CFPB Bites of the Month – March Top 10

March 31st, 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 March 17 webinar.

So what happened at the CFPB in the past month?

Bite #10 – The CFPB and State AGs sued an immigration services company.

The CFPB, in partnership with state attorneys general in Virginia, Massachusetts, and New York, sued an immigration services company for alleged deceptive and abusive acts and practices under the Dodd-Frank Act. The company provides bond services to detainees of U.S. Immigration and Customs Enforcement (ICE) whereby the detainees pay upfront fees and other costs in order to obtain a bond. The CFPB and the state AGs allege that the company:

- Coerced non-English speakers to sign predatory financial contracts in English;
- Deceived consumers about its relationship with immigration authorities;
- Strong-armed detainees with false debt collection threats; and
- Incentivized its employees to deceive and threaten.

The CFPB is seeking an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties.

Bite #9 – The CFPB report highlighted the housing crisis.

The CFPB issued a report that warns of widespread evictions and foreclosures once federal, state, and local pandemic protections come to an end, absent additional public and private action. Over 11 million families are behind on their rent or mortgage payments: 2.1 million families are behind at least three months on mortgage payments, while 8.8 million are behind on rent. According to the CFPB report:

- Black and Hispanic families are more than twice as likely to report being behind on housing payments than white families.
- While mortgage forbearance has dropped foreclosures to historic lows, 2.1 million homeowners are more than 90 days behind on payments and are likely to experience severe financial hardship when payments resume. Of these families, an estimated 263,000 families are seriously behind on

their mortgages and not in forbearance, putting them at higher risk of foreclosure once federal and state moratoria end.
- 9 percent of renters, who do not have the same protections or options as homeowners, report that they are likely to be evicted. Black and Hispanic households are more likely to report being at risk.
- 28 percent of manufactured home residents reported being behind on their housing payments, compared to 12 percent of single-family home residents, and 18 percent of residents in small-to-mid-sized multi-unit buildings.

Homeowners alone are estimated to owe almost $90 billion in missed payments, the first time so many families have been behind on their mortgages since the Great Recession.

Bite #8 – The Senate Banking Committee held a confirmation hearing for President Biden's CFPB Director nominee.

On March 2, the Senate Committee on Housing, Banking and Urban Affairs held a confirmation hearing for President Biden's nominee to lead the CFPB, FTC Commissioner Rohit Chopra. Commissioner Chopra faced questions on CFPB enforcement and supervision powers, and questions about the mortgage, student, and small-dollar lending industries, among others. Though confirmed unanimously as an FTC Commissioner, the Committee tied 12-12 in voting on whether to advance Chopra's nomination to a full Senate vote. Senator Pat Toomey (R-PA) cited Chopra's work at the CFPB, before his time at the FTC, as a reason for voting against him.

Bite #7 – CFPB Acting Director faced scrutiny.

Senator Toomey also wrote a letter to CFPB Acting Director Dave Uejio to express his concerns over recent CFPB policy statements. In response to one statement regarding the CFPB's priorities, Senator Toomey warned against a return to the CFPB's "regulation by blog post" under the Obama Administration. Other topics covered included:
- Warning against use of the disparate impact theory in fair lending matters in the wake of the Inclusive Communities case;
- Noting that the CFPB would be contravening its own prior statements if it were to conduct examinations specifically directed at the Military Lending Act;
- Reminding the CFPB that rental of real property is not a financial product or service;
- Reminding the CFPB that it cannot collect data on evictions as it directed its research office to do;
- Disagreeing with the CFPB's proposal to delay the mandatory compliance date for the QM rule (which it did); and
- Finding nothing in Dodd-Frank that would allow the CFPB to apply a disparate impact standard to company responses to unverified consumer complaints.

Senator Toomey closed his letter with several questions related to the above points and asked for responses by March 15.

Bite #6 – The CFPB proposed a compliance delay for the General Qualified Mortgage Rule.

The CFPB released a notice of proposed rulemaking (NPRM) to delay the mandatory compliance date of the General Qualified Mortgage (QM) final rule from July 1, 2021, to October 1, 2022. The CFPB is proposing to extend the compliance date to ensure homeowners struggling with the financial impacts of the COVID-19 pandemic have the options they need. According to the CFPB, extending the mandatory compliance date of the General QM final rule would:

- allow lenders more time to offer QM loans based on the homeowners' debt-to-income (DTI) ratio, and not solely based on a pricing cut-off; and
- give lenders more time to use the GSE Patch, which provides QM status to loans that are eligible for sale to Fannie Mae or Freddie Mac.

If the NPRM is finalized as proposed, the old, DTI-based General QM definition; the new, price-based General QM definition; and the GSE Patch (unless the GSEs exit conservatorship prior to October 1, 2022) would all remain available as long as the lender received the consumer's application prior to October 1, 2022. Comments on the NPRM must be received on or before April 5, 2021.

Bite #5 – The CFPB sued a payment processor.

The CFPB sued a payment processor and its CEO for allegedly engaging in unfair practices under the Consumer Financial Protection Act and deceptive practices under the Telemarketing Sales Rule. The CFPB alleged that the payment processor knowingly processed payments for client companies that tricked consumers, often older Americans, into purchasing expensive and unnecessary antivirus software or services. The company allegedly processed remotely created check payments for more than 100 client companies totaling more than $71 million. The CFPB alleges that the company continued to process the scammers' remotely created check payments for months and, in some cases, years, despite being aware of nearly 1,000 consumer complaints, several inquiries from police departments around the country, and return rates averaging more than 20%. The CFPB's complaint seeks injunctions, as well as damages, redress to consumers, disgorgement of allegedly ill-gotten gains, and the imposition of civil money penalties.

Bite #4 – The CFPB clarified ECOA coverage.

The CFPB issued an interpretive rule clarifying that the prohibition against sex discrimination under the Equal Credit Opportunity Act (ECOA) and Regulation B includes sexual orientation discrimination and gender identity discrimination. The prohibition covers discrimination based on actual or perceived non-conformity with traditional sex-based or gender-based stereotypes and discrimination based on social or other associations. In 2016, the CFPB indicated that the law supports arguments that the prohibition against sex discrimination also affords broad protection from discrimination based on an applicant's sexual orientation and gender identity under ECOA.

In June 2020, the Supreme Court issued its decision in Bostock v. Clayton County, Georgia, holding that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 encompasses sexual orientation discrimination and gender identity discrimination. In July 2020, the CFPB issued a Request for Information (RFI) to solicit comments and information to identify opportunities to prevent credit discrimination and encourage responsible innovation under ECOA and Reg. B, including whether the Bostock decision should affect how the CFPB interprets ECOA.

The CFPB's interpretive rule notes that it is consistent with the Bostock decision and supported by many of the public comments received in response to the ECOA RFI.

Bite #3 – The CFPB rescinded its abusiveness policy statement.

The CFPB rescinded its January 24, 2020, "Statement of Policy Regarding Prohibition on Abusive Acts or Practices." According to the CFPB, the 2020 Policy Statement was inconsistent with the CFPB's duty to enforce Congress's standard. Going forward, the CFPB intends to exercise its supervisory and enforcement authority consistent with the full scope of its statutory authority under the Dodd-Frank Act as established by Congress.

Congress defined abusive acts or practices in section 1031(d) of the Dodd-Frank Act. Paraphrasing Congress, that standard prohibits companies from:

- Materially interfering with someone's ability to understand a product or service;
- Taking unreasonable advantage of someone's lack of understanding;
- Taking unreasonable advantage of someone who cannot protect themselves; and
- Taking unreasonable advantage of someone who reasonably relies on a company to act in their interests.

The CFPB indicated that it intends to consider good faith, company size, and all other factors it typically considers as it uses its prosecutorial discretion.

Bite #2 – The CFPB sued a debt relief company.

The CFPB sued a student loan debt relief company, its owner, and manager for violations of the Telemarketing Sales Rule (TSR). The TSR prohibits sellers or telemarketers from requesting or receiving advance fees for any debt-relief service before renegotiating, settling, reducing, or otherwise altering the terms of at least one of a consumer's debts, and before a consumer has made at least one payment on such altered debt.

The company allegedly requested and received advance fees—as high as $795—for its services. The CFPB also alleges that a third-party defendant company received some portion of the advance fees without a legitimate claim to the funds. The fees allegedly cost approximately 3,300 consumers more than $3.5 million in advance fees. The CFPB is seeking injunctive relief, consumer redress, and civil money penalties against the company, its owner, and manager, and seeks to have the third-party defendant disgorge the funds it received from the company.

Bite #1 – The CFPB posts a video on mortgage forbearance to its Facebook page.

On March 15, the CFPB posted a short video entitled, "5 steps to ask for mortgage forbearance" to its Facebook page to help consumers who may not be able to make their monthly mortgage payments. The 5 steps outlined in the video are:

1. Find the contact information for the mortgage servicer on the most recent mortgage statement.

2. Contact the mortgage servicer. Tell them you are experiencing financial hardship because of the coronavirus pandemic. Calling the number on the statement helps to avoid scams.

3. Ask if you are eligible for protections under the CARES Act.

4. Ask the servicer what happens when the forbearance period ends.

5. After you have asked the servicer all of your questions, ask them to provide the agreement in writing to ensure it matches everything that was discussed.

The video concludes by encouraging consumers to visit its housing assistance site, for more detailed information or to find a housing counselor. The video can be found here.

Still hungry?

Tune in each month for our CFPB Bites of the Month webinars or request to view the recording of any of our previous webinars.