

CFPB Bites of the Month - 2022 Annual Review - Mortgage

January 12, 2023 | [Joseph \("Jed"\) E. Mayk](#), [Eric L. Johnson](#) and [Justin B. Hosie](#)

In this article, we share a timeline of our monthly "bites" for 2022 applicable to the Mortgage industry.

So, what happened in 2022?

1. The CFPB issued a joint letter to The Appraisal Foundation

On February 4, 2022, the CFPB joined senior staff from across the federal government to submit a joint letter to The Appraisal Foundation (TAF) emphasizing that federal prohibitions against discrimination under the Fair Housing Act and Equal Credit Opportunity Act extend to appraisals. The CFPB expressed an ongoing concern that some appraisers may be unaware of these federal discrimination bans and urged TAF to provide clear guidance on the existing legal standards as they relate to appraisal bias. The CFPB indicated that it was deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies.

The CFPB indicated that it was carefully reviewing the findings of a report identifying biases and barriers funded by the Federal Financial Institutions Examination Council's Appraisal Subcommittee. According to the CFPB, the report raises serious concerns regarding existing appraisal standards and provides recommendations with respect to fairness, equity, objectivity, and diversity in appraisals and the training and credentialing of appraisers.

2. The CFPB addressed special purpose credit programs

On February 22, 2022, 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 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.

3. The CFPB outlined options to prevent algorithmic bias in home valuations

On February 23, 2022, 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, as flawed versions of these models could digitally redline certain neighborhoods and further perpetuate disparities.

4. The CFPB encouraged servicers to participate in Homeowner Assistance Fund (HAF) programs and provide training regarding HAF programs

On March 14, 2022, the CFPB announced that it was encouraging servicers to participate in Homeowner Assistance Fund (HAF) programs and provide training regarding HAF programs. The HAF is a federal program that provides money to states, tribes, and territories to assist homeowners with housing-related costs. While servicer participation in HAF programs is voluntary, the CFPB believes that HAF funds can prevent avoidable foreclosures. Servicers participating in HAF programs must maintain policies and procedures reasonably designed to ensure that they properly evaluate loss mitigation applications. This includes:

- Providing accurate information about loss mitigation options, such as those related to HAF, available to a borrower from the owner or assignee of the loan;
- Ensuring that borrowers are not improperly referred to foreclosure, for example, especially while a servicer is working with a borrower during the HAF application process or waiting for payment of HAF funds; and
- Providing borrowers accurate information about the loss mitigation process, including, when applicable, accurate information about the servicer's participation in the HAF program and how

to communicate with the servicer throughout the HAF application process.

The CFPB indicated that it is closely monitoring servicer conduct for compliance with all applicable federal consumer financial laws, plus assisting consumers with resolving delinquencies and preventing avoidable foreclosures. This includes a heightened review of mortgage servicing complaints, including complaints about challenges working with servicers to use HAF funds.

The CFPB also encouraged servicers to provide borrowers with sufficient time to move through the HAF application process before proceeding with foreclosure. The CFPB warned that foreclosing on a homeowner while a HAF application is pending undercuts the congressional purpose in allocating this money, increases avoidable foreclosures, and will merit increased scrutiny.

5. The CFPB Released 2021 HMDA data on mortgage lending

On March 24, 2022, the CFPB published its Home Mortgage Disclosure Act (HMDA) Modified Loan Application Register (LAR) data for 2021, addressing approximately 4,316 HMDA filers. To increase public accessibility, the data is now made available online. According to the CFPB, the 2021 HMDA data will be available in other forms to provide users insights into the data. These will include:

- a nationwide loan-level dataset with all publicly available data for all HMDA reporters,
- aggregate and disclosure reports with summary information by geography and lender, and
- a HMDA Data Browser to allow users to create custom datasets, reports, and data maps.

The CFPB indicated that it will also publish a Data Point article highlighting key trends in the annual data.

6. The CFPB provided Spanish-language disclosures

On May 11, 2022, the CFPB announced that it published Spanish-language disclosures. To help financial institutions better support Spanish-speaking communities, the CFPB unveiled Spanish translations of home mortgage origination documents and early intervention clauses for mortgage servicers. Spanish disclosures also included prepaid card model forms, adverse action sample notices, credit reporting notices, and the debt collection model validation notice. The CFPB encouraged the use of the translations alongside the corresponding English-language disclosures when working with Spanish-speakers.

7. Mortgage company to pay more than \$22 Million

On July 27, 2022, the CFPB and DOJ filed a complaint and proposed settlement order to resolve allegations against a mortgage originator. The CFPB and DOJ allege that the originator engaged in unlawful discrimination on the basis of race, color, or national origin against applicants and prospective applicants, including by (i) redlining majority-minority neighborhoods in the Philadelphia Metropolitan Statistical Area and (ii) discouraging prospective applicants from applying for credit in violation of the Equal Credit Opportunity Act, Regulation B, and the Consumer Financial Protection Act. The DOJ also alleges that the mortgage company violated the Fair Housing Act.

According to the CFPB's complaint, the company's loan officers sent and received emails containing

racial slurs and racist content. The company also allegedly avoided sending loan officers to market in majority-minority neighborhoods, and developed marketing that discouraged and ignored minority mortgage loan applicants. The company was required to invest \$18.4 million in a loan subsidy program under which the mortgage company will contract with a lender to increase the credit extended in majority-minority neighborhoods in the Philadelphia MSA and make loans under the loan subsidy fund. That lender must also maintain at least four licensed branch locations in majority-minority neighborhoods in the Philadelphia MSA. The company would also be required to fund targeted advertising to generate applications for credit from qualified consumers in majority-minority neighborhoods in the Philadelphia MSA and take other remedial steps to serve the credit needs of majority-minority neighborhoods in the Philadelphia MSA. The company was also required to pay a civil money penalty of \$4 million.

8. CFPB Annual Report reveals an end to the refinancing boom

On September 19, 2022, the CFPB released its annual report on residential mortgage lending activity and trends. The report shows a shift from refinance loans in 2020 to home purchase loans in 2021, with a greater share of home purchase loans going to Asian, Black, and Hispanic white borrowers relative to the share of home purchase loans for non-Hispanic white borrowers. This year's analysis also found a decrease in mortgage lending institutions reporting HMDA data in 2021 and found that the increase in mortgage origination was driven by home purchase loans, as refinance loans fell.

9. CFPB Considers Permanently Restoring Covid Mortgage Protections

On September 22, 2022, the CFPB issued a request for information seeking input on ways to facilitate refinances for consumers, especially those consumers with smaller loan balances. The CFPB also sought input on ways to reduce risks for consumers who experience disruptions in their financial situation that could interfere with their ability to remain current on their mortgage payments. Specifically, the CFPB requested information about targeted and streamlined refinance programs, innovative refinancing products such as automatic refinancing, and automatic forbearance and long-term loss mitigation assistance. The comment period closed on November 28, 2022.

10. Changes to HMDA's Closed-End Loan Reporting Threshold

On December 6, 2022, the CFPB addressed changes to its closed-end loan reporting threshold under the Home Mortgage Disclosure Act (HMDA). Back on September 23, 2022, the U.S. District Court for the DC Circuit issued an order vacating the 2020 HMDA Final Rule as to the loan volume reporting threshold for closed-end mortgage loans. The decision changed the threshold for reporting data on closed-end mortgage loans to 25 established by the 2015 HMDA Final Rule, rather than the 100-loan threshold set by the 2020 HMDA. The CFPB acknowledged that financial institutions affected by this change may need time to implement or adjust policies, procedures, systems, and operations to come into compliance with their reporting obligations.

As a result, the CFPB indicated that it did not intend to initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data collected in 2022, 2021, or 2020 for institutions that: (i) are subject to the CFPB's enforcement or supervisory jurisdiction that meet Regulation C's other coverage requirements, and (ii) originated at least 25 closed-end mortgage loans in each of the 2 preceding calendar years but fewer than 100 closed-end mortgage loans in either or both of the 2 preceding calendar years.

11. CFPB's Fall 2022 Supervisory Highlights Find Junk Fees and COVID-19 Protection Issues

On November 16, 2022, the CFPB announced that it had released its Fall 2022 Supervisory Highlights addressing examinations involving numerous industries. The CFPB highlighted inaccurate information in credit reporting, allegedly illegal "pay-to-pay" fees in mortgage servicing, unfair and deceptive practices in auto financing, and mishandling of Covid relief. With respect to mortgage servicing, the CFPB claims that customer service representatives charged phone payment fees but did not address those fees with borrowers. Concerning Covid relief, some mortgage servicers allegedly failed to timely provide homeowners with CARES Act forbearances and failed to otherwise comply with CARES Act requirements.

12. CFPB Enters into Consent Order with Non-Bank Mortgage Servicer

On November 17, 2022, the CFPB announced that it had entered into a consent order with a non-bank mortgage servicer for alleged deceptive acts or practices in connection with mortgage forbearances. The CFPB claims that the servicer failed to implement protections such as forbearances during the COVID-19 health emergency. The CFPB also claims that the servicer misled certain homeowners seeking a forbearance under the CARES Act into paying improper late fees, deceived consumers about forbearance and repayment options, and inaccurately reported forbearance status to credit reporting companies. The consent order requires the servicer to conduct an audit and refund improperly charged late fees to consumers, address compliance management deficiencies, and pay \$5.25 Million in fines.

13. CFPB Issues Updated HELOC Brochure

On December 16, 2022, the CFPB announced that it had issued an update to the "What you should know about home equity lines of credit" brochure (HELOC Brochure). New versions of the HELOC Brochure in English and Spanish can be found here. Creditors were permitted, at their option, to immediately begin using the revised HELOC Brochure, or a suitable substitute, to comply with the requirements under 12 CFR 1026.40(e). Creditors with existing stock of the prior brochure may continue using the prior version until the existing stock is exhausted. When reprinting the HELOC brochure, the most recent version should be used.

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