

# The Regulatory Alchemist

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The Consumer Financial Protection Bureau has released its March 2019 edition of Supervisory Highlights. One thing of interest that was discussed in this edition was where CFPB examiners found that one or more institutions engaged in a deceptive act or practice by representing that payments made through an institution's online bill-pay service would be debited on the date selected by the consumer or a few days after the selected date.

However, the institution(s) failed to disclose or failed to disclose adequately that in instances where a payee accepts only a paper check, the debit may occur earlier than the selected date. Accordingly, these paper bill-pay checks were sent several days prior to the consumer-designated payment date which was at the discretion of the Institution(s). In addition, said payments would be debited from the consumer's account when the payee presented and cashed the check, which may have occurred earlier or later than the date selected by the consumer.

Furthermore, the failure to notify consumers that their bill-pay payments made by paper check may be debited on a date sooner than the date selected caused some consumers to pay overdraft fees.

The failure by the institution(s) to disclose the possible earlier debit date may have created the impression that payments made through the online bill-pay service would be withdrawn no earlier than the payment date designated by the consumer. The CFPB believes it would be reasonable for consumers to understand that the payment date they designated would be the earliest date that the payment would be withdrawn from their account.

In addition, the consumers' understanding of when funds will be withdrawn is considered material to consumers' decisions regarding which payment date to designate in the first instance and then how to manage funds in the accounts on a going-forward basis, to ensure there is a

sufficient balance to cover the anticipated withdrawals.

Accordingly, it may prudent to review bill payment agreements, related documentation, and corresponding practices to make sure that the underlying documents accurately present correct payment date information and match actual payment practices - especially in relation to paper check payments. Furthermore, if compliance issues are discovered, additional corrective action may be needed.

In addition and although not addressed by this situation, it is foreseeable that similar issues could arise in relation to person-to-person or pop money transfers. Accordingly, if your institution offers those services, a comparable review may also need to be conducted.

#### **And the Really Fine Print....**

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