permits carefully targeted and cost effective responses.

The U.S. government’s critical need for comprehensive broadband data continues to increase as high-speed Internet access and the skills to use the technology are becoming essential to Americans’ daily lives and to the nation’s economy. The U.S. Government Accountability Office, NTIA, and the FCC have all issued reports noting the importance of useful broadband adoption data for policymakers. Congress sought to address the paucity of such information in the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009, and recent congressional action has highlighted the need for more accurate broadband data. 3 Modifying the November 2017 CPS to include NTIA’s requested information collection will enable the Commerce Department and NTIA to advance the Administration’s infrastructure initiative, as well as to respond to congressional concerns and directives.

Since 1994, NTIA has sponsored 13 supplements to the CPS on the Internet and the shifting technologies consumers use for online access. The Census Bureau enjoys an outstanding reputation for data gathering and analysis based on its centurion of experience and its scientific methods. Coordinating NTIA’s requested information collection on broadband usage with the Bureau’s scheduled November 2017 CPS will significantly reduce the potential burdens on that agency and on surveyed households. The 66 questions to be added to the November 2017 CPS are comparable to the 61 questions that NTIA added to the July 2015 CPS.

AFFECTED PUBLIC: Individuals and households. Frequency: Once.

RESPONDENT’S OBLIGATION: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or faxed to (202) 395–5806.

Sheleen Dumas,
Departmental PRA Lead, Office of the Chief Information Officer.

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BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

COMPLIANCE BULLETIN 2017–01: PHONE PAY FEES

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) issues this Compliance Bulletin to provide guidance to covered persons and service providers regarding fee assessments for pay-by-phone services (phone pay fees) and the potential for violations of sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act’s (Dodd-Frank Act) prohibition on engaging in unfair, deceptive, or abusive acts or practices (collectively, UDAPs) when assessing phone pay fees. This Bulletin also provides guidance to debt collectors about compliance with the Fair Debt Collection Practices Act (FDCPA) when assessing phone pay fees.

This Bulletin summarizes the current law, highlighting relevant examples of conduct observed during supervisory examinations and enforcement investigations that may violate Federal consumer financial law. Whether conduct similar to the conduct described in this Bulletin violates these laws may depend on additional facts and circumstances; and (iii) the misleading act or practice is material.

Dependent on the facts and circumstances, the following non-exhaustive list of examples of conduct related to phone pay fees may constitute UDAPs or contribute to the risk of committing UDAPs. 4 Accordingly, the

1 For example, as implemented by Regulation Z, a Credit Card Act amendment to the Truth in Lending Act provides that for credit card accounts under an open-end consumer credit plan, a creditor (including a third party that collects, receives, or processes payments on behalf of a creditor) may not impose a separate fee to allow consumers to make a payment by any method (including telephone payments) unless the payment method involves an expedited service by a service representative of the creditor. See 15 U.S.C. 1637(l); 12 CFR 1026.10(e).


3 See CFPB Exam Manual at UDAP 5 (noting that the standard for “deceptive” practices in the Dodd-Frank Act is informed by the standards for the same terms under Section 5 of the FTC Act).

4 The Bureau will also review whether phone pay fee conduct may violate the Dodd-Frank Act’s prohibition on abusive acts or practices. An act or practice is abusive when (i) it causes or is likely to cause substantial injury to consumers; (ii) the injury is not reasonably avoidable by consumers; and (iii) the injury is not outweighed by countervailing benefits to consumers or to competition.

Examples of Conduct That May Violate or Risk Violating the Prohibition on UDAPs

Under the Dodd-Frank Act, all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices in violation of the Act. An act or practice is unfair when (i) it causes or is likely to cause substantial injury to consumers; (ii) the injury is not reasonably avoidable by consumers; and (iii) the injury is not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive when (i) the act or practice misleads or is likely to mislead the consumer; (ii) the consumer’s interpretation is reasonable under the circumstances; and (iii) the misleading act or practice is material.

Regarding the facts and circumstances, the following non-exhaustive list of examples of conduct related to phone pay fees may constitute UDAPs or contribute to the risk of committing UDAPs. Accordingly, the

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Regarding the facts and circumstances, the following non-exhaustive list of examples of conduct related to phone pay fees may constitute UDAPs or contribute to the risk of committing UDAPs. Accordingly, the
Bureau will be watching these practices closely.

Failing To Disclose the Prices of All Available Phone Pay Fees When Different Phone Pay Options Carry Materially Different Fees

Many entities charge different phone pay fees depending on the payment method used by the consumer. Prior to charging such fees, entities sometimes send periodic billing statements or other documentation that discloses that “transaction fees may apply” to various payment methods, but that do not disclose the relevant fees to be charged for those methods. In some of these instances, entities may depend solely on phone representatives to disclose the relevant fees to consumers before the charge is imposed. Yet, the phone representatives may potentially only reveal the higher-cost options or fail to inform consumers of the material price difference between available options. This conduct poses a risk of an unfair practice: It may cause substantial harm to consumers, who are pushed into materially higher-cost options; this harm may not be reasonably avoidable if consumers are unable to select lower-cost alternatives because they do not have the necessary information to know that such options are available; and countervailing benefits to consumers or competition may not warrant the entity’s failure to disclose the materially different prices of the available phone pay options to its consumers.

Misrepresenting the Available Payments Options or That a Fee Is Required To Pay by Phone

Entities sometimes charge a fee for expedited phone payments, but also offer consumers no-fee phone pay options that post after a processing delay. Some entities in turn offer fee-based expedited payment options as a way to exploit customers’ desire to avoid late fees. In such cases, disclosures in connection with the default option may risk misleading consumers into believing that a fee is required under all circumstances to make any payment by phone.

For example, in a public enforcement action, the Bureau alleged that an entity and its service provider engaged in deceptive acts or practices when it gave delinquent credit card holders the false impression that they had to pay $14.95 to make payment by phone when, in fact, the sole purpose of that fee was to expedite phone payments. Specifically, the Bureau alleged that the entity or its service provider: (i) Misrepresented in card agreement credits that the fee’s purpose was to allow payment by phone, when its purpose was solely to ensure payment posted the same day it was made; (ii) failed to disclose during collection calls that the fee’s purpose was solely to expedite payment, and in certain circumstances misrepresented that the fee was a “processing fee”; (iii) volunteered that consumers could make payment using a checking account and triggered the fee by setting such payments to post immediately by default; and (iv) failed to disclose the existence of no-cost payment alternatives, including free next-day payment.

In another public enforcement action, the Bureau alleged that a mortgage servicer engaged in a deceptive practice by misrepresenting to consumers, both expressly and by implication, that a particular pay-by-phone option was the only available payment method, or that consumers must use the particular pay-by-phone option in order to avoid negative consequences, including incurring a late fee or even facing foreclosure. In fact, the servicer accepted several payment options free of charge. In many instances, consumers could have used these other payment methods to make timely payments and avoid late fees.

Failing To Disclose That a Phone Pay Fee Would Be Added to a Consumer’s Payment Could Create the Misimpression That There Was No Service Fee

An entity may risk engaging in a deceptive act or practice when it fails to disclose that a phone pay fee will be charged in addition to a consumer’s otherwise applicable payment amount and indicates to that consumer that only the otherwise applicable payment amount will be charged. This conduct may leave the misimpression that there is no service fee, when in fact the entity does charge the consumer a fee. This potential misrepresentation may be material to consumers because a consumer who knows about the fee may inquire whether there is an alternative payment option with a lower fee or may choose a payment method that requires no fee.

Lack of Employee Monitoring or Service Provider Oversight May Lead to Misrepresentations or Failure To Disclose Available Options and Fees

A number of entities have policies and procedures in place requiring phone representatives to disclose all available phone pay options and fees to consumers, including requiring the use of detailed phone scripts. But deviations from call scripts may potentially cause phone representatives to misrepresent the available phone payment options and fees resulting in a consumer being charged a higher fee than otherwise would have been applicable. Entities can reduce the risk of misrepresentations through adequate monitoring.

In November 2016 the Bureau issued a separate bulletin on detecting and preventing consumer harm from production incentives. Companies may wish to consult that bulletin when considering incentive programs for employees that process phone pay fees. Companies should also consider the impact that incentives created by contracts and agreements with service providers might have on compliance risk relating to potential UDAAPs associated with phone pay fees.

Examples of Conduct That May Violate or Risk Violating the FDCPA

Under the FDCPA, a person defined as a “debt collector” is prohibited from charging fees, including phone pay fees, in certain instances. Under Section 808(1) of the FDCPA, a debt collector may not collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly

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7 See FTC and CFPB v Green Tree Servicing, LLC, No. 15–cv–02064 (April 23, 2015).
8 An example would be as follows: A consumer owes a payment of $250. The consumer calls and tells the customer service representative that she will pay by phone. The customer service representative confirms that the borrower authorizes a payment of $250. In fact, the consumer’s bank account is debited $265 . . . $250 for the otherwise applicable payment amount and $15 for a pay-by-phone fee.
10 Debt collectors sometimes charge “convenience fees” or fees for processing consumer payments through a particular channel.
authorized by the agreement creating the debt or permitted by law. Supervision has found that one or more mortgage servicers that met the definition of “debt collector” under the FDCPA violated the Act when they charged fees for taking mortgage payments over the phone to borrowers whose mortgage instruments did not expressly authorize collecting such fees and who reside in states where applicable law does not expressly permit collecting such fees. Supervision directed one or more servicers to review mortgage notes and applicable state law, and to only collect pay-by-phone fees where expressly authorized by contract or state law.

The Bureau’s Expectations

The Bureau expects entities to review their practices on charging phone pay fees for potential risks of committing UDAAPs or violating the FDCPA. While the Bureau does not mandate any particular method for informing consumers about the available phone pay options and fees, entities should consider the following suggestions in assessing whether their practices may present a risk of constituting a UDAAP or FDCPA violation:

- Review applicable State and Federal laws, including the FDCPA, to confirm whether entities are permitted to charge phone pay fees.
- Review underlying debt agreements to determine whether such fees are authorized by the contract.
- Review internal and service providers’ policies and procedures on phone pay fees, including call scripts and employee training materials, and revise policies and procedures to address any concerns identified during the review, as appropriate.
- Review whether information on phone pay fees is shared in account disclosures, loan agreements, periodic statements, payment coupon books, on the company’s Web site, over the phone, or through other mechanisms.
- Incorporate pay-by-phone issues in regular monitoring or audits of calls with consumers.
- Review consumer complaints regarding phone pay fees.
- Perform regular reviews of service providers as to their pertinent practices.
- Review that the entity has a corrective action program to address any violations identified and to reimburse consumers when appropriate.

Entities should also consider reviewing employee and service provider production incentive programs to see if there are incentives to steer borrowers to certain payment types or to avoid disclosures. As discussed in more detail in CFPB Compliance Bulletin 2016–03, the Bureau acknowledges that production incentives have been common across many economic sectors and can affect a wide range of outcomes for employees or service providers, from their compensation levels to whether they will continue to be employed or retained at all. The Bureau has also highlighted the risks posed to consumers by production incentive programs, especially when they create an unrealistic culture of high-pressure targets or when the activities of employees or service providers are not adequately monitored for compliance with the law.

In the context of phone pay fees, production incentives may enhance the potential risk of entities engaging in UDAAPs. Production incentives that reward employees or service providers based on consumers using a higher-cost phone pay option may potentially lead entities to steer consumers to a higher-cost option despite the availability of lower-cost alternatives. Similarly, incentive programs that reward representatives who complete a large number of daily calls may potentially cause these representatives to spend less time discussing the available phone pay options and fees resulting in the consumer paying a higher fee because the consumer is not informed of the lower-cost alternatives. Entities should review these programs accordingly.

The Bureau will continue to review closely the practices of entities assessing phone pay fees for potential UDAAPs and FDCPA violations, including the practices described above. The Bureau will use all appropriate tools to assess whether supervisory, enforcement, or other actions may be necessary.

[2]. Regulatory Requirements

This Compliance Bulletin is a non-binding general statement of policy articulating considerations relevant to the Bureau’s exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Compliance Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.


Richard Cordray,
Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–16188 Filed 8–1–17; 8:45 am]
BILLING CODE 4810–AM–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the Federal Register.

DATES: Saturday, August 19, 2017, 9:00 a.m. to 2:30 p.m.

ADDRESSES: Tremont Lodge, 7726 East Lamar Alexander Parkway, Townsend, Tennessee 37882.


SUPPLEMENTARY INFORMATION:
Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:
- Welcome, Opening Remarks and Introductions

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14 Id.
16 See Supervisory Highlights, Fall 2015 edition at pp. 20–21.