CFPB Bites of the Month – December Top 10

December 16th, 2021 | Justin B. Hosie and Eric L. Johnson

Each month, we host a 30-minute **webinar** outlining the month's key announcements and takeaways from the Consumer Financial Protection Bureau (CFPB) for financial services providers to consider. In this month's article, we share some of our top "bites" for the prior month covered during the December 15 webinar.

So, what happened at the CFPB in the past month?

Bite #10 – Director Chopra issued ethics guidance.

Director Chopra issued ethics guidance related to a "revolving door" of former CFPB employees, saying that he is "committed to setting the highest standards of ethics and integrity for CFPB employees." The Director appeared to be addressing situations when individuals move back and forth between employment as a regulator and employment serving the interests of regulated entities. Director Chopra expressed concern about former employees with a financial incentive to exploit confidential information they may have had access to. In tandem with this announcement, the CFPB issued additional guidance reminding staff to report suspicious activity, so the CFPB can detect activity by former employees violating ethics and information disclosure laws.

Bite #9 – The CFPB published two reports addressing overdraft fees.

The first report, *Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports*, analyzed call report data since 2015 to study the evolution of banks' reliance on overdraft and NSF fees. The second report, *Checking Account Overdraft at Financial Institutions Served by Core Processors*,described overdraft practices and outcomes at several thousand credit unions and banks in 2014 using data provided by core processors.

Based on the reports, the CFPB determined that banks continue to rely heavily on overdraft and non-sufficient funds revenue, which reached an estimated $15.47 billion in 2019. The CFPB announced that it will be enhancing its supervisory and enforcement scrutiny of those banks that are heavily dependent on overdraft fees.

Bite #8 – Federal agencies announced the dollar thresholds in Regulations Z and M for exempt consumer credit and lease transactions.

The Federal Reserve Board and the CFPB announced the dollar thresholds used to determine whether certain consumer credit and lease transactions in 2022 are exempt from Regulation Z and Regulation M.

By law, the agencies are required to adjust the thresholds annually based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, known as CPI-W. Transactions at or below the thresholds are subject to the protections of the regulations.

Based on the annual percentage increase in the CPI-W as of June 1, 2021, the protections of Regulations Z and M generally will apply to consumer credit transactions and consumer leases of $61,000 or less in 2022. However, private education loans and loans secured by real property are subject to Regulation Z regardless of the amount of the loan.

Bite #7 – Federal agencies announced the threshold for smaller loan exemption from appraisal requirements for higher-priced mortgage loans.

The CFPB, the Federal Reserve Board, and the Office of the Comptroller of the Currency announced that the 2022 threshold for exempting loans from special appraisal requirements for higher-priced mortgage loans will increase from $27,200 to $28,500. The threshold amount will be effective January 1, 2022 and is based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, known as CPI-W, as of June 1, 2021. The Dodd-Frank Act added special appraisal requirements for higher-priced mortgage loans, including that creditors obtain a written appraisal based on a physical visit to the interior of the home before making a higher-priced mortgage loan. The rules implementing these requirements contain an exemption for loans of $25,000 or less, adjusted annually to reflect CPI-W increases.

Bite #6 – The CFPB Ombudsman's office released its 2021 annual report.

The CFPB Ombudsman's office issued its annual report addressing process issues within the CFPB. The report shares individual inquiries received by the Ombudsman's office, as well as the associated analysis and data. It includes an update on its post-examination survey of supervised entities and the next steps to launch the program in FY2022. It also shared updated FAQs which include additional information on contacting the office. A new section in the report, the "Ombudsman in Brief," included observations about the CFPB's choice and usage of words in referencing certain stakeholder communities and continued work around how the CFPB assists small business owners.

Bite #5 – The CFPB requested feedback on its FY 2022-26 draft Strategic Plan.

The CFPB is required to publish a new strategic plan that communicates the CFPB's mission, strategic goals, and objectives for the next four years. The draft Strategic Plan for fiscal years 2022 to 2026 is posted on the Strategic Plan page, along with past plans. Comments can be sent to CFPB_Strategy@cfpb.gov by January 3, 2022.

Bite #4 – Director Chopra addressed the National Association of Attorneys General.

Director Chopra told the AGs that the CFPB is exploring ways to make redress funds available to victims identified in state AG actions enforcing federal consumer financial protection laws. Chopra also stated his concern for repeat offenders violating federal consumer protection laws, especially those that violate agency court orders.

Bite #3 – The CFPB issued its final rule to facilitate the transition from LIBOR.

The final rule establishes requirements for how creditors must select replacement indices for existing LIBOR-linked consumer loans after April 1, 2022. It requires creditors to choose an index comparable to LIBOR when changing the index of a variable rate loan or to consider the loan a "refinancing" for purposes of Regulation Z. The rule identifies a Secured Overnight Financing Rate (SOFR) for consumer products as a comparable rate to replace LIBOR. The final rule also provides factors for creditors to use to determine whether a replacement index meets the Regulation Z "comparable" standard regarding a particular LIBOR index. The rule also provides updated sample forms for certain adjustable-rate mortgage loan products replacing LIBOR references with a SOFR index. The CFPB also issued an updated set of FAQs to help creditors address other LIBOR transition topics, regulatory questions, and general implementation considerations. Approximately $1.4 trillion of consumer loans are estimated to be currently tied to LIBOR.

Bite #2 – The CFPB's supervisory highlights reported wide-ranging violations.

The violations occurred in areas such as auto loan servicing, consumer reporting, debt collection, deposits, fair lending, mortgage origination and servicing, private student loan origination, payday lending, and student loan servicing. Violations in the report include:

- Some mortgage servicers allegedly charged improper fees to borrowers enrolled in CARES Act forbearance;
- Fair lending violations;
- Some payday lenders allegedly debited consumer bank accounts improperly; and
- Some remittance providers allegedly failed to timely investigate error notices.

Bite #1 – Director Chopra's blog post addresses bank mergers.

Director Chopra announced that the Board of Directors of the FDIC, on which he sits, voted to launch a review of the agency's Bank Merger Act policies. The FDIC will accept comments for 60 days from the publication in the Federal Register. Chopra said that the FDIC plays a critical role when it comes to reviewing bank mergers and ensuring financial stability in the country. The board's vote was reportedly taken without the approval of FDIC Chair Jelena McWilliams. She has rejected the board's vote requesting comment on the bank merger approval process.

Extra Bite – The CFPB addressed mortgage servicing violations.

Mortgage servicing violations addressed by the CFPB include allegedly:

- Charging late or default-related fees to borrowers in CARES Act forbearance programs.
- Failing to end preauthorized electronic fund transfers.
- Charging consumers unauthorized amounts.
- Misrepresenting mortgage loan transactions and payment history in online accounts.
- Failing to review borrowers' applications for loss mitigation options within 30 days.
- Incorrect handling of partial payments.
- Failing to automatically terminate Private Mortgage Insurance on time.

Still hungry?

If you missed our December 15 year in review round-up, visit our CFPB Bites page to request a replay. We look forward to seeing you in 2022!