

Practice Update

CFPB Announces Supervisory and Enforcement Flexibility Regarding Billing Errors During COVID-19

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On May 13, 2020, the Consumer Financial Protection Bureau (CFPB) issued a [Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic](#) (Statement). The purpose of the Statement is to inform creditors of the CFPB's flexible supervisory and enforcement approach to the timeframe in which creditors are required to resolve billing error disputes under the open-end credit rules in Regulation Z, 12 C.F.R. part 1026, which implements the Truth in Lending Act and the Fair Credit Billing Act. The CFPB notes that billing error investigations often require cooperation from a merchant and many merchants are currently hampered in their ability to respond to requests from creditors about billing error disputes.

Overview of Regulation Z's Billing Error Dispute Rules

Regulation Z requires creditors to investigate and resolve billing error notices received from consumers within specified timeframes. With respect to open-end credit, including credit cards, § 1026.13 specifies billing error investigation and resolution obligations and timeframes after a creditor receives a billing error notice from a consumer. Section 1026.13(c)(1) generally requires

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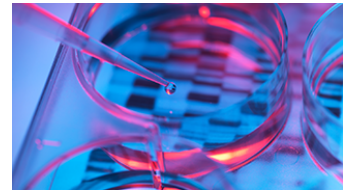
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creditors to mail or deliver a written acknowledgment to a consumer within 30 days of receiving a billing error notice. Section 1026.13(c)(2) requires creditors to investigate the dispute, correct any errors found, and notify the consumer of the outcome no later than two complete billing cycles or 90 days after receiving the billing error notice. Section 1026.13(d)(1) allows borrowers to withhold payment of disputed amounts. Section 1026.13(d)(2) prohibits adverse credit reports regarding the disputed amount, while § 1026.13(d)(3) prohibits the creditor from accelerating payment or closing a consumer's account because a consumer exercised his or her good faith rights to assert a billing error.

Supervisory Flexibility

The Statement explains the CFPB's intention to follow a flexible supervisory and enforcement approach during the pandemic regarding the timeframe in which creditors must complete investigations of billing error notices. The CFPB acknowledged some creditors, merchants, and other entities providing information to facilitate investigations of billing error notices may face significant operational disruptions due to the pandemic. The CFPB is concerned that if creditors made decisions on billing error notices without access to information from merchants, the merchants could be harmed by owing chargebacks for transactions creditors would have deemed valid had the merchant been able to provide information to the creditor. Consumers could also be harmed by incorrect decisions based on insufficient information.

When evaluating a creditor's compliance with the § 1026.13(c)(2) timing requirements, the CFPB intends to consider the creditor's circumstances and does not intend to cite a violation in an examination or bring an enforcement action against a creditor for taking longer than required to resolve a billing error notice so long as the creditor: (1) makes good faith efforts to obtain the necessary information, (2) makes a determination as quickly as possible, and

(3) complies with all other requirements pending resolution of the error. Good faith efforts include obtaining a reasonable estimate from the merchant of when it will be able to respond or determining reasonably that the merchant is unable to respond to the creditor's request for information. The CFPB explains it does not expect the pandemic to prevent creditors from fully complying with the requirements of § 1026.13(d) outlined above, as those provisions are intended to protect consumers while a billing error investigation is pending.

Other Considerations for Consumers

The CFPB also acknowledged consumers may face significant disruptions due to the pandemic. The Statement encourages creditors to show flexibility when determining whether to require consumers to provide notice of a billing error within 60 days after the purported error first appears on the consumer's periodic statement, pursuant to § 1026.13(b)(1). The CFPB further encourages creditors to consider other relief options such as late fee waivers, refunds, repayment forbearance, or deferral without interest accrual or with temporary interest rate reductions.

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