

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

CFPB Summer Supervisory Highlights Report Reveals a Potpourri of Issues that Have Examiners Concerned

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The CFPB published its Summer Supervisory Highlights last week, highlighting examinations that were conducted between January 2016 and April 2016 across various financial products. The Report comes on the heels of a Supervisory highlight report devoted entirely to mortgage servicing. The Report highlights key findings made by the CFPB and provides insight into the current focus of examiners. The Report highlights a number of technology failures and covers auto finance, debt collection, mortgage origination, payday lending and fair lending. The CFPB noted the following issues worthy of mention:

Auto Finance

The Report makes two specific observations and one very general observation. As suggested in other recent CFPB activity, the CFPB is scrutinizing add-on products and the representations made by lenders regarding the same. Specifically, the Bureau noted that add-on products and specifically, gap coverage products, should be accurately described. The CFPB also noted that one or more auto lenders engaged in deceptive practices when allowing a consumer to defer payments in that they omitted details as to how interest would accrue and how payments would be applied as a result of the deferral.

The Bureau also noted compliance management system weaknesses in one or more examinations. Specifically, the Bureau noted the following deficiencies and auto lenders, both direct and indirect, should take note:

- Failure to raise compliance-related issues to the institution's board of directors or their principal;
- Failure to monitor and correct business line practices to align with federal consumer financial law;
- Failure to adequately track training completed by employees and the Board;
- Failure to follow up on consumer complaints; and
- Failure of compliance audits to highlight deficiencies in the consumer complaint

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

response process.

Debt Collection

Banks and other original creditors who sell debt should carefully review their technology and their use of coding. The Bureau noted that, as a result of coding errors, one or more debt sellers sold accounts which were in bankruptcy, accounts that were products of fraud and accounts that had been paid in full.

The Bureau also found that one or more debt collectors made false representations to collect debt. Particularly, the Bureau noted instances of debt collectors making representations that down payments were required to establish a repayment plan and that use of a checking account was the only option for repayment. In both instances, the debt collector's policies and procedures did not support the representations and the Bureau concluded that the practice was deceptive.

Mortgage Origination

The majority of the Report is devoted to mortgage origination issues and reflect some of the struggles faced by lenders since the implementation of TRID. Specifically, the Bureau's examinations indicated that:

- One or more lenders incorrectly calculated the amount financed on loans with discount credits and subsequently incorrectly calculated the finance charge on the same loans, resulting in a negative finance charge and an amount financed that exceeded the stated loan amount;
- One or more lenders offering bridge loans failed to accurately disclose the interest payments due to a software failure;
- One or more institution demonstrated weak oversight of their automated systems, including inadequate testing of codes that calculate the finance charge and the amount financed when originating residential loans to consumers.

The Report also noted failures to comply with the Fair Credit Reporting Act. The Report indicates that one or more institutions failed to comply with the FCRA's adverse action notice requirements.

Payday Lending

It should not come as a surprise to those following the proposed payday rules; the CFPB has concerns as to electronic fund transfers on small short term loans. The Bureau's examinations noted issues with compliance with the Electronic Fund Transfer Act. Specifically, the Report notes that one or more lenders' loan agreements were ambiguous as to the acceptable range of amounts to be debited. As a consequence, lenders were required to revise their loan agreements for new loans. For existing loans, the Bureau required one or more entity to notify borrowers of the amount of any new transfer that will vary from the amount of the previous or preauthorized amount before initiating the new transfer.

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