



CFPB Bites of the Month – November Top 10

November 20th, 2020 | [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 CFPB to be considered by financial services providers. In this month's article, we share our top "bites" covered during the November 18 webinar. We hope you can take this article "to-go" and dive in for another bite later.

So what happened at the Consumer Financial Protection Bureau (CFPB) this month?

Bite #10 – Issued a final rule amending its Disclosure of Records and Information Regulation

The CFPB issued a final rule amending its Disclosure of Records and Information Regulation. The rule seeks to balance the Bureau's need to protect confidential personal, business, supervisory, and investigative information against the need to use and disclose certain information in the course of the Bureau's work or the work of other agencies with overlapping statutory or regulatory authority. Specifically, the rule addresses the confidential treatment of information that the Bureau obtains from persons in connection with the exercise of its authorities under Federal consumer financial laws.

The final rule:

- improves clarity and transparency by revising the rules related to the Bureau's information practices;
- improves Bureau relationships with agency partners and others, increases clarity and eliminates unnecessary hurdles to collaboration;
- improves the Bureau's ability to protect its confidential information; and
- provides guidance to industry stakeholders on how the Bureau interprets its own rules.

Bite #9 – Released the quarterly consumer credit trends report

The CFPB released the latest quarterly consumer credit trends report, which explores the prevalence of actual payment information in consumer credit reporting. This is part of a series of reports of consumer credit trends produced by the CFPB using a longitudinal, nationally representative sample of approximately five million de-identified credit records maintained by one of the three nationwide consumer reporting agencies.

Here are the main findings in the report:

- Across the three most common installment loan types (auto loans, student loans, and mortgages), shares of credit accounts with actual payment amount information furnished have generally

trended upward, and by March 2020, contained actual payment information in more than 90 percent of credit accounts.

- However, shares of revolving and credit card accounts with actual payment information furnished significantly declined over the same time period.
- Compared to actual payment, other data variables in a consumer's credit report, such as balance amount and credit limit, are consistently furnished across loan types.
- Credit card issuers typically either furnish actual payment information for nearly all accounts or not at all.

Bite #8 – Issued a no-action letter on small-dollar lending

The CFPB granted a no-action letter (NAL) to Bank of America, N.A. regarding certain small-dollar credit products. NALs provide increased regulatory certainty that the Bureau will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances. Bank of America's NAL application is based on the NAL Template issued by the Bureau in May 2020, which was designed to further competition in the small-dollar lending space.

The CFPB also submitted a Paperwork Reduction Act (PRA) notice related to its research efforts to identify information that could be disclosed to consumers during the payday loan process to help them make better-informed decisions. The research will include consumer interviews (estimated to be completed by September 2021) that may be used to determine whether to move forward with a rulemaking related to payday loan disclosures.

Bite #7 – Settled with a national bank

The CFPB settled with a national bank over allegations that the bank reported inaccurate mortgage data in violation of the Home Mortgage Disclosure Act (HMDA), Regulation C, and the Consumer Financial Protection Act. The bank is subject to a prior consent order for similar violations.

Findings:

- The CFPB found that the reported data—from 2016 and 2017—included significant errors, with some samples having error rates as high as 40%.
- The errors in the 2016 data were caused by a lack of appropriate staff, insufficient staff training, and ineffective quality control.
- The errors in the 2017 data were directly related to weaknesses in the bank's compliance management system, specifically in the areas of board and management oversight, monitoring, and policies and procedures.

The bank must pay a \$200,000 civil money penalty and develop and implement an effective compliance management system to prevent future violations.

Bite #6 – Sued a debt-relief business

The CFPB sued a student loan debt-relief business and its owners for alleged violations of the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act (CFPA). The CFPB

alleged that the business charged upfront fees in its telemarketing campaigns to entice customers, in violation of the TSR's prohibition against collecting fees for debt-relief services sold through telemarketing before the terms of the debt are altered or settled, and the consumer has made at least one payment under the newly altered debt. The CFPB further alleged that the business deceptively induced consumers to sign up for debt relief services by misrepresenting to them that the business's debt settlement company—which does not make loans—had rejected those consumers' loan applications, in violation of the CFPB. The CFPB also alleged that the business's owners substantially assisted in these violations.

Bite #5 – Settled with a debt collector

The CFPB settled with a debt collector that specializes in collecting debt on behalf of telecommunications companies and furnishes information to consumer reporting agencies (CRAs) about consumers' credit for violations of the Fair Credit Reporting Act, Regulation V, and the Consumer Financial Protection Act.

The CFPB found:

- The debt collector furnished information to CRAs that it knew or had reasonable cause to believe was inaccurate and failed to report to CRAs an appropriate date of first delinquency on certain accounts.
- The debt collector failed to:
 - conduct reasonable investigations of disputes made by consumers both to the debt collector and to CRAs about furnished information and failed to conduct investigations of disputes in a timely manner; and
 - send required notices to consumers about the results of such investigations and failed to establish, implement, and update its policies and procedures regarding its furnishing of consumer information to CRAs.

The consent order imposes a \$500,000 civil money penalty and requires the debt collector to take certain steps to prevent future violations.

Bite #4 – Settled with a mortgage company

The CFPB settled with a mortgage company that advertised VA-guaranteed loans through direct mail primarily to military servicemembers and veterans. The action is the 9th case stemming from a Bureau sweep of investigations of multiple mortgage companies that use deceptive mailers to advertise VA-guaranteed mortgages.

The company's advertisements allegedly:

- misrepresented credit terms by stating credit terms that the company was not actually prepared to offer to consumers, including misrepresenting the annual percentage rate applicable to the advertised mortgage;
- misrepresented the existence, nature, or amount of cash or credit available to consumers, and used misleading rhetorical questions;
- failed to properly disclose credit terms required by Regulation Z, such as the amount of each

payment and time period of payments associated with consumers' repayment obligations over the full term of the loan;

- misleadingly indicated that its mortgage products could help consumers eliminate debt; and
- made misleading comparisons involving actual or hypothetical loan terms in advertisements.

The company must pay a civil money penalty of \$1.8 million and take actions to prevent future violations.

Bite #3 – Sued a small-dollar lender and its CEO

The CFPB sued a small-dollar lender and its CEO for allegedly engaging in deceptive acts or practices in taking deposits from and offering credit to consumers. The lender offered short-term, high-interest personal loans totaling over \$30 million, typically to drivers who work with ride-share companies, ranging from \$100 to \$500 each and repayable in 15 daily installments. The Bureau alleges that the lender deceptively markets its loans as having an APR of 440% when the actual APRs are about 975%. The lender takes deposits from consumers to fund the loans, guaranteeing a 15% annual percentage yield on the deposits.

The CFPB alleges that the lender misrepresented that:

- the deposits were held at FDIC-insured institutions;
- the rate of return was guaranteed; and
- consumers were depositing funds every minute.

The CFPB also alleged that the loans violated Florida criminal usury law and were uncollectable, creating substantial risk that consumers would not be able to withdraw their deposited funds.

Bite #2 – Settled with a loan repayment company

The CFPB issued a consent order against a loan repayment company, finding that the company's disclosures of its loan payment program contained misleading statements in violation of the Consumer Financial Protection Act's prohibition against deceptive acts or practices. The company operates a loan payment program for auto loans that deducts payments from consumers' bank accounts every two weeks and then forwards these payments every month to the consumers' lenders. The company provided consumers individualized "benefits summaries" that purported to state a specific amount of interest savings or other money savings consumers would get by enrolling in the repayment Plan, but the company's fees would allegedly ordinarily exceed the savings. According to the CFPB, this created the misleading impression that consumers would save money using its product.

The consent order imposes a judgment against the company requiring it to pay \$7.5 million in consumer redress and requirements to prevent future violations.

Bite #1 – Issued its final debt collection rule (finally)

After more than 7 years of deliberation and more than 14,000 comments, the CFPB issued a final rule to restate and clarify prohibitions on harassment and abuse, false or misleading representations, and unfair practices by debt collectors when collecting consumer debt.

The rule clarifies:

- how consumers may set limits on debt collection communications to reflect their preferences and the limits on communicating with third parties about a consumer's debt; and
- how the protections of the Fair Debt Collection Practices Act (FDCPA), which was passed in 1977, apply to newer communication technologies, such as email and text messages.

The CFPB implemented the feedback it received into the rule, including:

- establishing a presumption on the number of calls debt collectors may place to reach consumers on a weekly basis; and
- not finalizing the proposed safe harbor for debt collectors against claims that an attorney falsely represented the attorney's involvement in the preparation of a litigation submission.

The Bureau intends to issue a second debt collection final rule focused on consumer disclosures in December 2020. Our partners, [Chuck Dodge](#) and [Anastasia Caton](#) addressed this rulemaking in a recent Compliance Coffee Break, and you can request a replay of that presentation, [here](#).

Tune in each month for our [CFPB Bites of the Month webinars](#) and keep an eye out for the Top 10 roundups that follow.