CFPB Bites of the Month – July Top 10

July 22nd, 2021 | Eric L. Johnson and Justin B. Hosie

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" covered during the July 21 webinar.

So what happened at the CFPB in the past month?

Bite #10 – The CFPB released its Spring 2021 rulemaking Agenda.

The CFPB published its Spring 2021 rulemaking Agenda, which outlines the current plans for the CFPB under interim leadership. Some highlights from the Agenda include:

- Implementing Section 1071 of the Dodd-Frank Act, which requires financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses;
- Implementing Section 1033 of the Dodd-Frank Act to address the availability of consumer financial account data in electronic form;
- Addressing Property Assessed Clean Energy financing;
- Developing standards for automated valuation models; and
- Facilitating transition away from LIBOR index.

The CFPB noted that it has already addressed extension of the compliance date for changes to the Qualified Mortgages provisions of Regulation Z and mortgage servicing early intervention and loss mitigation-related provisions in Regulation X.

Bite #9 – The CFPB issued an interpretive rule.

The CFPB issued an interpretive rule explaining the basis for its authority to examine supervised financial institutions for risks related to conduct that violates the Military Lending Act (MLA). In 2018, the CFPB's leadership discontinued MLA-related examination activities first authorized in 2013, based on its then stated belief that Congress did not specifically confer examination authority on the CFPB with respect to the MLA. The current CFPB leadership does not find the 2018 position persuasive and the CFPB will now resume MLA-related examination activities.

Bite #8 – CFPB Acting Director Dave Uejio addressed Juneteenth.

CFPB Acting Director Dave Uejio expressed concerns regarding implementation of the new

Juneteenth Federal holiday, particularly as it relates to mortgage lender compliance with the Truth in Lending Act and TILA-RESPA Integrated Disclosure timing requirements. The CFPB indicated that some lenders did not have sufficient time after the Federal holiday declaration to consider whether and how to adjust closing timelines, and that some lenders may delay closings to accommodate the reissuance of disclosures adjusted for the new Federal holiday. The CFPB reminded creditors that the TILA and TRID requirements generally protect them from liability for bona fide errors and permit re-disclosure after closing to correct errors. According to the Acting Director, any guidance ultimately issued by the CFPB will take into account the limited implementation period before the holiday and would be issued after consultation with the other federal and state regulators to provide a consistent interpretation for regulated entities.

Bite #7 – The CFPB issued foreclosure rules and a digital housing toolkit.

The CFPB issued rules that establish temporary special foreclosure safeguards to provide borrowers time to explore their options, including loan modifications and selling their homes. The rules cover loans on principal residences, generally exclude small servicers, and will take effect on August 31, 2021. The CFPB indicated that the rules are intended to provide a "smooth and orderly transition" from pandemic-related foreclosure protections. The CFPB indicated the rules will:

- Give borrowers a meaningful opportunity to pursue loss mitigation options;
- Allow mortgage servicers to help borrowers faster through streamlined loan modifications; and
- Inform borrowers of their pre-foreclosure options.

With the rules in place, borrowers coming out of forbearance should have the option to resume regular mortgage payments, lower their monthly mortgage payments or sell their homes. In addition, a new Digital Housing Toolkit issued by the CFPB provides information and resources stakeholders for mortgage borrowers (and renters) struggling financially due to the pandemic. the Toolkit is part of the **housing assistance website**, developed in collaboration with the CFPB, Federal Housing Agency, Department of Veterans Affairs, U.S. Department of Housing and Urban Development and U.S. Department of Agriculture.

Bite #6 – The CFPB released supervisory highlights.

The CFPB released its annual Supervisory Highlights, covering 2020. The Highlights reflect four "particularly concerning findings" according to the CFPB:

- Consumer reporting companies may have accepted consumer data from unreliable furnishers;
- CFPB examiners found redlining that discouraged people in minority neighborhoods from applying for credit;
- CFPB examiners found foreclosure issues among mortgage servicers; and
- Student loan servicers may have misled consumers about Public Service Loan Forgiveness.

The CFPB also reported that there are currently non-public actions in the following areas: auto loan servicing, consumer reporting, debt collection, deposits, fair lending, mortgage origination and servicing, private student loan origination, payday lending, and student loan servicing.

Bite #5 – The CFPB settled with a debt relief company and its executives.

The CFPB settled with a debt relief company and its executives for alleged violations of the

Telemarketing Sales Rule and the Consumer Financial Protection Act. The CFPB alleged that the company advertised that its “debt validation” program used a legally vetted process to eliminate debt within 8 to 12 months. The company charged customers upfront fees of 40% of the debt amount owed, with an average cost of $21,000 per customer or $552 in monthly payments.

According to the CFPB’s investigation, the company failed to produce any evidence showing that it had invalidated, eliminated, or lowered any of its customers debt. Allegedly, the company also encouraged its customers to stop paying their debts, thereby causing customers to suffer additional consequences, such as collection lawsuits and damaged credit scores. The CFPB also alleged that the company falsely told customers that it could restore their credit scores and that it had a “credit restoration team.”

The settlement will ban the company and its executives from offering, selling, or marketing debt relief services, and order the company to pay approximately $30 million in consumer redress and a nearly $150,000 civil money penalty.

Bite #4 – The CFPB released research on commercial credit reporting.

The CFPB released research examining commercial and consumer credit for small businesses. According to the research, in an average quarter, over 2.8 million consumers have information in their personal consumer reports related to commercial or business credit. Between 2012 and 2019, an average of over 1,300 lenders, mostly banks and credit unions, furnished commercial credit information to a nationwide credit reporting agency each quarter. The analysis also showed various, seemingly inconsistent reporting strategies for consumer reporting regarding credit related to small businesses. Given the various reporting strategies, the CFPB indicated that individuals may not grasp the impact that business loans will have on their consumer credit report.

Bite #3 – The Federal Financial Institutions Examination Council updated its examiner guidance.

The Federal Financial Institutions Examination Council (FFIEC), which includes various federal financial regulators including the CFPB, issued a new booklet as part of its FFIEC Information Technology Examination Handbook series, titled “Architecture, Infrastructure, and Operations.” The booklet provides expanded guidance to help financial institution examiners assess information technology risks. The new booklet replaces an “Operations” booklet issued in July 2004. Updates reflect the changing technological environment and increasing need for security and resilience in information technology systems.

Bite #2 – The CFPB released a new complaint bulletin.

The CFPB released a new complaint bulletin covering several areas of concern related to the COVID-19 pandemic. Some highlights include the following:

- Some consumers reported facing homelessness, that according to the CFPB resulted from the negative impact of an eviction on those consumers’ credit history as reported by debt collectors;
- Consumers were, according to the CFPB, deprived of the full benefit of the economic impact payments as a result of overdraft practices at some financial institutions; and
- Student loan borrowers were unable to get the timely information and assistance they needed from their student loan servicer to get the full benefit of the variety of federal loan forgiveness,

cancellation, and discharge programs offered through the CARES Act.

Bite #1 – The CFPB prioritizes resources against racial bias in home appraisals.

The CFPB hosted a roundtable to take closer look at role of racial bias in home appraisals. The National Credit Union Administration, Office of the Comptroller of the Currency and Department of Housing and Urban Development (HUD) also participated in the roundtable. The agencies listened to civil rights activists, consumer advocates, local leaders, and other experts about how biases can play out in the appraisal process. The CFPB also indicated that it will participate in President Biden's new interagency initiative to address inequity in home appraisals, with HUD leading the effort. The CFPB also plans to dedicate additional resources to evaluate tools and approaches to address iniquities in home appraisals.

Bonus Bite: The CFPB issued a consent order against a fintech company.

On July 12, the CFPB issued a consent order against a non-bank fintech company for enabling contractors and other merchants to take out loans on behalf of thousands of consumers who allegedly did not request or authorize the loans. The CFPB claimed that the company engaged in unfair practices against their customers in violation of the Consumer Financial Protection Act of 2010. Alleged violations included:

- Processing and servicing unauthorized loans related to consumers who neither requested nor authorized them.
- Structuring the program in a manner that enabled unauthorized loans
- Failing to create and implement appropriate and effective controls during the loan application, approval, and funding processes;
- Failing to implement adequate merchant training and oversight; and
- Neglecting to effectively manage consumer complaints.

The order requires the company to refund or cancel up to $9 million in loans for customers impacted, pay a $2.5 million civil penalty, and implement new procedures to prevent these issues.

Still hungry?

Tune in August 18 for our next Bites of the Month webinar or request the recording of a past Bites.