CFPB Bites of the Month – March Top 10

March 16th, 2022 | Justin B. Hosie and Eric L. Johnson

We thank you for reading our Top 10 and listening to our CFPB Bites of the Month webinars over the past two years. We are pleased to continue the series in 2022. In this month's article, we share some of our top "bites" for the prior month covered during the March 16 webinar.

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

Bite #10 – The CFPB launched a new way for the public to submit rule related petitions.

Starting on February 16, the CFPB made it easier for the public to engage with the agency and request regulatory changes by submitting petitions for rulemaking directly to the CFPB. The petitions will be posted on public dockets for review and comment. Members of the public can request that the agency pursue a new rule, amend an existing rule, or repeal a rule. Former government employees and individuals paid to influence the agency's rulemaking agenda will be asked to submit their petition for public inspection. The CFPB indicated that the public's petitions will help the CFPB identify consumer protection issues worthy of reform, rulemaking, clarification. The new process is based on recommendations issued by the Administrative Conference of the United States for improving transparency and ensuring that the public has a meaningful opportunity to petition the government.

Bite #9 – The CFPB weighs in on an FTC Settlement concerning business credit reports.

The FTC recently proposed a settlement with a company that provides business credit information to creditors. The FTC alleged that the company deceived small businesses about their role helping the businesses improve their credit reports. Under the settlement, the company agreed to provide prompt responses to complaints about inaccurate information, to restrict automatic subscription renewals, and to offer refunds to affected small businesses.

The FTC asked for comment on its proposed agreement, and the CFPB submitted a comment letter. The CFPB indicated that it is gathering data about whether and how small businesses are able to access credit. As a result, the CFPB and FTC indicated that they will be working together to ensure that small businesses are treated fairly when it comes to accessing loans.

Bite #8 – The CFPB issued a bulletin regarding student loan servicing.

The CFPB released a bulletin detailing student loan servicers' obligation to halt unlawful conduct. The bulletin focused on borrowers' eligibility and benefits under the Public Service Loan Forgiveness (PSLF) Waiver.

According to the CFPB, poor servicing practices have impeded many borrowers from making progress toward relief, such as by giving them inaccurate information about how they can become eligible for debt cancellation. The bulletin indicated that servicers should not misrepresent borrower eligibility or make deceptive statements to borrowers about PSLF.

The CFPB also indicated that it plans to prioritize student loan servicing enforcement and supervision resources in the coming year, with a specific focus on PSLF. The CFPB indicated that it will pay particular attention to whether servicers:

- Provide complete and accurate information about the PSLF Waiver when discussing PSLF or loan consolidation in any communications.
- Implement adequate policies and procedures to recognize when borrowers are expressing interest in PSLF or are otherwise eligible, and to direct those borrowers to appropriate resources.
- Promote the benefits of the PSLF Waiver to borrowers who express interest or whose files otherwise demonstrate their eligibility.

To prevent unfair, deceptive, or abusive acts or practices, student loan servicers should consider enhancing their compliance management systems to develop and implement policies and procedures so that all borrowers receive accurate and complete information about the PSLF Waiver and representatives facilitate their enrollment.

Bite #7 – The CFPB filed a status report in a Section 1071 lawsuit on small business lending data collection rulemaking.

The CFPB filed a status report with the U.S. District Court for the Northern District of California in connection with the lawsuit brought by the California Reinvestment Coalition, National Association for Latino Community Asset Builders and two individual plaintiffs. The status report reiterates that the CFPB met the deadlines under a Stipulated Settlement Agreement with the plaintiffs.

Bite #6 – The CFPB addressed special purpose credit programs.

The CFPB joined seven other federal agencies in issuing a statement encouraging lenders to explore opportunities to increase credit access through special purpose credit programs (SPCPs) to better serve historically disadvantaged individuals and communities.

Under Federal law, lenders are permitted, under certain conditions, to design and implement SPCPs to extend credit to a class of persons who would otherwise be denied credit or would receive it on less favorable terms. In particular, the Equal Credit Opportunity Act (ECOA) and Regulation B permit creditors to offer or participate in SPCPs to meet special social needs through any:

- Credit assistance program authorized by federal or state law for the benefit of an economically disadvantaged class of persons;
- Credit assistance program offered by a non-for-profit organization for the benefit of its members or an economically disadvantaged class of persons; or
- SPCP offered by a for-profit organization, or in which such an organization participates to meet special social needs, if it meets certain standards prescribed in regulation by the CFPB.

Previously, the CFPB issued guidance that helped to explain how lenders can offer or participate in a SPCP. In addition, the Department of Housing and Urban Development recently issued guidance confirming SPCPs for real estate loans or credit assistance, that are compliant with ECOA and Regulation B, generally would not violate the Fair Housing Act.

Bite #5 – The CFPB outlined options to prevent algorithmic bias in home valuations.

The CFPB outlined options to ensure accurate and fair home valuation computer models. Specifically, the CFPB, along with its federal partners, intends to:

- Ensure a high level of confidence in the estimates produced by automated valuation models;
- Protect against the manipulation of data;
- Seek to avoid conflicts of interest;
- Require random sample testing and reviews; and
- Account for any other such factor that the agencies determine to be appropriate.

According to the CFPB, automated valuation models can pose fair lending risks to homebuyers and homeowners. The CFPB indicated that it is particularly concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further perpetuate disparities.

Bite #4 – The CFPB moved to thwart "illegal" auto repossessions.

The CFPB issued a compliance bulletin addressing alleged conduct, including the illegal seizure of cars, sloppy record keeping, unreliable balance statements, and ransom for personal property. To head off the risk of wrongful repossessions, the CFPB indicated that it is taking action against illegal repossessions and sloppy servicing of auto loans. The bulletin describes instances, in examinations and enforcement actions, where servicers violated the Dodd-Frank Wall Street Reform and Consumer Protection Act's prohibition against unfair, abusive, or deceptive acts and practices such as:

- Illegally seizing cars;
- Sloppy record keeping;
- Unreliable balance inquiries; and
- Ransom for personal property

Last week, eleven Republican members of the House Financial Services Committee sent Director Chopra a letter regarding the Director's recent blog posts on vehicle finance. The letter specifically noted that the CFPB's equating of repossessing a vehicle with theft is a "gross mischaracterization." The letter also noted that the CFPB's examples of evidence or unlawful repossessions occurred well before the pandemic and the increase in automobile prices. The letter asks Director Chopra to respond to several questions, including whether the CFPB has "any evidence that the illegal practices cited in these enforcement actions are widespread across the auto lending industry?"

Bite #3 – The CFPB addresses medical bills on credit reports.

The CFPB released a report claiming that the U.S. healthcare system is supported by a billing, payments, collections, and credit reporting infrastructure where mistakes are common, and where patients often have difficulty getting these errors corrected or resolved. The report indicates that medical bills are often incurred through unexpected and emergency events, are subject to opaque pricing, and involve complicated insurance or charity care coverage and pricing rules. According to the CFPB, medical bills placed on credit reports can result in reduced access to credit, increased risk of bankruptcy, avoidance of medical care, and difficulty securing employment, even when the bill itself is inaccurate. The report indicates that these repercussions are especially acute for people from Black and Hispanic communities, as well as people with low incomes, veterans, older adults, and young adults of all races and ethnicities.

The CFPB said it plans to take action in order to ensure that the consumer credit reporting system is not used coercively against patients and their families to force them to pay questionable medical bills. Specifically, the CFPB intends to hold credit reporting companies accountable, work with federal partners to reduce coercive credit reporting; and determine whether unpaid medical billing data should be included in credit reports.

Bite #2 – The CFPB released its No FEAR Act annual report for FY 2021.

The CFPB released its Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Annual Report of Fiscal Year (FY) 2021. The report summarizes the CFPB's EEO complaint activity, most significant accomplishments in its EEO program; and its commitment to abide by civil rights and whistleblower protection laws and merit systems principles, and to promote accountability.

Bite #1 – The CFPB invites worker organizations and labor unions to share experiences.

The CFPB invited labor organizations to share their members' experiences at a roundtable event. Participants claimed that workers are increasingly subject to specific consumer financial products or services that can leave them vulnerable. Participants also reported that the opportunity for abuse is significantly heightened for many workers who have been involved in the justice system, are immigrants, or are geographically isolated. The two themes that emerged from the roundtable were:

- Employer-driven debt; and
- Surveillance technology and sale of personal data.

As a result, the CFPB announced that it is looking into risks related to the consumer financial products or services that employees face in the workplace.

Still hungry?

Join us for our next CFPB Bites of the Month: A Basket of Regulations on April 20. If you missed any of our previous Bites, request a replay on our website.