unlawful practices and come into compliance with the law and prohibits incentive-based employee compensation or performance measurements in relation to add-on products.

4.1.2 TransUnion, Trans Union LLC, and TransUnion Interactive, Inc.

On October 12, 2023, the CFPB issued an order against TransUnion, parent company of one of the three nationwide CRCs, and two of its subsidiaries, Trans Union LLC, and TransUnion Interactive, Inc. (collectively, TransUnion), which are headquartered in Chicago, Illinois. Security freezes and locks block certain third parties, such as lenders, from accessing consumers' credit reports to prevent a potential identity thief from obtaining new credit in those consumers' names. Starting in September 2018, Federal law has required nationwide CRCs to provide security freezes as a free service, whereas locks are a feature of certain paid products. The CFPB found that TransUnion, from as early as 2003, failed to timely place or remove security freezes and locks on the credit reports of tens of thousands of consumers who requested them, including certain vulnerable consumers; in some cases, those requests were left unmet for months or years. The CFPB found TransUnion's failure to place or remove security freezes in a timely manner occurred as a result of problems, including systems issues, that TransUnion knew about but failed to address for years. The CFPB found that TransUnion's failure to place or remove security freezes in a timely manner violated the FCRA, and TransUnion's failure to place or remove both security freezes and locks in a timely manner was unfair in violation of the Consumer Financial Protection Act of 2010. Further, the CFPB found that TransUnion engaged in deceptive acts and practices by falsely telling certain consumers that their requests had been successful when they had not. In addition, the CFPB found that from about 2016 to 2020, TransUnion failed to exclude certain consumers, including active-duty military and other potential victims of identity theft, from pre-screened solicitation lists in violation of FCRA. The CFPB's order requires TransUnion to pay $3 million to consumers in redress and $5 million in civil penalties.[23] TransUnion must also take steps to address and prevent unlawful conduct, including convening a committee to identify and address technology problems that can affect consumers.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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[23] A copy of the Consent Order is available at:*https://www.consumerfinance.gov/enforcement/actions/transunion-trans-union-llc-and-transunion-interactive-inc/*.

CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights, Issue 33, Spring 2024

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory Highlights.

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

DATES: The findings in this report cover select examinations regarding mortgage servicing, that were completed from April 1, 2023, through December 31, 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

The residential mortgage servicing market exceeds $13 trillion in current outstanding balances. When servicers do not comply with the law, they impose significant costs on consumers.

The CFPB is actively monitoring the market for emerging risks during a period of increasing default servicing activity since the end of the COVID–19 pandemic emergency. The mortgage industry has grappled with many challenges during this period, including increased requests for loss mitigation, changes to housing policies and programs, and staffing issues. Violations described in prior editions of *Supervisory Highlights* raised concerns about servicers' ability to appropriately respond to consumer requests for assistance, especially consumers at risk of foreclosure. While mortgage delinquencies and foreclosure rates remain near all-time lows, this may change in the future as consumers grapple with higher levels of debt and affordability challenges due to high rates and low housing supply. Foreclosure starts have risen in recent months, increasing the risks that vulnerable consumers face.

The CFPB also continues to prioritize scrutiny of exploitative illegal fees charged by banks and financial companies, commonly referred to as "junk fees." Examiners continue to find supervised mortgage servicers assessing junk fees, including unnecessary property inspection fees and improper late fees. Additionally, examiners found that mortgage servicers engaged in other unfair, deceptive, and abusive acts or practices (UDAAP) such as sending deceptive loss mitigation eligibility notices to consumers.[1] Mortgage servicers also violated several of Regulation X's loss mitigation provisions.[2]

The CFPB is currently reviewing Regulation X's existing framework to identify ways to simplify and streamline the mortgage servicing rules. The CFPB is considering a proposal to streamline the mortgage servicing rules, only if it would promote greater agility on the part of mortgage servicers in responding to future economic shocks while also continuing to ensure they meet their obligations for assisting borrowers promptly and fairly.

The findings in this report cover select examinations regarding mortgage servicing, that were completed from April 1, 2023, through December 31, 2023. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and related findings may pertain to one or more institutions.

2. Supervisory Observations

2.1 Mortgage Servicing

Examiners found that mortgage servicers engaged in UDAAPs and regulatory violations while processing payments by overcharging certain fees, failing to adequately describe fees in periodic statements, and not making timely escrow account disbursements. Additionally, as in prior editions of *Supervisory Highlights,* examiners identified persistent UDAAP and regulatory violations at mortgage servicers related to loss mitigation practices.

2.1.1 Unfair Charges for Property Inspections Prohibited by Investor Guidelines

Mortgage investors generally require servicers to perform property inspection visits for accounts that reach a specified

[1] 12 U.S.C. 5531, 5536.

[2] 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.

level of delinquency. Investor guidelines stipulate when servicers should complete these property inspections. Servicers pass along the cost of property inspections to the consumers; the fees for this action generally range from $10 to $50.

Examiners found that servicers engaged in unfair acts or practices by charging property inspection fees on Fannie Mae loans where such inspections were prohibited by Fannie Mae guidelines. The CFPA defines an unfair act or practice as an act or practice that: (1) causes or is likely to cause substantial injury to consumers; (2) is not reasonably avoidable by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition.[3]

Fannie Mae guidelines prohibit property inspections if the property is borrower-or tenant-occupied and one of the following applies: the servicer has established quality right party contact with the borrower within the last 30 days, the borrower made a full payment within the last 30 days, or the borrower is performing under a loss mitigation option or bankruptcy plan. Examiners found that in some instances a servicer would charge a property inspection fee on Fannie Mae loans even though the property was borrower-or tenant-occupied and the servicer had established quality right party contact within 30 days, the borrower had made a full payment within the last 30 days, or the borrower was performing under a loss mitigation option. In total, the servicers charged hundreds of borrowers' fees for property inspections that were prohibited by Fannie Mae's guidelines, causing consumers substantial injury. Consumers were unable to anticipate the property inspection fees or mitigate them because they have no influence over the servicer's practices. Charging improper fees has no benefit to consumers or competition. In response to these findings, the servicers corrected automation flaws behind some of the improper charges and implemented testing and monitoring to address the others. The servicers were also directed to identify and remediate borrowers who were charged fees contrary to investor guidelines.

2.1.2 Unfair Late Fee Overcharges

Examiners found that servicers engaged in unfair acts or practices by assessing unauthorized late fees.[4] These errors occurred for one of two reasons. First, in some instances servicers charged late fees that exceeded the amount allowed in the loan agreement. Second, in some instances servicers charged late fees even though consumers had entered into loss mitigation agreements that should have prevented late fees. Examiners found these practices constituted unfair acts or practices.

The servicers caused substantial injury to consumers when they imposed these unauthorized 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 unauthorized late fees. Charging unauthorized late fees had no benefits to consumers or competition. In response to these findings, servicers refunded the fees and improved internal processes.

2.1.3 Failing To Waive Existing Fees Following Acceptance of COVID–19 Loan Modifications

Regulation X generally allows certain servicers to offer streamlined loan modifications made available to borrowers experiencing a COVID–19 related hardship based on the evaluation of incomplete loss mitigation applications if the modifications meet certain requirements.[5] One requirement is that the servicer "waives all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification."[6]

Examiners found that servicers offered streamlined COVID–19 loan modifications but, in violation of Regulation X, failed to waive existing fees after borrowers accepted the modifications. In response to these findings, servicers are remediating consumers.

2.1.4 Failing To Provide Adequate Description of Fees in Periodic Statements

Regulation Z requires servicers to provide billing statements that include a list of all transaction activity that occurred since the last statement, including, among other things, "a brief description of the transaction."[7] Examiners found that servicers failed to provide a brief description of certain fees and charges in violation of this provision when they used the general label "service fee" for 18 different fee types, without including any additional descriptive information. In response to these findings, the servicers implemented changes to provide more specific descriptions of each service fee.

2.1.5 Failing To Make Timely Disbursements From Escrow Accounts

Regulation X requires servicers to make timely disbursements from escrow accounts if the borrower is not more than 30 days overdue.[8] Timely disbursements are defined as payments made on or before the deadline to avoid a penalty.[9] Examiners found servicers attempted to make timely escrow disbursements, but the payments did not reach the payees. The servicers did not resend the payments until months after the initial payment attempts. Some borrowers incurred penalties due to the late payments, which the servicers only reimbursed after the borrowers complained. Because the initial payments were unsuccessful, and the second payments were late, the servicers did not make timely disbursements and violated Regulation X. In response to these findings, the servicers were directed to comply with this regulation and remediate borrowers.

2.1.6 Deceptive Loss Mitigation Eligibility Notices

Examiners found that servicers engaged in deceptive acts or practices when they sent notices to consumers representing that the consumers had been approved for a streamlined loss mitigation option even though the servicers had not yet determined whether the consumers were eligible for the option. In fact, some consumers were ultimately denied the option.

An 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.[10]

The notices were misleading because the servicers had not yet determined the consumers were eligible for the loss mitigation option. Consumers reasonably interpreted the representations to mean that the loss mitigation option was available to them. The representations were material because consumers could have made budgeting decisions on the false

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[3] 12 U.S.C. 5531, 5536.

[4] Supervision previously reported a similar unfair act or practice of overcharging late fees in *Supervisory Highlights,* Issue 29 (Winter 2023), available at: *https://www.consumerfinance.gov/compliance/supervisory-highlights/*

[5] 12 CFR 1024.41(c)(vi)(A).

[6] 12 CFR 1024.41(c)(vi)(A)(5).

[7] 12 CFR. 1026.41(d)(4).

[8] 12 CFR 1024.17(k)(1).

[9] *Id.*

[10] *Consumer Financial Protection Bureau* v. *Gordon,* 819 F.3d 1179, 1192 (9th Cir. 2016).

assumption that they were approved for a loss mitigation option or were discouraged from submitting complete loss mitigation applications or taking other steps to cure their delinquencies and avoid foreclosure. In response to these findings, the servicers reviewed affected borrowers who remained delinquent to ensure they were considered for appropriate loss mitigation options.

2.1.7 Deceptive Delinquency Notices

Examiners found that servicers engaged in deceptive acts or practices when they sent notices informing certain consumers that they had missed payments and should fill out loss mitigation applications. In fact, these consumers did not need to make a payment because they were current on their payments, in a trial modification plan, or had an inactive loan (*e.g.,* loan was paid off or subject to short sale). These misrepresentations were likely to mislead consumers and it was reasonable for consumers under the circumstances to believe that the notices from their servicers were accurate. The representations were material because they were likely to influence consumers' course of conduct. For example, in response to the notice, a consumer may contact their servicer to correct the error or fill out unnecessary loss mitigation applications. In response to these findings, servicers are implementing additional policies and procedures to ensure accuracy of notices.

2.1.8 Loss Mitigation Violations

Regulation X generally requires servicers to send borrowers a written notice acknowledging receipt of their loss mitigation application and notifying the borrowers of the servicers' determination that the loss mitigation application is either complete or incomplete after receiving the application.[11] Examiners found that servicers violated Regulation X by sending acknowledgment notices to borrowers that failed to specify whether the borrowers' applications were complete or incomplete.

Additionally, after receiving borrowers' complete loss mitigation applications, Regulation X generally requires servicers to provide borrowers with a written notice stating the servicers' determination of which loss mitigation options, if any, the servicers will offer to the borrower.[12] Among other requirements, the written notice must include the amount of time the borrower has to accept or reject an offer of a loss mitigation option.[13] Examiners found that servicers violated Regulation X because the servicers did not provide timely notices stating the servicers' determination regarding loss mitigation options. The servicers were directed to enhance policies and procedures to ensure timely loss mitigation determinations. One servicer also violated Regulation X because its written notices did not provide a deadline for accepting or rejecting loss mitigation offers. In response to the finding, the servicers updated the offer letter templates to include a deadline to accept or reject the loss mitigation offer.

Finally, Regulation X requires servicers to maintain policies and procedures that are reasonably designed to ensure that they can properly evaluate borrowers who submit applications for all available loss mitigation options for which they may be eligible.[14] Examiners found that servicers violated Regulation X because they failed to maintain policies and procedures reasonably designed to achieve this objective. Specifically, the servicers did not follow investor guidelines for evaluating loss mitigation applications when they automatically denied certain consumers a payment deferral option rather than submitting the consumers' applications to the investor for review. In response to these findings, the servicers updated their policies and procedures and refunded or waived late charges and corrected negative credit reporting for impacted consumers.

2.1.9 Live Contact and Early Intervention Violations

Regulation X requires servicers to make good faith efforts to establish live contact with delinquent borrowers no later than the 36th day of delinquency.[15] Examiners found that servicers violated this provision when they failed to make good faith efforts to establish live contact with hundreds of delinquent borrowers. The servicers took corrective action which included providing remediation to harmed borrowers including refunding or waiving late fees.

Regulation X also requires servicers to provide written early intervention notices to delinquent borrowers no later than the 45th day of delinquency and again every 180 days thereafter.[16] Examiners found that servicers violated this provision when they failed to send written early intervention notices to thousands of delinquent borrowers. In response to these findings, the servicers identified and provided remediation to affected borrowers who were assessed late fees for missed payments after the 45th day of delinquency.

2.1.10 Failing To Retain Records Documenting Actions Takes on Mortgage Loan Accounts

Regulation X requires servicers to retain records documenting actions taken with respect to a borrower's mortgage loan account until one year after the date the loan was discharged or servicing of the loan was transferred to another servicer.[17] Examiners found that servicers failed to document certain actions in their servicing systems, such as establishing live contact with borrowers, in violation of this provision. In response to these findings, the servicers were directed to enhance training and monitoring to ensure compliance with this requirement.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 8, 2024–3:30 p.m.

PLACE: The meetings will be held remotely, and in person at 4330 East West Highway, Bethesda, Maryland 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Briefing Matter

FY 2024 Midyear Review

To attend remotely, please use the following link: *https://cpsc.webex.com/cpsc/j.php?MTID=m6d40a3231e2b6f93a08fda74c53af1fe.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

[11] 12 CFR 1024.41(b)(2)(i)(B). This notice is only required if the servicer receives a loss mitigation application 45 days or more before a foreclosure sale.

[12] 12 CFR 1024.41(c)(1). This notice is only required if the servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale.

[13] 12 CFR 1024.41(c)(1)(ii).

[14] 12 CFR 1024.38(b)(2)(v).

[15] 12 CFR 1024.39(a).

[16] 12 CFR 1024.39(b)(1).

[17] 12 CFR 1024.38(c)(1).