HIGHLIGHTS

- This release contains updates and revisions to Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, and 17 to provide the current status of consumer credit law, including recent developments in case, statutory, and regulatory law.

- The new 2021 edition of the Consumer Credit Law Manual Primary Source Pamphlet includes changes to certain relevant consumer regulations and statutes.

Chapter 1—Truth in Lending.

Qualified mortgage standards. The CFPB has proposed material changes for certain qualified mortgage standards. The proposed changes remain pending as of early 2021, but the CFPB has announced that it is revisiting the changes and will delay the mandatory compliance date of the new rule. See § 1.01.

Sources of law. A recent case invalidated a CFPB rule that set time limit for a borrower’s access to certain credit funds as in excess of Bureau’s statutory authority under TILA, finding the rule set substantive limit on credit rather than a disclosure requirement; see Paypal, Inc. v. Consumer Fin. Prot. Bureau, at § 1.02.

Exempt transactions. In 2019, the CFPB published final versions of two new policies that purport to shield regulated entities from certain enforcement actions and liabilities. Both policies can apply to TILA compliance. These are the CFPB’s Compliance Assistance Sandbox Policy (“Sandbox”) and the No Action Letter (“NAL”) policy. See § 1.03[2].

Required closed-end disclosures.
Unfair and deceptive practices claim was allowed based on discrepancies between terms in TILA disclosures and statements in application documents proclaiming “no hidden fees”; see Federal Trade Commission v. LendingClub Corp., at § 1.05[2][a]. A court refused to enter default judgment against a car dealer when consumer’s TILA claim asserted that the dealer orally told her GAP coverage was mandatory but the loan documents expressly stated the coverage was optional; Munoz v. JLO Auto., Inc., at § 1.05[2][a]. Motion to dismiss was denied when borrowers alleged they did not receive disclosures until after they received their loan over lender’s assertion that borrowers checked a box on the website acknowledging that they had reviewed their loan agreement; see Solomon v. American Web Loan, § 1.05[2][a].

**Required disclosures.** In an interpretive rule published in 2020, the CFPB created a waiver provision purportedly to assist borrowers facing hardships due to the COVID-19 pandemic. The provision applies to both the seven-day pre-consummation waiting period for the TILA-RESPA integrated disclosures and the three-day pre-consummation waiting period for TILA rescission. See § 1.05[2][b].

**Periodic statement requirements.** A change in treatment of cryptocurrency from purchases to cash advances did not make earlier disclosures of cryptocurrency transactions inaccurate because the transactions were actually treated as purchases; see Eckhardt v. State Farm Bank F.S.B., at § 1.07[5][a].

**Billing error procedures.** The unauthorized use protections of TILA do not apply to unauthorized use by an authorized user. In Mas de Leon v. Banco Popular de Puerto Rico, it was not a boiling error when a cardholder authorized a friend to use the credit card for a $3500 charge, but the friend charged over $37,000. See at § 1.07[6][a].

**Notice of billing error.** The 60-day period runs from transmission of billing statement, not from discovery of the disputed charges; see RLFShop, L.L.C. v. American Express Co., at § 1.07[6][b]. Statute requires only that a creditor send the required acknowledgement and explanation; it does not require that the creditor confirm receipt by the obligor; see Schott v. American Express Co., at § 1.07[6][b]. FCBA does not require “intensive investigation” as to whether a charge was actually valid; see Borisov v. Alamo Rent A Car, at § 1.07[6][b].

**Creditor defenses.** Courts have refused to use either the “continuing violation” doctrine or the theory of “continuous accrual” to extend TILA’s one-year limitations period in all but the rarest circumstances. See § 1.09[1].

**Good faith conformity with regulatory agency rules.** In 2019 and 2020 the CFPB established new procedures for issuing interpretations or approvals: the Compliance Assistance Sandbox Policy, the Policy to Encourage Trial Disclosure Pro-
grams, and the Advisory Opinions Policy. Creditors might attempt to assert reliance on one of these for the good faith defense. Approvals granted by the CFPB are listed on its website. See § 1.09[2][a].

**Assignee liability.** Absent evidence indicating an assignment of the underlying debt, a debt collector that enters into payment agreements on behalf of the owners of debts is not a creditor for TILA purposes; see Medrano v. Great Mercantile Agency, Inc., at § 1.09[2][g].

Chapter 4—Unfair and Deceptive Credit Practices. **Deceptive terms.** In a Ninth Circuit case, a payday loan note was deceptive regardless of whether or not disclosures were technically accurate; see Federal Trade Comm’n v. AMG Capital Mgmt., L.L.C., at § 4.04[3].

**Home mortgage loans.** While refusal to modify a loan, without more, may not be a UDAP violation, courts often recognize UDAP claims if the consumer can show that the servicer made specific material misrepresentations in the course of a loan modification attempt. See, e.g., Saika v. Ocwen Loan Servicing, L.L.C., at § 4.04[5]. Court denied motion to dismiss claim that a servicer violated state UDAP statute by improperly evaluating homeowners’ loss mitigation application, repeatedly requested unnecessary information, solicited homeowners to apply for loan modifications for which they were ineligible, and improperly charged costs and fees; see Tanasi v. CitiMortgage, Inc., at § 4.04[5]. Court refused to dismiss complaint that alleged that servicer misrepresented that tax arrearage would be included in the principal when loan was modified; see Hollenshead v. New Penn Fin., L.L.C., at § 4.04[5]. Court refused to dismiss complaint alleging that servicer misrepresented that principal of modified loan would include all foreclosure fees and costs that it claimed were owing; see Rivera v. Bayview Loan Servicing, at § 4.04[5]. It was an unfair practice to discourage homeowners from taking advantage of a state foreclosure mediation program by misrepresenting the program’s utility; see Cenatiempo v. Bank of Am., at § 4.04[5].

**Debt collection.** UDAP violation to misrepresent that consumer’s wages could be garnished, when judgment was dormant; see Leib v. Thompson, Dunlap & Heydinger, Ltd., at § 4.05[1]. Summary judgment granted to consumer on claim that bank violated UDAP statute by relentlessly billing and calling her, seeking payment of debt she did not owe; postage for letters disputing the debt met injury requirement. See Augustin v. PNC Fin. Servs. Group, at § 4.05[1].

**Calculating actual damages.** Lost profits and damage to reputation are consequential damages and are not recoverable; see Flexstake, Inc., v. DBI Servs., L.L.C., at § 4.06[2]. Price that must be paid to purchase the product is direct damages, not consequential, so may be sought in UDAP suit; see Coffey v. WCW & Air, Inc., at § 4.06[2].
Injunctive actions. Consumer who knows that product is worthless is unlikely to purchase it again so lacks Art. III standing to seek an injunction; see Min Sook Shin v. Umeken USA, Inc., at § 4.06[9][b]. Plaintiff who now knows that label is deceptive lacks Art. III standing to seek an injunction; see Warner v. StarKist Co., at § 4.06[9][b].

Attorney fees. One court identified a non-exclusive list of factors to guide the court’s discretion, including whether an award of fees would deter others from acting in similar circumstances; whether the claim was frivolous, unreasonable, or groundless; and whether the claim brought was to resolve a significant legal question under the UDAP statute. See Perez v. FCA US, L.L.C., at § 4.06[11][a]. Fees can be awarded for all work in furtherance of UDAP claim, even if it also furthered non-UDAP claims; fees need not be proportionate to percentage of overall award that UDAP claim represents. See Lodise v. Aspen Mill, L.L.C., at § 4.06[11][d].

Chapter 5—Credit Discrimination. Civil Rights Acts. The Ninth Circuit held that plaintiffs’ allegations that their request to open a bank account was denied on the basis of race were sufficient to show intentional discrimination under § 1981; see James v. U.S. Bancorp, at § 5.01[5].

Equal Credit Opportunity Act. In Regions Bank v. Legal Outsource P.A., the Eleventh Circuit affirmed a district court’s finding that a guarantor is not an “applicant” under the ECOA; the U.S. Supreme Court denied certiorari in 2020. See § 5.02[1][d].

Types of discrimination. A “bare bones” complaint alleging that plaintiff was an African-American, that he applied for a credit card from defendant, and that his application was denied did not satisfy ECOA’s pleading standards when there were no allegations of nexus between protected status and denial of credit; see Wilson v. Atlanticus Servs. Corp., at § 5.04[1][b].

Discrimination at different stages. Plaintiff whose line of credit was closed was not an “applicant” under the ECOA; the ECOA calls for a consumer to seek credit (a new request, an extension of existing or additional credit or resisting termination of credit. See Tewinkle v. Capital One, N.A., at § 5.04[2].

Public assistance status. A defendant’s request for documentation establishing that public assistance payments would “continue for life” did not render ECOA claim plausible, since such a request, in context, is not discriminatory if for the purpose of determining the amount and probable continuance of income levels; see Trites v. 21st Mortg. Corp., at § 5.05[3][e].

Cosignature of spouse. There was no ECOA violation when a husband expressly applied for joint credit with his wife and the bank also made him aware that his signature was not needed because of his marital status; see Wells Fargo Bank, Nat’l Ass’n v.
Building Blocks Pediatrics, P.L.L.C., at § 5.05[5].

**HMDA collection requirements.** Effective January 1, 2020, the CFPB extended to January 1, 2022 the threshold of 500 open-end lines of credit for reporting data about open-end lines of credit. For data collection years 2020 and 2021, financial institutions that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years will not need to collect, record, or report data with respect to open-end lines of credit. On April 16, 2020, the CFPB issued a final rule adjusting the institutional and transactional coverage thresholds for closed-end mortgage loans and open-end lines of credit. Effective July 1, 2020, the final rule permanently raises the closed-end coverage threshold from twenty-five to 100 closed-end mortgage loans in each of the two preceding calendar years. Effective January 1, 2022, when the temporary threshold of 500 open-end lines of credit expires, the final rule sets the permanent open-end threshold at 200 open-end lines of credit in each of the two preceding calendar years. See § 5.09[1][a].

**Chapter 6—The Cost of Credit.**

**National banks and rate exportation.** If a state has opted out of rate exportation by state-chartered banks, then application of that state’s laws to interest charged by those banks is also not governed by the federal definition of “interest.” See 85 Fed. Reg. 44,146, 44,153 (July 22, 2020). See § 6.02[3][b]

Rent-a-charter arrangements. While courts often focus on which party has the predominant economic interest in the transaction, no one factor is determinative. The more involvement that the non-bank entity has, and the more that it primarily designs the lending program, runs day-to-day operations, or benefits from the lending operation, the more likely the non-bank entity is to be considered the true lender. See Dep’t of Ins. & Fin. Servs. v. Comdata Network, Inc., at § 6.02[3][c][v].

**Payday loans.** In 2020, the FRB, FDIC, OCC, and NCUA jointly issued principles on small-dollar loans. The principles cover both open-end lines of credit with minimum payments and closed-end loans, including those with “appropriate shorter-term single payment or longer-term installment payment structures.” See “FRB, FDIC, NCUA, OCC, Interagency Lending Principles for Offering Responsible Small-Dollar Loans.” The principles theoretically permit single-payment loans, but it is difficult to see how single-payment loans would meet the principle that a high percentage of customers should successfully repay a loan on its original loan terms, which is a “key indicator of affordability, eligibility, and appropriate underwriting.” See § 6.05[7][a].

**State high-cost mortgage statutes.** In order to be considered a high-cost home loan, a loan must first be a home loan; when borrowers did not reside at the property, the loan was not a home loan; see Gustavia Home,
L.L.C. v. Vaz, at § 6.09[1][c]. The high-cost loan law was not applicable in a case because it covers only loans secured by principal dwellings; see Gustavia Home, L.L.C. v. Rice, at § 6.09[1][c]. A loan was not covered when property was uninhabitable and there was no evidence that plaintiff used or intended to use it as principal dwelling; See Clenney-Martinez v. Miramontes, at § 6.09[1][c]. A loan was not covered when the total points and fees for the loan did not exceed five percent of the total loan amount; see Goshen Mortg., L.L.C. v. Giertl, at § 6.09[1][c]. Homeowner failed to present evidence that the loan satisfied either the interest rate or total points and fees thresholds so as to qualify as a high-cost loan; see Wells Fargo Bank, N.A. v. Yaccarino, at § 6.09[1][c]. A loan servicer who acquires servicing rights from the originating lender cannot generally be held liable under state high-cost home loan statutes. See, e.g., Salvador v. Bank of N.Y. Mellon, and cases cited at § 6.09[1][c].

Chapter 8—Fair Debt Collection. Entities whose principal business is collecting debts. Banks for which debt collection is just one of many parts of the business generally do not fit under the principal purpose prong of the debt collection definition. See, e.g., Ahmed v. Wells Fargo Bank (noting that Wells Fargo is a multinational financial services company and that it was not collecting debt for another); Shallenburg v. PNC Bank, (granting motion to dismiss when complaint merely pleaded that some of defendant attorney’s business was debt collection). See § 8.02[1][a]. A court rejected a debt buyer’s argument that it was not debt collector, as there was evidence the buyer used the mails in its business and wired funds to investors; see Guzman v. Mel S. Harris & Assocs., at § 8.02[1][b]. The interstate commerce element of limited-purpose definition was lacking when a based in Michigan allegedly entered into home located in Michigan and removed property; no mailing was involved, nor was any other instrumentality of interstate commerce. See Thompson v. Five Bros. Mortg. Co. Serv. & Securing Inc., at § 8.02[1][b]. Allegations that defendant’s principal purpose was debt collection, with more than half of revenues derived from debt collection, were insufficient as conclusory and unsupported by factual allegation; see Gold v. Shapiro, at § 8.02[1][b]. Debtor failed to allege facts to support a contention that bank’s “principal purpose” was debt collection; see Capozio v. J.P Morgan Chase Bank, at § 8.02[1][b]. Allegations that an entity acquires, manages, and liquidates defaulted residential mortgages as well as regularly engages in collection of consumer debts by filing lawsuits in mortgage foreclosures was enough to plausibly show that the entity’s principal purpose is debt collection; see Muir v. AM Solutions, L.L.C., at § 8.02[1][b]. Allegations were sufficient that an entity had an active role in debt collection, by hiring agents, attorneys and/or third-party debt collectors and by initiating numerous
consumer debt collection actions; see Page v. Forster & Garbus, L.L.P., at § 8.02[1][b].

Repossession and foreclosure companies as debt collectors. Law firm was a debt collector based on complaint’s averment that the firm appeared frequently on the docket in foreclosure cases in area courts; see In re Holyfield, at § 8.02[1][c]. FDCPA claim allowed against law firm that filed foreclosure complaint for plaintiff that did not have authority to foreclose; see Williams v. Partners for Payment Relief Inc., at § 8.02[1][c]. Section 1692e claim allowed against foreclosure law firm that filed complaint for recovery of interest amounts not authorized under state licensing law; see Gary v. Hladik Onorato & Federman, L.L.P., at § 8.02[1][c]. Servicer’s communications through its attorney with represented borrower violated § 1692c; see Roche v. Rushmore Loan Mgt. Servs., L.L.C., § 8.02[1][c]. Section 1692e claim allowed against servicer for seeking attorney fees not lawfully incurred; see Flournoy v. Rushmore Loan Mgt. Servs., L.L.C., at § 8.02[1][c].

Attorneys. Attorney was not covered by FDCPA when his debt collection activities constituted at most 0.5% of his workload and revenues for last three years; see Roller v. Herrera, at § 8.02[1][f][ii]. Law firm was not a debt collector, when less than 1.3% of firm’s overall revenue was attributable to fees accrued through the representation of condominium associations in perfecting and enforcing liens and recovering delinquent balances; see Reyes v. Steeg Law, L.L.C., at § 8.02[1][f][iii].

State and federal officials. The Ninth Circuit and affirmed a district court’s grant of summary judgment to a student loan guaranty agency, as the record showed that its activities were incidental to its bona fide fiduciary obligation to the Department of Education; see Lima v. United States Dep’t of Educ., at § 8.02[3][f].

Originators’ collection. Mortgage lenders are not debt collectors if they either originated a loan or began servicing the loan before it went into default; see Villegas v. Wells Fargo Bank, at § 8.02[3][g]. Collecting debts not in default when obtained. Consumer failed to allege that foreclosing entities were debt collectors and that the debt was in default when it was assigned; see Dicion v. Mann Mortg., L.L.C., at § 8.02[3][h]. Mortgage holder that was assigned the mortgage before default was not debt collector under FDCPA; see Hollenshead v. Bank of Am., at § 8.02[3][h]. Bank that purchased preexisting debt and then attempted to collect on that debt on its own behalf was not a covered debt collector; Dernier v. U.S. Bank, at § 8.02[3][h]. Fannie Mae was a creditor rather than debt collector; see Fed. Nat’l Mortg. Ass’n v. DuBois, at § 8.02[3][h].

Harassment. Plaintiff sufficiently alleged a pattern and frequency of calls from which a jury could easily infer an intent to harass; see Light v. Seterus, Inc., at § 8.03[3][f]. Courts
are split on whether consumers may assert claims under both sections 1692d and 1692d(5) for the same conduct. Some courts allow both to proceed because plaintiffs may plead alternative theories. See, e.g., Jones v. Seas & Assoc., Kromelbein v. Envision Payment Solutions, Inc., and Hollis v. LVNV Funding, at § 8.03[3][f].

Meaningful disclosure. The Third Circuit has stated that meaningful disclosure requires a debt collector to disclose enough information so as not to mislead the recipient as to the purpose of the call; see Levins v. Healthcare Revenue Recovery Grp. L.L.C., at § 8.03[3][g].

Deceptive statements. In a Seventh Circuit case, a 1099C clause stating that settling a debt for less than the balance owed may have tax consequences and creditor may file a 1099C form violated FDCPA; see Heredia v. Capital Mgmt. Servs., L.P., at § 8.03[4][c][ii]. Statement that creditor may file a 1099-C form could be misleading or deceptive; see Leonard v. Capital Mgmt. Servs., § 8.03[4][c][ii].

Language and symbols on envelopes. The Sixth Circuit has declined to read into § 1692f(8) a “benign language” exception, finding that a letter containing a glassine window through which were visible two unmarked checkboxes followed by “Payment in full is enclosed” and “I need to discuss this further” violated that provision; see Donovan v. FirstCredit, Inc., at § 8.03[5][g].

Actual damages. Plaintiff was awarded $5,000 for emotional distress consisting of panic, difficulty falling asleep, trouble focusing at work, and flashbacks to past instances of abuse; see Blevins v. MSV Recovery L.L.C., at § 8.04[3][a]. Plaintiff was awarded $2,000 in emotional distress damages for frustration, anxiety, and stress resulting from the calls both to the plaintiff and to his family members; see Lepski v. Bayside Capital Servs., L.L.C., at § 8.04[3][a].

One-year statute of limitations. FDCPA provides a one-year statute of limitations for private actions. In 2019, the Supreme Court ruled that the period begins to run from when the violation occurs, and not from when the consumer discovers the violation. The decision, however, left open extending the statute of limitations based on equitable tolling or on the equitable fraud-specific discovery rule. See Rotkiske v. Klemm, at § 8.04[10].

Chapter 12—Student Loans and Trade School Abuses. Public service loan forgiveness. Borrowers’ claim under state consumer protection acts that student loan servicer affirmatively misrepresented information regarding borrowers’ eligibility for forgiveness under PSLF Program was not preempted by Higher Education Act; borrowers stated claims for breach of fiduciary duty, negligence, unjust enrichment, and breach of implied-in-law contract. See Daniel v. Navient Sols., L.L.C., at § 12.02A[5].

Loan servicers. Since 2015, twelve
states have passed laws to strengthen the rights of student borrowers against their loan servicers. The consumer protections range from strengthening borrowers’ rights and regulations enforceable by borrowers to licensing requirements with state oversight and public enforcement mechanisms. Because of these laws, several states have a designated student loan ombudsman or advocate. See § 12.04[1].

**Borrower defenses.** New rules applicable to borrower defenses to repayment of federal student loans went into effect on July 1, 2020. The new borrower defense standards are much more challenging to satisfy. See § 12.04[1].

**Collection costs.** Borrowers may not be charged collection costs if they enter into a rehabilitation agreement within 60 days following the initial notice of default and successfully complete the rehabilitation. Rules issued in September 2019 amended the FFEL regulations to specify that guaranty agencies may not charge collection fees in such instances. See § 12.04[5][a].

**Tax refund interception.** In a case involving a group application for borrower defense discharge, a federal district court in Massachusetts ruled that the Department acted arbitrarily and capriciously by certifying debts for tax offset without having considered borrower defenses that were submitted on borrowers’ behalf by application of the state attorney general. See Williams v. DeVos, at § 12.04[7][c].

**Wage garnishment.** An employer was ordered to implement administrative wage garnishment it had ignored; the court granted judgment against employer for the amount that should have been withheld from borrower’s wages, plus attorney fees. See Educational Credit Mgmt. Corp. v. Hope Wine L.L.C., at § 12.04[8][b].

**Forbearance.** Legislation enacted in 2019 includes a cancer deferment for all FFEL, Direct Loan, and Perkins Loan programs. Unlike other deferments, this deferment for borrowers receiving cancer treatment will not have interest accrue on any of their federal loans, including unsubsidized loans. See § 12.05[2].

**Closed-school discharge.** The designated 120-day or 180-day period may be extended if the Secretary determines that exceptional circumstances related to the school’s closing would justify an extension. This period also may be extended, under some circumstances, for students who attended correspondence schools. See § 12.06[2][b].

Regulations that went into effect in 2018 provide for automatic discharges, without application, to students whose schools closed between November 1, 2013 and July 1, 2020, and who do not re-enroll at another school within three years of their school’s closure. Regulations issued in 2019 remove automatic closed-school discharges for schools that close after July 1, 2020. See § 12.06[2][d].

**False-certification discharge.**
False-certification regulations promulgated in 2019 and became effective created revised standards for loans disbursed on or after July 1, 2020. Among the changes, the new rules removed language specifying that the Department could grant automatic discharges based on evidence that a school falsified the satisfactory academic progress of its students for loans issued after July 1, 2020. See § 12.06[3][a]. Rules promulgated in 2019 make borrowers ineligible for a false-certification discharge if they are unable to provide an official high school transcript or diploma and instead provide a written attestation that they had a high school diploma. See § 12.06[3][b].

**Discharge in bankruptcy.** Rule mandating narrow construction of dischargeability exceptions was applied in rejecting application of § 523(a)(8)(A)(ii) to debtor’s contractual obligation to co-signor; see In re Shuey at § 12.06[4][a]. A private direct-to-student loan was not covered by § 523(a)(8)(A)(ii); see In re Homaidan, at § 12.06[4][a]. Plain language of statute supports the “trending narrower view of Section 523(a)(8)(A)(ii)” as inapplicable to loans; see In re McDaniel, at § 12.06[4][a].

**Substantial hardship.** Although debtors were in their thirties, income was modest and unlikely to increase; court allowed discharge of several, but not all, student loans. See In re Swafford, at § 12.06[4][c]. A 57-year-old debtor’s medical school debt totaling $284,000 was discharged; debtor failed medical exam seven times and never earned above poverty level income; see In re Kisselburg, at § 12.06[4][c]. A 52-year-old debtor with monthly net earnings of $2160 and decades of similar earnings from same factory work satisfied first prong of “totality” test; discharge was granted. See In re Kinney, at § 12.06[4][c]. Discharge was denied where borrower’s income was more than four times the federal poverty guidelines and her disposable income available after amounts needed for minimally necessary expenses exceeded amount of loan payment; see In re Lewis, at § 12.06[4][c]. The 2020 CARES Act provided that students who withdraw from their school as a result of the coronavirus crisis may apply for cancellation of the federal student loans they obtained to pay for the term they did not complete. See § 12.06[6].

**Chapter 13—Foreclosure Defense.** Workout options. Once a mortgage is accelerated, the Rural Housing Authority takes the position that the borrower is not eligible for loan servicing and will not be allowed to cure unless given such a right by state law. However, courts have found this position, with respect to moratoria, is contrary to the statute. See Wood v. United States Dep’t of Agric. Rural Hous. Serv., at § 13.03[6][e].

**Defenses to foreclosure.** A Massachusetts banking regulation expressly makes a loan servicer’s misrepresentations regarding the certification of note holder status a violation of the state’s UDAP statute; see
Servicer's standing to foreclose. A pooling and servicing agreement gave servicer authority to perform activities necessary to conduct non-judicial foreclosure under state Deed of Trust Act; see Lisson v. Wells Fargo Bank, N.A., at § 13.04[2][a][iii]. Summary judgment for foreclosure was denied where servicer alleged it was note holder with authority to foreclose, but provided an affidavit that was contradictory on its face, showing original note was in possession of note’s owner. See Ocwen Loan Servicing v. Butcher, at § 13.04[2][a][iii].

Statutory requirements related to identifying mortgage holders. Attorney certification under order along with submission of required documents met the standard to show standing for summary judgment; defendants’ general denial of standing in their answer did not raise disputed issue of fact. See Wilmington Saving Fund Soc’y, F.S.B. v. Jaye, at § 13.04[2][a][v].

Procedural defenses to foreclosure. Remand to enter judgment for borrower where lender’s evidence failed to establish that note and allonge it proffered at trial in foreclosure action were original documents; see Morroni v. Wilmington Savings Fund Soc’y F.S.B., at § 13.04[5]. Borrower’s request to discover original note and its indorsements in order to inspect condition of allonges was enforced; see Bayview Loan Servicing, L.L.C. v. Charleston, at § 13.04[5].

Distressed Asset Stabilization Program. Despite significant data showing higher likelihood that Black borrowers in New York had their homes sold and lost the benefits of FHA-insurance, the court in Washington v. United States Dep’t of Hous. & Urban Dev, dismissed the claims for failing to meet Fair Housing Act standards; see § 13.06[2][A]. A court rejected borrowers’ Declaratory Judgment Act claims based on HUD’s failure to properly implement DASP pursuant to the APA, as the borrowers did not include HUD in the lawsuit; see Sharma v. Rushmore Loan Mgmt. Servs., L.L.C., at § 13.06[2][A].

Bankruptcy. Collateral estoppel applied to Housing Court’s decision against borrower in eviction case, precluding borrower’s later action against foreclosing party and sale purchaser to regain title to property; see Duross v. Scudder Bay Capital, LLC, at § 13.14[2]. The court declined to apply collateral estoppel to post-foreclosure eviction decision in favor of borrower, finding that housing court in eviction case merely found plaintiff’s evidence insufficient to support claim for possession; see In re Haro Acuna, at § 13.14[2].

Chapter 15—Credit Cards. Billing errors. There was no billing error when a cardholder authorized a friend to use credit card for a specified amount and the friend charged more than the designated amount; see Mas de Leon v. Banco Popular de
Puerto Rico, at § 15.02[1]. It was inadequate to allege that a consumer notified creditor of disputed charges within 60 days of discovery; the 60 days runs from transmission of the billing statement; see RLFSop, L.L.C. v. Am. Express Co., at § 15.02[2]. Filing of a bankruptcy petition did not constitute a sufficient billing error notice when the plaintiff provided no explanation or argument relating to the sufficiency of the notice; see Asper v. Wells Fargo Bank, at § 15.02[2]. Plain language of the statute requires only that the creditor send the required acknowledgement and explanation; it does not require that the creditor confirm receipt by the obligor; see Schott v. American Express Co., at § 15.02[3].

Chapter 16—Fair Credit Reporting. Disclosures. Consumer failed to show injury in fact arising from check verification company’s omission of certain information regarding checking accounts from requested disclosure; see Huff v. Tel-eCheck Servs., Inc., at § 16.03[4][b]. There was no concrete harm from reporting agency’s failure to disclose that the identity of the true furnisher of information to the agency was the servicer and not the lender; see Dreher v. Experian Info. Sols., at § 16.03[4][b].

Sources of information. Failure to disclose source of information to consumer constituted concrete harm; see Stokes v. Realpage, Inc., at § 16.03[5][e]. In Shimon v. Equifax Info. Servs. L.L.C., the court dismissed a claim for willful violation of § 1681g based on allegations that Equifax falsely represented that it obtained information about court judgment from the court when it actually received information through a third-party furnisher. The court rejecting plaintiff’s argument that Equifax’s interpretation of “source” as referring to state court and not to third-party furnisher was objectively unreasonable. See § 16.03[5][e].

Permissible use in connection with credit. Comparison shopping behavior will not support permissible purpose under § 1681b(a)(3)(A); plaintiff had not initiated transaction or sought to create a debt and did not apply for credit. See Miller v. Dish Network, L.L.C., at § 16.04[2][d][i]. No permissible purpose when plaintiff paid cash for a medical procedure and never sought financing; see Harris v. Coral Gables Hospital, at § 16.04[2][d][i]. FCRA does not prohibit review of consumer report following discharge of only the consumer’s personal liability in bankruptcy; see In re Ocwen Loan Servicing L.L.C. Litig., at § 16.04[2][d][ii]. It was permissible for a bank to obtain a consumer report for collection purposes after discharge of only in personam liability to the bank; see Marino v. PNC Bank, N.A., at § 16.04[2][d][ii]. Debt collector had a permissible purpose; an entity need not be original creditor to obtain a credit report; see Middlebrooks v. Sacor Fin., Inc., at § 16.04[2][d][ii]. An entity may obtain a credit report even if it does not ultimately enter into a transaction with the consumer.
and is not original creditor; Tatro v. Equifax Info. Servs., L.L.C., at § 16.04[2][d][ii].

Adverse information. Dates that a consumer attended college and what degree was obtained were not adverse information because they are not inherently harmful; that the report flagged the consumer’s self-reported dates and degree because they contradicted information supplied by her college did not transform the information into adverse items. See Jenkins v. CARCO Grp., Inc., at § 16.06[1]. Instead of requiring the entire original account be deleted when the first delinquency reaches seven years, one court approved of the idea of treating the repayment agreement as a new account and removing only the delinquencies from the original account when the first delinquency reaches seven years; see Beseke v. Equifax Info. Servs. at § 16.06[2][b]. Federal law, rather than state law, determined whether a consumer’s sentence of six months’ supervision and subsequent dismissal of charge was a “conviction” under the FCRA; see Aldaco v. RentGrow, Inc., at § 16.06[2][f].

FCRA limitations period. Limitations period began when plaintiff disputed a report based on identity theft, not subsequent disputes based on the same incident and previously investigated and rejected; see Hearns v. Equifax Info. Servs., L.L.C., at § 16.09[6]. A court refused to allow subsequent complaints regarding the same allegedly inaccurate information to restart the statute of limitations because doing so would allow plaintiffs to indefinitely extend the limitations period by simply sending another complaint letter to the credit reporting agency; see Bittick v. Experian Info. Sols., Inc., at § 16.09[6]. Limitations period restarts when a re-publication of credit information results in a new denial of credit, because it constitutes a distinct harm that gives rise to a new cause of action; see James v. MRC Receivables Corp., at § 16.09[6].

The 2021 edition of the Primary Source Pamphlet presents revisions to certain consumer credit regulations and statutes.

Index. The index has been comprehensively revised with this release.

Table of Cases. The Table of Cases has been comprehensively revised with this release.

Table of Statutes. The Table of Statutes has been comprehensively revised with this release.
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   - Package 2 contains Volume 2 White Revision pages
   - 2021 Consumer Credit Law Primary Source Pamphlet (packaged separately from White Revision pages)

Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.

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VOLUME 1

Revision
☐ Title page
☐ 1-11 thru 1-71
☐ 1-93
☐ 1-105 thru 1-167
☐ 1-187 thru 1-263
☐ 2-1 thru 2-3.
☐ 2-19 thru 2-29
☐ 3-1 thru 3-37
☐ 4-1 thru 4-97
☐ 5-1 thru 5-71
☐ 5-101 thru 5-105
☐ 5-115 thru 5-175
☐ 6-1 thru 6-45
☐ 6-61
☐ 6-71 thru 6-217
☐ 6-229 thru 6-231
☐ 6-257 thru 6-275
☐ 7-1 thru 7-25

VOLUME 2

Revision
☐ Title page
☐ 8-1
☐ 8-17 thru 8-137
☐ 8-155 thru 8-221
☐ 8-229 thru 8-246.1
☐ 8-253 thru 8-271
☐ 9-1 thru 9-63
☐ 10-1 thru 10-171
☐ 12-5 thru 12-39
☐ 12-49 thru 12-161
☐ 13-1 thru 13-89
☐ 13-101 thru 13-111
☐ 13-123 thru 13-127
☐ 14-1 thru 14-25

FI-2
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| ☐            | 2020 Consumer Credit Law Primary Source Pamphlet | 2021 Consumer Credit Law Primary Source Pamphlet |
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