

**2021 SURVEY OF ACTIVITIES IDENTIFIED AS UNFAIR, DECEPTIVE, OR  
ABUSIVE UNDER THE DODD-FRANK ACT,  
PART ONE**

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**I. INTRODUCTION**

This is our latest article in a series that surveys activities identified as unfair, deceptive, or abusive acts or practices (“UDAAPs”) by the Consumer Financial Protection Bureau (“CFPB”), state attorneys general, and consumer financial services regulators using federal UDAAP powers created by the Dodd-Frank Act.<sup>1</sup> This article covers relevant UDAAP activity that occurred between January 1, 2021, and June 30, 2021, and it surveys enforcement actions and other statements by the CFPB in reports that discuss UDAAP violations.<sup>2</sup> These activities provide insight into the specific types of practices that could be considered UDAAP violations in the future.<sup>3</sup>

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301, *et seq.* (the “Dodd-Frank Act”); *see, e.g.*, 12 U.S.C. § 5552 (2012).

<sup>2</sup> We have attempted to make this survey as comprehensive as possible; however, it is not exhaustive and other relevant actions may not be discussed in this survey.

<sup>3</sup> The term “unfair” is defined in the Dodd-Frank Act as an act or practice that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by

We intend to publish periodic updates to this article cataloging new UDAAP activity based upon the federal UDAAP powers contained in the Dodd-Frank Act as the use of this enforcement authority continues to evolve.

## **II. OVERVIEW: IDENTIFICATION OF UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES**

Between January 1, 2021, and June 30, 2021, the CFPB engaged in seven<sup>4</sup> public enforcement actions involving alleged UDAAP violations. Past UDAAP actions can provide a road map for industry participants to identify and better understand acts or practices considered problematic by law enforcement authorities. UDAAP enforcement actions during the period of this summary involved mortgage lending, debt collection, payments, Truth in Lending, credit repair and debt relief services, and auto finance.

Summaries of the UDAAP actions below appear in chronological order and are intended to provide a straightforward identification of the specific acts or practices that were alleged to be unfair, deceptive, or abusive under the Dodd-Frank Act.

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consumers [and the] injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1) (2012). The term “deceptive” is not statutorily defined, but it is defined in the CFPB’s examination manual as when the material “representation, omission, act, or practice misleads or is likely to mislead the consumer,” provided “the consumer’s interpretation is reasonable under the circumstances.” CONSUMER FIN. PROTECTION BUREAU, CFPB SUPERVISION AND EXAMINATION MANUAL V.2 9 (2012), [http://files.consumerfinance.gov/f/201210\\_cfpb\\_supervision-and-examination-manual-v2.pdf](http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf). The Dodd-Frank Act introduced the term “abusive” and defined it as an act or practice that either:

[1] materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

[2] takes unreasonable advantage of [either]:

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person [such as a bank or other financial institution] to act in the interests of the consumer.

12 U.S.C. § 5531(d) (2012).

<sup>4</sup> One matter was brought by the CFPB and the attorneys general for New York, Massachusetts, and Virginia. Another matter was brought by the CFPB and the attorney general for Georgia.

### III. CFPB ENFORCEMENT ACTIONS

#### A. *1<sup>st</sup> Alliance Lending, LLC* — Jan. 2021 (Mortgage Lending).<sup>5</sup>

The CFPB filed a complaint (amended in April 2021)<sup>6</sup> against 1<sup>st</sup> Alliance Lending, LLC and its principals, John Christopher DiIorio, Kevin Robert St. Lawrence, and Socrates Aramburu (collectively the “company”), concerning the company’s mortgage origination business, which included refinance and home purchase transactions. The CFPB alleged that most of the company’s employees who handled mortgage originations were unlicensed. The CFPB further alleged that these unlicensed employees misled consumers about the availability of certain mortgage products and failed to follow certain lending procedures.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that unlicensed employees were licensed mortgage originators by using a licensed employee’s signature block with their Nationwide Mortgage Licensing System and Registry licensing number in email solicitations;
- Misrepresenting to consumers that unlicensed employees were licensed mortgage originators through social media profiles that indicated that the employees performed the duties of a licensed mortgage loan originator;
- Misrepresenting to consumers, via unlicensed company employees, as to consumers’ likelihood of obtaining a mortgage-credit product or term, including whether the consumer was prequalified for a mortgage; and
- Misrepresenting to consumers seeking a purchase mortgage that they could later obtain a Federal Housing Administration Streamline refinance loan, including stating the refinancing loan costs, timing, and interest rates, without any knowledge as to whether that was a genuine possibility for that consumer.

The CFPB also alleged that the following practice was unfair:

- Relying on unlicensed and poorly trained employees to perform the functions of a licensed mortgage loan originator.

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<sup>5</sup> Complaint, [\*Consumer Financial Protection Bureau v. 1<sup>st</sup> Alliance Lending, LLC, et al.\*, No. 3:21-cv-00055-RNC \(D.Conn. Jan. 15, 2021\)](#).

<sup>6</sup> Amended Complaint, [\*Consumer Financial Protection Bureau v. 1<sup>st</sup> Alliance Lending, LLC, et al.\*, No. 3:21-cv-00055-RNC \(D.Conn. Apr. 1, 2021\)](#).

The CFPB also alleged violations of the Mortgage Acts and Practices Rule of Regulation N, Regulation Z, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act. The complaint seeks to permanently enjoin the company from engaging in further violations. The complaint also seeks damages, redress, disgorgement, and civil money penalties.

B. *Nexus Services, Inc.* — Feb. 2021 (Debt Collection).<sup>7</sup>

The CFPB and the attorneys general for the state of New York and the commonwealths of Massachusetts and Virginia filed a complaint against Nexus Services, Inc., Libre by Nexus, Inc., Micheal Donovan, Richard Moore, and Evan Ajin (collectively the “company”). The company’s business involved obtaining immigration bonds to secure the release of individuals detained by Immigration and Customs Enforcement (“ICE”) during the pendency of the detainees’ immigration proceedings. The CFPB and the state attorneys general alleged that the company created the impression that the company paid for the detainee’s immigration bond, which the consumer would then repay in monthly installments. Instead, the company acted as an intermediary between the detainees, and surety companies and their bond agents. That is, once the detainee entered into a contract with the company, the company would agree to indemnify the surety company and its bond agents against bond losses, who would then post the immigration bond for the detainee. The CFPB and the state attorneys general further alleged that the company’s contracts with consumers, which included large upfront payments followed by monthly installment payments, did not actually repay the detainee’s immigration bond. Instead, the monthly payments went toward lease payments for ankle monitors that the company required the detainees to wear during the pendency of their immigration proceedings.

The CFPB and the state attorneys general alleged the following practices were deceptive:

- Misrepresenting to consumers that their monthly payments were used to repay their immigration bonds;
- Threatening consumers with re-arrest, detention, or deportation if they failed to make monthly payments or wear the company’s ankle monitor, when the company cannot and does not take such action;

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<sup>7</sup> Complaint, *Consumer Financial Protection Bureau, et al. v. Nexus Services, Inc., et al.*, No. 5:21-cv-00016 (W.D.Va. Feb. 22, 2021).

- Threatening consumers that co-signers would be forced to wear ankle monitors if there were payment defaults, without the legal authority to do so;
- Misrepresenting to consumers that the company would turn over consumers' accounts to a debt buyer or collection agency upon failure to make monthly payments;
- Misrepresenting to consumers that their failure to make payments would negatively impact their credit;
- Misrepresenting to consumers that the company would file a collection lawsuit against them;
- Misrepresenting that the company monitors consumers via GPS ankle monitors and collecting lease payments from consumers for those devices when the ankle monitors were frequently defective, and the company was unable to monitor thousands of devices;
- Misrepresenting that the company would refund certain collateral payments once the consumer's immigration proceeding was resolved; and
- Misrepresenting that the company would provide a free, full-service lawyer to help the consumer or that it could arrange *pro bono* representation for the consumer.

The CFPB and the state attorneys general also alleged that the following practices were abusive:

- Using English language agreements with consumers that the company knew did not understand the language well, if at all; and
- Rushing consumers through the enrollment process by omitting or misrepresenting material terms of the English language agreement.

The state attorneys general also alleged violations of New York, Virginia, and Massachusetts state consumer protection laws. The complaint seeks to permanently enjoin the company from engaging in further violations. The complaint also seeks damages, redress, disgorgement, and civil money penalties.

C. *BrightSpeed Solutions, Inc.* — March 2021 (Payments).<sup>8</sup>

The CFPB filed a complaint against BrightSpeed Solutions, Inc. and Kevin Howard (collectively the “company”) concerning the company’s

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<sup>8</sup> Complaint, [Consumer Financial Protection Bureau v. BrightSpeed Solutions, Inc., et al., No. 1:21-cv-01199 \(N.D.Ill. Mar. 3, 2021\)](#).

business as a third-party payment processor for certain high-risk telemarketing businesses. These clients, which purported to offer antivirus software and technical support services to consumers, were unable to obtain payment processing services from other payment processors due to the high risk of fraudulent activity associated with their businesses. The CFPB alleged that the company's clients targeted consumers with misleading pop-up advertisements and, in exchange for the payment processed by the company, would only download free or low-cost software that was often duplicative of what the consumer had on their system. Consumers lodged frequent complaints that led to an abnormally high rate of returned payments.

The CFPB alleged the following practices were unfair:

- Processing payments for hundreds of consumers who were defrauded into purchasing unnecessary tech support and software;
- Continuing to process payments for tech-support clients when the company knew or should have known that those clients were engaged in fraudulent activity; and
- Continuing to process payments for tech-support clients when the company knew that those clients were violating the Telemarketing Sales Rule's ("TSR") prohibition against using remotely created check payments for telemarketing transactions.

The CFPB also alleged violations of the TSR. The complaint seeks to permanently enjoin the company from engaging in further violations. The complaint also seeks damages, redress, disgorgement, and civil money penalties.

D. *Yorba Capital Management, LLC* — April 2021 (Debt Collection).<sup>9</sup>

Yorba Capital Management, LLC and Daniel Portilla, Jr. (collectively, the "company") act as a third-party debt collector. The CFPB alleged that the company sent misleading "Litigation Notices" to consumers, in which the company threatened to take legal action if the consumer failed to pay their debt. The company, however, did not file lawsuits or hire attorneys to file suits on its behalf.

The CFPB alleged that the following practices were deceptive:

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<sup>9</sup> Consent Order, [\*In re Yorba Capital Management, LLC, et al.\*, CFPB No. 2021-CFPB-0001 \(Apr. 6, 2021\)](#). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

- Misrepresenting that the company would file lawsuits and take further legal action if consumers failed to repay their debt; and
- Misrepresenting to consumers that the company had commenced legal action against them by sending notices with references to a “Case No.” and with captions mimicking court pleadings.

The CFPB also alleged violations of the Fair Debt Collection Practices Act. The order enjoins the company from engaging in future debt collection activities. The order also requires the company to pay \$860,000 in consumer redress, which is suspended upon payment of a \$2,200 civil money penalty due, to a demonstrated inability to pay.

E. *SettleIt, Inc.* — April 2021 (Debt Relief).<sup>10</sup>

SettleIt, Inc. (the “company”) is a debt settlement business, working with consumer borrowers to resolve their unsecured debts. The CFPB alleged that the company concealed important aspects of the company’s business, including common ownership and dealings between the company’s owner and several lenders. The company settled debts with those related lenders at higher rates than other lenders and used those related lenders to fund “Fresh Start” loans to finance the consumers’ payoffs of existing debt, along with the company’s fees.

The CFPB alleged the following practices were abusive:

- Misrepresenting to consumers that the company would work in their interests only and that the company was not owned or operated by any of the consumers’ lenders;
- Prioritizing the settlement of consumers’ debts to lenders with financial ties to the company;
- Using Fresh Start loans to pay the company’s fees without clarifying this to customers; and
- Taking unreasonable advantage of consumers’ reasonable belief that the company would protect their interests by engaging in self-dealing that benefited the company and the related lenders.

The CFPB also alleged violations of the TSR. Under the Stipulated Final Judgment and Order, the company is enjoined from settling debts with the

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<sup>10</sup> Complaint, [Consumer Financial Protection Bureau v. SettleIt, Inc., No. 8:21-cv-00674 \(C.D. Cal. Apr. 13, 2021\)](#). A [Stipulated Final Judgment and Order was filed on April 13, 2021](#), in which the parties agreed to settle and resolve the matters arising from the conduct alleged in the complaint.

related lenders or other lenders with financial ties to the company. The company also must adequately disclose its fees to customers. The order also requires the company to pay \$646,769.43 in consumer redress and imposes a \$750,000 civil money penalty.

F. *3<sup>rd</sup> Generation, Inc., dba California Auto Finance* — May 2021 (Auto Lending).<sup>11</sup>

3<sup>rd</sup> Generation, Inc., dba California Auto Finance (the “company”) is an indirect auto loan originator and servicer. The CFPB alleged that under the retail installment contracts that the company purchases, the company may add its loss damage waiver (“LDW”) product if the consumer lacks sufficient insurance. The LDW product cancels a borrower’s debt in the event of a total loss or covers the repair cost if the damage is less than a total loss. The CFPB alleged that when a customer is required to add an LDW product, the company’s systems added an amount to the loan principal. Though the company disclosed the increased amortized loan payment amount to the consumer, the CFPB alleged that the company failed to disclose that interest would be charged on the LDW portion of the increased loan balance in the event of late payments.

The CFPB alleged the following practice was unfair:

- Charging interest on LDW fees without clearly and conspicuously disclosing that fact to the company’s borrowers, most of whom are subprime borrowers with a propensity for late payments.

The order enjoins the company from charging interest on LDW fees without clearly and conspicuously disclosing the material terms and conditions to consumers. The order requires the company to pay consumer redress of \$168,162 to consumers with paid-off accounts, issue \$117,582 in credits to consumers with active accounts (or refund the difference between the credit and the customer’s balance), and update information that the company furnished to consumer reporting agencies about consumers with charged-off accounts. The order also imposes a \$50,000 civil money penalty.

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<sup>11</sup> Consent Order, [\*In re 3<sup>rd</sup> Generation, Inc. dba California Auto Finance\*, CFPB No. 2021-CFPB-0003 \(May 21, 2021\)](#). A [separate stipulation was filed](#) on the same date in which the parties agreed to certain facts cited in the consent order.



G. *Burlington Financial Group, LLC* —June 2021 (Debt Relief).<sup>12</sup>

The CFPB and the Georgia Attorney General filed a complaint against Burlington Financial Group, LLC and its principals, Richard W. Burnham, Sang Yi, and Katherine Ray Burnham (collectively, the “company”), for alleged deceptive acts and practices related to the company’s marketing of its credit repair and debt relief services business. The CFPB and the Georgia Attorney General alleged that the company rarely, if ever, achieved the results it marketed to consumers, failed to provide any services in some instances, and failed to track its outcomes to determine whether its representations to consumers had any merit.

The CFPB and the Georgia Attorney General alleged that the following practice was deceptive:

- Misrepresenting to consumers that the company’s services would reduce or lower credit card debt, lower monthly card payments, restore or improve credit scores, and remove negative items from consumers’ credit reports, when the company generally failed to do so.

The CFPB and the Georgia Attorney General also alleged violations of the TSR and Georgia state consumer protection laws. The consent order enjoins the company from telemarketing with respect to any consumer financial product or service and from offering, marketing, selling, or providing any financial advisory, debt relief, or credit repair service. The order also requires the company to pay a total civil money penalty of \$150,001 and imposes a \$30 million redress judgment, which will be suspended upon payment of the civil money penalty.

#### IV. UPDATES ON PAST CASES

A. *Upstate Law Group LLC* — Feb. 2020 (Small Dollar Loans).<sup>13</sup>

We previously reported on a complaint that the CFPB, the South Carolina Department of Consumer Affairs, and the Arkansas Attorney General filed against Upstate Law Group, LLC (the “company”) and related principals Candy Kern-Fuller and Howard Suter III. The complaint alleged that the

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<sup>12</sup> Complaint, *Consumer Financial Protection Bureau, et al. v. Burlington Financial Group, LLC, et al.*, 1:21-cv-02595-JPB (N.D. Ga. June 28, 2021). A separate Stipulated Final Judgment and Order was filed on June 29, 2021.

<sup>13</sup> Stipulated Final Judgment and Consent Order, [\*Bureau of Consumer Financial Protection, et al. v. Candy Kern-Fuller, et al.\*, No. 6:20-cv-00786-DCC \(D.S.C. Jan. 21, 2021\)](#).

company's substantial assistance to aid others in providing high-interest loans to consumers, through third-party brokers that promoted a program in which consumers were solicited to sell future pension or disability payments for an up-front lump sum payment, when, in fact, the resulting transaction was a high-interest loan with an assignment of consumer pension or disability payments as security for repayment of the loan. The complaint alleged that the company engaged in deceptive practices by (i) assisting the third-party brokers in furthering misleading marketing practices by serving as the underwriter and payment processor for the third-party brokers, and (ii) by collecting loan transactions that were void at inception. The complaint also alleged that the company engaged in unfair practices by assisting the third-party brokers in misrepresenting offerings to consumers through the company's approval, servicing, and collection of the resulting high-interest loan transactions.

Since our prior report, the CFPB and the state attorneys general entered into a stipulated final judgment with the company and its principals under which the company and its principals must pay \$725,000 in consumer redress. The company and its principals are also permanently enjoined from brokering sales or assignments of pensions and disability benefits and from collecting on any of these contracts.

B. *DMB Financial, LLC* — Dec. 2020 (Debt Relief).<sup>14</sup>

We previously reported on the CFPB's complaint against DMB Financial, LLC (the "company"), in which the CFPB alleged that the company engaged in deceptive practices by misrepresenting when it would charge fees and the underlying fee structure for its debt relief services. Since our prior report, the court entered into a stipulated final judgment against the company. The court entered a \$7.7 million consumer redress judgment, which will be suspended, in part, due to an inability to pay (assuming the company pays \$5.4 million of the redress judgment). The court also entered a \$1 civil money penalty, and enjoined the company from charging unlawful settlement fees, future deceptive acts with respect to its fees, and from obtaining consumers' credit reports without a permissible purpose.

C. *Driver Loan, LLC* — Nov. 2020 (Small Dollar Loans)<sup>15</sup>

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<sup>14</sup> Stipulated Final Judgment and Order, *Bureau of Consumer Financial Protection v. DMB Financial, LLC*, No. 1:20-cv-12147 (D. Mass. May 19, 2021).

<sup>15</sup> Stipulated Final Consent Order, *Bureau of Consumer Financial Protection v. Driver Loan, LLC, et al.*, No. 1:20-cv-24550-CMM (S.D. Fla. June 1, 2021).

We previously reported on the CFPB’s complaint against Driver Loan, LLC and Angelo Jose Sarjeant (collectively, the “company”). In November 2020, the CFPB filed a complaint alleging deceptive acts and practices in connection with the company’s personal loan and deposit products, which the company primarily markets to Uber and Lyft drivers. The CFPB alleged that the company engaged in deceptive practices by misrepresenting to consumers that the company’s deposit products were akin to a savings account in FDIC insured institutions with fixed Annual Percentage Yields (“APY”) of 15%. The CFPB also alleged that the company misrepresented the APR for its loans by a significant margin. Since our prior report, the court entered a stipulated final judgment against the company, permanently banning them from engaging in deposit-taking activities and from making deceptive statements to consumers. The order also requires the company to return consumers’ deposits (roughly \$1 million) plus all interest owed to consumers on those deposits at the advertised rates and to pay a \$100,000 civil money penalty.

## V. CFPB Rules Updates and Additional Guidance

### Supervisory Highlights:

*CFPB Summer 2021 Supervisory Highlights Issue.*<sup>16</sup>

Released in June 2021, the highlights note continued UDAAP concerns in several industries.

Auto Servicing: (1) Charging for Unnecessary Collateral Protection Insurance (“CPI”). The CFPB noted instances where servicers added or maintained charges for CPI premiums where consumers had adequate insurance. The CFPB also noted that some servicers applied refunds of paid CPI to the loan principal, rather than returning the funds directly to consumers. (2) Charging for CPI after Repossession. The CFPB noted instances where services charged consumers for CPI after repossession, arising from (i) the failure to communicate the repossession date to the CPI provider; (ii) miscalculating CPI charges to be removed from a consumer’s account; and (iii) incorrectly entering the repossession date in the servicer’s internal systems. (3) Inaccurate Payment Posting. The CFPB noted instances where servicers posted payments to the wrong loan account or applied

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<sup>16</sup> CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS (Issue 24, Summer 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-24\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf).

payments as principal-only payments instead of regular installment payments. (4) Failure to Follow Disclosed Payment Application Orders. The CFPB noted instances where servicers' websites advertised that payments would be applied to interest, then principal, then past-due payments, before other charges, when, in practice, the servicers applied payments in a different manner. (5) Inaccurate Payoff Amounts. The CFPB noted instances where servicers' payoff quotes included overcharges for optional products where the charges for those products should have been based on pro-rata refund calculations rather than the full amounts of those products.

Mortgage Originations: (1) Deceptive Waivers of Borrowers' Rights in Security Deed Riders and Loan Security Agreements. The CFPB noted instances where lenders included language in security instruments purporting to waive consumers' rights to notice or to a judicial hearing before the lender exercises its right to nonjudicially foreclose on the property. The CFPB similarly identified a deceptive waiver in which consumers purported to waive, after default, any equity or right of redemption in the loan security agreement for cooperative units.

Mortgage Servicing. The CFPB noted instances where servicers represented to borrowers that they would not initiate a foreclosure action until a specified date, but nevertheless, they initiated a foreclosure before that date.

Payday Lending: (1) Misrepresentations Regarding and Intent to Sue. The CFPB noted instances where lenders stated an intent to sue if consumers failed to pay their loan when, in fact, the lenders had not yet decided whether they would sue and usually did not ultimately sue those consumers. (2) Misrepresentations that No Credit Check Will Be Conducted. The CFPB noted instances where lenders' storefronts and websites marketed that they would not check a consumer's credit history when, in fact, the lenders would check at least consumer credit reports before extending credit. (3) Deceptive Presentation of Repayment Options to Borrowers Contractually Eligible for No-Cost Repayment. The CFPB noted instances where lenders would present fee-based refinancing options to struggling borrowers while withholding information as to certain no-cost options that those borrowers were eligible to use.

Private Student Loan Lending. The CFPB noted instances where lenders advertised "rates as low as" X% and disclosing certain conditions to obtain that rate, such as enrolling in automatic payment and applying by a certain date, while omitting that the borrower's ultimate rate would depend on their creditworthiness.

Student Loan Servicing. (1) Misrepresenting the Effect of Employer Certification Forms. The CFPB noted instances where servicers misrepresented to borrowers with Federal Family Education Loan Program (“FFELP”) loans that they could submit their employer certification forms to determine public service loan forgiveness (“PSLF”) program eligibility when PSLF guidelines dictate that FFELP borrowers are summarily rejected until they consolidate their loans into a direct loan. (2) Misrepresenting Eligibility of FFELP Loans for PSLF. The CFPB noted instances where servicers incorrectly represented to FFELP borrowers that there was no mechanism for them to become eligible for PSLF. (3) Misrepresenting Employer Types Eligible for PSLF. The CFPB noted instances where servicers represented to borrowers that they would be eligible for PSLF if they worked for nonprofits but failed to mention eligibility for work with government employees and other types of employees. (4) Failure to Reverse the Consequences of Automatic Natural Disaster Forbearances. The CFPB noted instances of servicers automatically enrolling borrowers in forbearances that become available for borrowers in locations affected by natural disasters rather than allowing those borrowers the option to enroll in such a program. The CFPB further noted that a servicer also automatically unenrolled some borrowers from their automatic debit programs in connection with the disaster loan forbearance. (5) Inaccurate Monthly Payment Amounts After Servicing Transfer. The CFPB noted instances where servicers failed to waive or refund overcharges that were assessed to borrowers on income-based repayment plans after the loans transferred to a new servicer. The CFPB emphasized that this issue had previously been discussed in a prior edition of the Supervisory Highlights. (6) Failure to Honor Payment Allocation Instructions. The CFPB noted instances where servicers failed to honor borrowers’ instructions as to the application of the borrower’s payments when the servicer handles multiple loans for the same borrower.

Policy Statements:

*A. Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency*

On January 13, 2021, the CFPB issued a Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency. This guidance addresses how financial services providers may service consumers with “Limited English Proficiency” (“LEP”). The guidance notes that stakeholders have expressed concern over potential UDAAP risks in determining how and in which languages to offer

products and services, particularly where not all products and services are provided in languages other than English. The guidance notes that stakeholders can avoid UDAAP issues by providing LEP consumers with clear and timely disclosures in non-English languages describing the extent and limits of any language services provided throughout the product life cycle.

*B. Statement of Policy Regarding Prohibition on Abusive Acts or Practices; Rescission*

We previously reported on the CFPB's Statement of Policy Regarding Prohibition on Abusive Acts or Practices, issued in January 2020. In this statement, the CFPB set forth the following three principles for enforcement based on the abusiveness standard:

1. The CFPB would challenge conduct as abusive only if it determined that the harm to consumers from the conduct outweighed its benefits to consumers.
2. The CFPB would avoid pleading abusiveness violations and unfair or deceptive violations arising from the same set of facts. The CFPB intended to allege the abusiveness violation with sufficient detail to set the bounds of the abusiveness claim apart from other allegations.
3. The CFPB would only seek monetary relief for violations of the abusiveness standard when the company failed to make a good faith attempt to comply with the law.

Effective March 19, 2021, the CFPB rescinded the policy statement. In its rescission statement, the CFPB asserts that the abusiveness policy did not clarify the abusive standard and, instead, afforded too much discretion for the CFPB. Moving forward, the CFPB intends to "exercise the full scope of its supervisory and enforcement authority to identify and remediate abusive acts and practices."