

**2019 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, 2019 and June 30, 2019, 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 there may be other relevant actions that are not 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 consumers [and the] injury is not outweighed by countervailing benefits to consumers or to

We intend to continue 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, 2019 and June 30, 2019, the CFPB engaged in eleven (11)<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 that are considered problematic by law enforcement authorities. UDAAP enforcement actions during the period of this summary involved debt collection, student and mortgage loan servicing, fair lending, payday/small dollar loans, and credit reporting.

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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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 enforcement action was pursued jointly with the Attorney General of the State of New York.

### III. CFPB ENFORCEMENT ACTIONS

#### A. *USAA Federal Savings Bank* — Jan. 2019 (Electronic Payments, Servicemembers).<sup>5</sup>

USAA Federal Savings Bank (the “company”) is a federally-chartered savings association located in Texas. The company allows its customers to move funds between depository accounts at the company and at other financial institutions using the Automated Clearing House (“ACH”). The company also allows its customers to authorize recurring ACH debits from deposit accounts that it maintains for bill payments specified by its customers. The CFPB alleged that the company failed to properly stop certain preauthorized ACH debits and failed to follow proper error resolution procedures under the Electronic Fund Transfer Act (“EFTA”).

The CFPB alleged the following practices were unfair, deceptive, or abusive:<sup>6</sup>

- Re-opening closed deposit accounts without consumer consent when a debit or credit was received after an account had been closed; and
- Allowing creditors to initiate debits to deposit accounts that the company had re-opened without consumer consent.

The CFPB also alleged certain violations of the EFTA. The Consent Order obligates the company to change certain practices related to how stop payments are processed, how claims concerning improper electronic fund transfers are processed, and how and when closed deposit accounts may be re-opened. The Consent order also requires the company to implement a comprehensive compliance plan, refund just over \$12 million to impacted consumers (through an extensive redress plan), and pay civil money penalties of \$3.5 million.

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<sup>5</sup> Consent Order, *In re USAA Federal Savings Bank*, CFPB No. 2019-BCFP-0001 (Jan. 3, 2019). A separate Stipulation was filed on December 12, 2018 in which the parties agreed to certain facts cited in the Consent Order.

<sup>6</sup> The Consent Order does not specify which of the three “UDAAP” prongs (unfair, deceptive, or abusive) the above conduct implicated, only that the referenced actions constituted a violation of the overall UDAAP prohibitions on unfair, deceptive, or abusive conduct.

B. *Sterling Jewelers Inc.* — Jan. 2019 (Credit Card Origination).<sup>7</sup>

Sterling Jewelers Inc. (the “company”) operates jewelry stores across the United States. The company offers in-house financing to its customers to finance the purchase of jewelry that it sells. The CFPB and the Attorney General for the State of New York brought a civil action against the company alleging that the company improperly opened credit accounts for consumers without telling consumers that they were applying for credit.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that they were enrolling in a rewards program rather than applying for a credit card;
- Misrepresenting to consumers that they were completing a survey rather than applying for a credit card; and
- Misrepresenting financing terms, including applicable interest rates, monthly payment amounts, and eligibility for promotional financing.

The CFPB alleged the following practices were unfair:

- Enrolling consumers in credit cards and payment protection insurance without informing them that they were being enrolled in those products and/or misleading them about the nature of the product in which they were being enrolled.

The CFPB and the State of New York also alleged additional violations of the Truth in Lending Act, Regulation Z, and provisions of New York law. The complaint seeks to enjoin the company from committing future violations of law, seeks unspecified damages, civil money penalties, and costs. We will continue to monitor this case and provide updates in future surveys.

C. *Mark Corbett* — Jan. 2019 (Small Dollar Loans).<sup>8</sup>

Acting on behalf of several unnamed entities, Mark Corbett (the “broker”) brokered contracts offering to purchase future pension or disability benefits from United States veterans. The CFPB alleged that the

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<sup>7</sup> Complaint, *Consumer Fin. Prot. Bureau and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. Sterling Jewelers Inc.*, No. 1:19-cv-00448 (S.D. N.Y. Jan. 16, 2019).

<sup>8</sup> Consent Order, *In re Mark Corbett*, CFPB No. 2019-BCFP-0002 (Jan. 23, 2019). A separate Stipulation was filed on Jan. 14, 2019 in which the parties agreed to certain facts cited in the Consent Order.

purchase arrangements were disguised high-interest loans. The CFPB alleged that the broker arranged for veterans to receive a lump sum payment in exchange for a prohibited assignment of future veteran pension or disability benefits.

The CFPB alleged the following practices were deceptive:

- Misrepresenting loans as an arrangement to purchase future pension and/or disability benefits;
- Failing to disclose to consumers that the purported assignments of benefits were void from inception under federal law;
- Misrepresenting the purported assignments as valid and enforceable;
- Failing to disclose the unenforceability of the purported assignments to consumers; and
- Misrepresenting the funding timing under the purported assignments

The CFPB alleged the following practice was unfair:

- Failing to inform consumers of the underlying interest rates associated with the purported assignments.

The Consent Order obligates the broker to cease from brokering, offering, and arranging any agreements between veterans and third parties under which the veterans purport to assign future pension or disability benefit payments. The Consent Order also requires the broker to pay a civil money penalty of \$1 (based on the broker's financial condition).

D. *Enova International, Inc.* — Jan. 2019 (Small Dollar Loans).<sup>9</sup>

Enova International, Inc. (the “company”) is an online lender that extends payday loans, installment loans, and open-end lines of credit to consumers throughout the United States. The CFPB alleged that the company improperly debited consumer bank accounts in connection with credit that it extended to consumer borrowers.

The CFPB alleged the following practices were unfair:

- Improperly debiting incorrect payment amounts from consumer deposit accounts; and

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<sup>9</sup> Consent Order, *In re Enova International, Inc.*, CFPB No. 2019-BCFP-0003 (Jan. 25, 2019). A separate Stipulation was filed on Jan. 18, 2019 in which the parties agreed to certain facts cited in the Consent Order.

- Improperly debiting consumer bank accounts without consumer authorization.

The Consent Order obligates the company to change certain practices related to how consumer deposit accounts are debited and pay civil money penalties of \$3.2 million.

E. *Cash Tyme* — Feb. 2019 (Small Dollar Loans).<sup>10</sup>

Several related entities doing business under the “Cash Tyme” name (collectively the “company”) operate retail lending outlets in several states. The company originates and services short-term, small-dollar consumer loans. The CFPB alleged that the company improperly debited consumer borrower payments after consumers had made required payments by cash and then failed to properly process refunds that were due to consumers who had made overpayments.

The CFPB alleged the following practices were unfair:

- Failing to stop future payment debits to consumer deposit accounts where consumer borrowers made cash payments;
- Improperly and/or inadequately identifying situations where consumers were due overpayment refunds;
- Failing to issue overpayment refunds in a timely manner; and
- Making harassing collection calls to consumer borrowers’ friends, employers, and relatives and improperly disclosing consumer information to third parties.

The CFPB alleged the following practices were deceptive:

- Failing to disclose that contact information for consumer borrowers’ friends, employers, and relatives would be used for loan collection and telemarketing purposes; and
- Advertising services that were not available.

The CFPB also alleged additional violations of the Gramm-Leach-Bliley Act, the Truth in Lending Act, and Regulation Z. Under the Consent Order, the company is required to change how it advertises loan terms,

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<sup>10</sup> Consent Order, *In re CMM, LLC, CMM of Indiana, LLC, CMM of Alabama, LLC, Cash Mart Express of Florida, LLC, CMM of Kentucky, LLC, CMM of Louisiana, LLC, CMM of Mississippi, LLC, and CMM of Tennessee, LLC, each and collectively d/b/a Cash Tyme*, CFPB No. 2019-BCFP-0004 (Feb. 5, 2019). A separate Stipulation was filed on January 25, 2019 in which the parties agreed to certain facts cited in the Consent Order.

discloses privacy practices, as well as implement certain compliance monitoring. The CFPB also ordered the company to conduct a comprehensive audit to identify any consumer borrowers due a refund (and promptly refund such amounts), and pay a \$100,000 civil money penalty.

F. *Conduent Education Services, LLC* — May 2019 (Student Loans).<sup>11</sup>

Conduent Education Services, LLC (the “company”), formerly known as ACS Education Services, is a servicer of student loans, including loans pursuant to the Federal Family Education Loan Program. The CFPB alleged that the company failed to process adjustments to the principal balances of student loans after borrowers had requested in a timely manner and been granted deferment, forbearance, or income-based repayment plans for their loans. The CFPB also alleged that unadjusted loans would remain in an electronic queue indefinitely while awaiting manual adjustment without notice to the borrowers of this status.

The CFPB alleged the following practices were unfair:

- Failing to process adjustments to the principal balances of the loans when the loans were put into deferment, forbearance, or income-based repayment plans;
- Failing to inform borrowers that the company had not completed its processing of the adjustments to the loans;
- Allowing borrowers to pay off unadjusted loans with inaccurate principal balances;
- Transferring loans to other servicers with unadjusted, inaccurate principal balances; and
- Failing to provide borrowers with payoff information in a timely manner, thus preventing those borrowers from being able to consolidate their loans.

Under the Consent Order, the company is required to review all affected loans to determine whether principal adjustments are necessary, make the necessary adjustments to the loans, make restitution to borrowers or third parties that made any overpayments, and compensate any successor servicer for any underpayments resulting from the failure to make principal balance adjustments (*i.e.*, the company, not the consumer, will make the successor servicer whole). The CFPB also ordered the company to provide an annual

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<sup>11</sup> Consent Order, *In re Conduent Education Services, LLC*, CFPB No. 2019-BCFP-0005 (May 1, 2019). A separate Stipulation was filed on April 18, 2019 in which the parties agreed to certain facts cited in the Consent Order.

report on the status of its remediation efforts and to pay a \$3.9 million civil money penalty.

G. *PGX Holdings, Inc.* — May 2019 (Credit Reporting).<sup>12</sup>

PGX Holdings, Inc., its subsidiaries, and John C. Heath, Attorney at Law, PLLC (collectively, the “company”), operate two credit repair companies, offering to help consumers remove negative information from their credit reports and improve their credit scores. The company markets their services online and over the telephone to consumers. The CFPB brought a civil action against the company alleging that the company violated the Federal Trade Commission’s Telemarketing Sales Rule (“TSR”) and engaged in deceptive practices through its own marketing efforts and by substantially assisting its marketing affiliates to do so.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that an advertised product or service, such as a loan or rent-to-own housing contract, was available through an affiliate or that it would be available after only signing up for the company’s credit repair services;
- Misrepresenting to consumers that they were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract;
- Misrepresenting that certain affiliates offered advertised products or services when, in fact, they solely served as marketing affiliates for the company; and
- Misrepresenting to consumers that their credit scores were the only impediment keeping them from their desired product.

The CFPB also alleged additional violations of the TSR. The complaint seeks to enjoin the company from committing future violations of law, and seeks unspecified damages, civil money penalties, and costs. We will continue to monitor this case and provide updates in future surveys.

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<sup>12</sup> Complaint, *Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc.; PGX Holdings, Inc.; Progrexion Teleservices, Inc.; eFolks, LLC; CreditRepair.com, Inc.; John C. Heath, Attorney at Law, PLLC, d/b/a Lexington Law*, No. 2:19-cv-00298 (D. Utah May 2, 2019).



H. *Forster & Garbus, LLP* — May 2019 (Debt Collection).<sup>13</sup>

*Forster & Garbus, LLP* (the “firm”) is a New York debt collection law firm. The firm files a high volume of suits to collect debts incurred primarily for consumer purposes. The CFPB brought a civil action against the firm alleging that the firm violated the Fair Debt Collection Practices Act (“FDCPA”) and engaged in deceptive practices by filing debt collection suits on a massive scale in New York courts with the firm’s attorneys providing merely cursory or deficient review over the preparation and filing of the suits. The CFPB alleged that a handful of associate attorneys provided cursory review of tens of thousands of complaints each year, all without reviewing their clients’ supporting documents or verifying whether the alleged debts were enforceable.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that firm attorneys were meaningfully involved in the preparation and filing of debt collection suits when, in fact, attorneys did not do much more than sign the complaints; and
- Misrepresenting to consumers that, by filing suit, firm attorneys verified the enforceability of their clients’ claims and the factual basis for the claims before filing suit.

The CFPB also alleged additional violations of the FDCPA. The complaint seeks to enjoin the company from committing future violations of law, seeks unspecified damages, disgorgement of ill-gotten gains, restitution to affected consumers, civil money penalties, and costs. We will continue to monitor this case and provide updates in future surveys.

I. *Servis One, Inc.* — May 2019 (Mortgage Servicing).<sup>14</sup>

*Servis One, Inc.* d/b/a BSI Financial Services (the “company”) is a mortgage servicer. The CFPB alleged that the company failed to properly process mortgage servicing transfers regarding certain loans’ escrow information and interest rate adjustments for adjustable rate mortgage loans (“ARM Loans”).

The CFPB alleged the following practices were unfair:

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<sup>13</sup> Complaint, *Bureau of Consumer Financial Protection v. Forster & Garbus, LLP*, No. 2:19-cv-002928 (E.D.N.Y. May 17, 2019).

<sup>14</sup> Consent Order, *In re Servis One, Inc., d/b/a BSI Financial Services*, CFPB No. 2019-BCFP-0006 (May 29, 2019). A separate Stipulation was filed on May 15, 2019 in which the parties agreed to certain facts cited in the Consent Order.

- Failing to ensure that the company properly entered complete and accurate property tax and homeowner's insurance policy information in the company's servicing system after onboarding a transferred loan;
- Entering loans in its system as non-escrowed loans when, in fact, those loans actually required the establishment of an escrow account for payment of property taxes and insurance premiums;
- Failing to make timely escrow account disbursements;
- Failing to enter into the company's servicing system loan data from prior servicers for ARM Loans concerning interest rate adjustments;
- Manually adjusting interest rates for ARM Loans in a fashion which did not keep pace with scheduled interest rate changes; and
- Sending ARM Loan borrowers monthly billing statements that did not accurately reflect the correct interest rate.

The CFPB also alleged additional violations of the Real Estate Settlement Procedures Act, Regulation X, the Truth in Lending Act, and Regulation Z. Under the Consent Order, the company is required to establish and maintain a comprehensive data integrity system and an information technology plan, pay restitution to affected borrowers (estimated to be at least \$36,500), and pay a civil money penalty of \$200,000.

J. *Student CU Connect CUSO, LLC* — June 2019 (Student Loans).<sup>15</sup>

Student CU Connect CUSO, LLC (the "company") is a special purpose entity that was created to fund, purchase, manage, and hold certain private student loans ("CUSO Loans") offered exclusively to students enrolled at ITT Technical Institute, which was run by ITT Educational Services, Inc. ("ITT"). The CFPB alleged that the company provided substantial assistance to ITT in operating the CUSO Loan program by helping to create the program, raising money for the CUSO Loans, ratifying loan criteria, and supervising the origination and servicing of the CUSO Loans. The CFPB alleged that ITT offered its students a "Temporary Credit" to cover the difference between the amount they could obtain in federal loans and grants and the costs of attending ITT. The Temporary Credit was a no-interest loan payable in a single lump sum nine (9) months after enrollment. The CFPB alleged that as the Temporary Credit came due and students needed to

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<sup>15</sup> Complaint, *Bureau of Consumer Financial Protection v. Student CU Connect CUSO, LLC*, No. 1:19-cv-2397 (S.D. Indiana June 14, 2019). A Stipulated Final Judgment and Order was entered on June 20, 2019 in which the parties agreed to settle and resolve the matters arising from the conduct alleged in the complaint.

enroll for the next academic term, ITT financial aid staff pressured students to refinance their Temporary Credit into the high-cost, high-risk CUSO Loans.

The CFPB alleged the following practices were unfair:

- Pulling students out of class to attend financial aid meetings to pressure them into taking out CUSO Loans;
- Rushing students through their financial aid meetings without adequately describing the nature of the meeting or the terms and conditions of the CUSO Loans;
- Utilizing the short-term Temporary Credits to allow students to meet initial funding gaps without disclosing ITT's future refinancing scheme involving the CUSO Loans; and
- Utilizing unauthorized access to student accounts to complete CUSO Loan processing, including e-signing loan documents, without the students' knowledge or participation.

Under the Stipulated Final Judgment and Order, the company is required to cease collecting on all outstanding CUSO Loans, discharge all outstanding CUSO Loans (estimated loan forgiveness of \$168 million), request that all consumer reporting agencies to which the company reported information delete tradelines related to the CUSO Loans. The company also must notify borrowers that their debt is discharged and that the company is seeking to delete relevant tradelines from their credit reports. Forty-four states and the District of Columbia have also settled with the company on the same terms.

#### IV. UPDATES ON PAST CASES

*NDG Financial Corp.* — Feb. 2019 (Payday Loans).<sup>16</sup>

We previously reported about the CFPB's complaint against NDG Financial Corp., several related entities, and its controlling officers (collectively the "company"). The company offered payday loans over the internet and the CFPB alleged that loans offered by the company violated

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<sup>16</sup> Stipulated Final Judgment and Order, *Consumer Financial Protection Bureau v. NDG Financial Corp., Northway Financial Corp., Ltd., Northway Broker, Ltd., Blizzard Interactive Corp., New World Consolidated Lending Corp., New World Lenders Corp., Payroll Loans First Lenders Corp., New World RRSP Lenders Corp., Peter Ash, Sagewood Holdings, Ltd., Kimberly DeThomas, Jeremy Sabourin, William Wrixon*, No. 1:15-cv-05211-CM (S.D. N.Y. Feb. 4, 2019).

state usury laws and were therefore void. A stipulated final judgment filed in connection with the matter obligates the company to:

- Refrain from advertising, marketing, promoting, offering, originating, collecting, or servicing any loans to residents of the United States;
- Refrain from assigning and/or collecting any amounts due for prior loans made to residents of the United States;
- Refrain from using or sharing any consumer information concerning residents of the United States for any purposes; and
- Refrain from assisting any other party in doing any of the foregoing.

## V. CFPB Rules Updates and Additional Guidance

### Supervisory Highlights:

In March of 2019, the CFPB released its Winter 2019 “Supervisory Highlights” issue.<sup>17</sup> The highlights note continued UDAAP concerns in several areas, including:

- **Automobile Loan Servicing.** The CFPB noted instances where rebates for certain ancillary products were calculated unfairly. The CFPB criticized servicers for using incorrect automobile mileage to determine extended warranty rebates on early prepayment; and for failing to request rebates of certain ancillary products (increasing deficiency claims).
- **Deposits.** CFPB examiners found situations where online bill payment terms of use were deceptive concerning when funds for payments would be debited. The CFPB criticized disclosures related to paper checks sent through a financial institution’s bill payment service. The CFPB noted that related bill payment disclosures misrepresented that payments to be mailed by paper check would not be debited on the selected payment date, but could be debited on an earlier date (causing consumer overdrafts).

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<sup>17</sup> CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS (Winter 2019), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2019/>.

- **Mortgage Servicing.** The CFPB noted instances where mortgage servicers assessed late fees greater than those provided in the related loan documents. In some instances, mortgage servicers assessed late fees equal to a specified percentage of the total payment amount that was outstanding (principal, interest, taxes, and insurance), when the related loan documents specified that late charges were to be calculated based on the principal and interest amount that was past due. In other instances, mortgage servicers failed to follow late charge maximum limits that were specified in the related loan documents. The CFPB also criticized mortgage servicers for discouraging borrowers who inquired about cancellation of private mortgage insurance. In some cases, mortgage servicers failed to properly advise borrowers of the right to cancel private mortgage insurance after reaching specified loan to value ratios or sent denial notices that failed to list the conditions that must be met to properly seek cancellation. In addition, the CFPB noted instances where mortgage servicers failed to exercise reasonable diligence in completing loss mitigation applications, by offering borrowers short-term payment forbearance programs, but failing to inform borrowers that such short-term arrangements were based on incomplete loss mitigation applications. In such situations, mortgage servicers failed to notify borrowers before the short-term forbearance program expired that a full loss mitigation application (providing broader payment relief) could not be evaluated.
- **Remittances.** CFPB examiners found instances where financial institutions failed to refund fees (and where permitted by applicable law, certain taxes) to consumers when remitted funds were made available to specified recipients after the date of availability noted in the financial institution's remittance disclosures.