consumers' interpretation that they would incur no late fee was reasonable under the circumstances; consumers reasonably assume that the payment amounts and fees servicers tell them to pay are accurate and truthful. And the misrepresentations were likely to be material because consumers may have elected to make a timely periodic

[16] 12 U.S.C. 5531 and 5536(a)(1)(B).

[17] The Bureau previously reported a different unfair act or practice of charging fees to consumers during a CARES Act forbearance in *Supervisory Highlights, Issue 25, Fall 2021,* available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf.*

[18] 12 U.S.C. 4902(b)(1).

[19] The Bureau previously reported similar violations in *Supervisory Highlights, Issue 25, Fall 2021,* available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf.*

payment if the servicers had accurately advised a late fee would be assessed.

In response to this finding, the servicers updated their periodic statements and waived or refunded late fee charges for the specific payments.

2.4 Payday and Small-Dollar Lending

2.4.1 Splitting and Re-Presenting Consumer Payments Without Authorization

Examiners found that lenders, in connection with payday, installment, title, and line-of-credit loans, after unsuccessful debit attempts, split missed payments into as many as four sub-payments and simultaneously or near-simultaneously represented them to consumers' banks for payment via debit card.

Examiners found that lenders engaged in unfair acts or practices when they re-presented split payments from consumers' accounts without their authorization to do so simultaneously or near-simultaneously. As a consequence, consumers incurred or were likely to incur injury in the form of multiple overdraft fees, indirect follow-on fees, unauthorized loss of funds, and inability to prioritize payment decisions. Injury was not reasonably avoidable because lenders did not disclose, and consumers had not authorized, same-day, simultaneous or near-simultaneous split debit processing. Substantial injuries were not outweighed by countervailing benefits to consumers or to competition.

In response to these findings, lenders were directed to: (1) provide remediation; (2) stop engaging in split-debit or other payment re-presentment attempts following an initial failed debit attempt, without first obtaining the consumer's authorization as to the manner and timing of the re-presentments; and (3) stop the practice of splitting the single amount owed into several debit attempts, unless the consumer has sufficient time between each debit attempt to learn of any successful debits and to take action to avoid incurring unwanted consequences, such as bank overdraft fees, indirect follow-on fees, unauthorized loss of funds, or inability to prioritize payment decisions.

2.4.2 Charging Borrowers Repossession-Related Fees Not Authorized in Automobile Title Loan Contracts

Examiners found that lenders engaged in unfair acts or practices when they charged borrowers fees to retrieve personal property from repossessed vehicles and to cover servicer charges, and withheld the personal property and vehicles until borrowers paid the fees. The practices caused or were likely to cause substantial injury when lenders, through their repossession agents, withheld personal property and vehicles until consumers paid unexpected personal property retrieval fees and agent fees for vehicle redemption. In addition to being subject to unexpected fees, borrowers faced being denied access to or destruction of property such as medical equipment and vehicles necessary for basic life functions. Potential countervailing benefits to consumers or to competition did not outweigh the substantial injuries caused.

Lenders were directed to enhance their compliance management systems to prevent these practices and to provide remediation to affected consumers.

2.4.3 Failure to Timely Stop Repossessions, Charging Fees and Refinancing Despite Prior Payment Arrangements

Examiners found that lenders engaged in unfair acts or practices by failing to stop vehicle repossessions before title loan payments were due as-agreed, and then withholding the vehicles until consumers paid repossession-related fees and refinanced their debts. The practice caused or was likely to cause substantial injury by depriving consumers of their means of transportation and of the contents of their vehicles including medication, by causing them to spend time reclaiming the vehicles, and by imposing repossession fees and refinancing costs. Consumers had no way to stop lenders from disregarding payment agreements specifically designed to prevent repossession. Therefore, they could not reasonably anticipate or avoid the injuries caused. Countervailing benefits of the practice, such as the cost of implementing controls to prevent wrongful repossessions, did not outweigh the substantial injury caused.

Lenders were directed to enhance their compliance management systems to prevent these practices and to provide remediation to affected consumers.

2.5 Student Loan Servicing

2.5.1 Charging Late Fees and Interest After Reversing Payments

Examiners found that servicers engaged in unfair acts or practices by initially processing payments but then later reversing those payments, leading to additional late fees and interest for consumers. Although the servicers' policies did not allow student loan payments to be made with a credit card, customer service representatives erroneously accepted credit card payment information from some consumers over the phone and then processed those credit card payments. Subsequently, the servicers manually reversed the payments because they violated their policies. As a result, consumers became delinquent on their accounts and suffered substantial injury in the form of late fees, negative credit reporting, and additional accrued interest. Consumers could not reasonably avoid the injury because they could not anticipate that servicers would reverse payments after initially accepting them, and the servicers did not send notices explaining the reversals in all cases. Moreover, the servicers did not provide consumers with an opportunity to make a payment with another method before reversing the payments. Finally, retroactively reversing credit card payments, as opposed to implementing measures to prevent such payments in the first instance, has no benefits to consumers or to competition. In response to these findings, the servicers enhanced controls to ensure that payment processing systems will not accept credit card payments and to train customer service representatives to inform consumers at the time of payment that credit cards are not accepted. Additionally, Supervision directed the servicers to reimburse any late fees and correct any negative credit reporting as a result of reversed credit card payments.

3. Supervisory Program Developments

3.1 Recent Bureau Supervisory Program Developments

Set forth below are CFPB-issued circulars, bulletins, advisory opinions, and proposed rules regarding fees.[20]

3.1.1 CFPB Proposed a Rule To Curb Excessive Credit Card Late Fees

On February 1, 2023, the CFPB proposed a rule to curb excessive credit card late fees that cost American families about $12 billion each year.[21] The CFPB's proposed rule would amend regulations implementing the CARD Act to ensure that late fees meet the Act's requirement to be ''reasonable and proportional'' to the costs incurred by issuers to handle late payments.

[20] Some of these items were also referenced in the last edition of *Supervisory Highlights.*

[21] The proposed rule is available at: *https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/credit-card-penalty-fees-regulation-z/.*

Specifically, the proposed rule would lower the immunity provision for late fees to $8 for a missed payment and end the automatic annual inflation adjustment. The proposed rule would also ban late fee amounts above 25% of the consumer's required payment.

3.1.2 CFPB Issued Circular on Unanticipated Overdraft Fee Assessment Practices

On October 26, 2022, the CFPB issued guidance indicating that overdraft fees may constitute an unfair act or practice under the CFPA, even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E.[22] As detailed in the circular, when financial institutions charge surprise overdraft fees, sometimes as much as $36, they may be breaking the law. The circular provides some examples of potentially unlawful surprise overdraft fees, including charging fees on purchases made with a positive balance. These overdraft fees occur when a bank displays that a customer has sufficient available funds to complete a debit card purchase at the time of the transaction, but the consumer is later charged an overdraft fee. Often, the financial institution relies on complex back-office practices to justify charging the fee. For instance, after the bank allows one debit card transaction when there is sufficient money in the account, it nonetheless charges a fee on that transaction later because of intervening transactions.

3.1.3 CFPB Issued Bulletin on Unfair Returned Deposited Item Fee Assessment Practices

On October 26, 2022, the CFPB issued a bulletin [23] stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

[22] Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.*

[23] Bulletin 2022–06: Unfair Returned Deposited Item Fee Assessment Practices, available at: *https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.*

3.1.4 CFPB Issued Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees

On June 29, 2022, the CFPB issued an advisory opinion [24] affirming that Federal law often prohibits debt collectors from charging ''pay-to-pay'' fees. These charges, commonly described by debt collectors as ''convenience fees,'' are imposed on consumers who want to make a payment in a particular way, such as online or by phone.

4. Remedial Actions

4.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in and supported the following enforcement action.

4.1.1 Wells Fargo

On December 20, 2022, the CFPB and Wells Fargo entered into a consent order in which Wells Fargo will pay more than $2 billion in redress to consumers and a $1.7 billion civil penalty for legal violations across several of its largest product lines.[25] The bank's illegal conduct led to billions of dollars in financial harm to its customers and, for thousands of customers, the loss of their vehicles and homes. Consumers were illegally assessed fees and interest charges on auto and mortgage loans, had their cars wrongly repossessed, and had payments to auto and mortgage loans misapplied by the bank. Wells Fargo also improperly froze or closed customer deposit accounts, charged consumers unlawful surprise overdraft fees, and did not always waive monthly account service fees consistent with its disclosures. Under the terms of the order, Wells Fargo will pay redress to the over 16 million affected consumer accounts, and pay a $1.7 billion fine, which will go to the CFPB's Civil Penalty Fund, where it will be used to provide relief to victims of consumer financial law violations.

4.1.2 Regions Bank

On September 28, 2022, the CFPB ordered Regions Bank to pay $50 million into the CFPB's victims relief fund and to refund at least $141 million to customers harmed by its illegal surprise overdraft fees.[26] Until July 2021, Regions charged customers surprise overdraft fees on certain ATM withdrawals and debit card purchases. The bank charged overdraft fees even after telling consumers they had sufficient funds at the time of the transactions. The CFPB also found that Regions Bank leadership knew about and could have discontinued its surprise overdraft fee practices years earlier, but they chose to wait while Regions pursued changes that would generate new fee revenue to make up for ending the illegal fees.

This is not the first time Regions Bank has been caught engaging in illegal overdraft abuses. In 2015, the CFPB found that Regions had charged $49 million in unlawful overdraft fees and ordered Regions to make sure that the fees had been fully refunded and pay a $7.5 million penalty for charging overdraft fees to consumers who had not opted into overdraft protection and to consumers who had been told they would not be charged overdraft fees.[27]

[24] Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees, available at: *https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.*

[25] CFPB Consent Order 2022–CFPB–0011, In the Matter of Wells Fargo Bank (Dec. 20, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.*

[26] CFPB Consent Order 2022–CFPB–0008, In the Matter of Regions Bank (Sept. 28, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf.*

[27] CFPB Consent Order 2015–CFPB–0009, In the Matter of Regions Bank (Apr. 28, 2015), available at: *https://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf.*

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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2023–0020]

Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is seeking comments from the public related to data brokers. The submissions in response to this request for information will serve to assist the CFPB and policymakers in understanding the current state of business practices in exercising enforcement, supervision, regulatory, and other authorities.

DATES: Comments must be received on or before June 13, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0020, by any of the following methods: