HUDSON COOK

CFPB Bites of the Month - 2024 Annual Review - Mortgage

February 6, 2025 | Joseph ("Jed") E. Mayk, Eric L. Johnson, Justin B. Hosie and Kristen Yarows

In this article, we share a timeline of our monthly "bites" for 2024 applicable to the mortgage industry. There was also a flurry of last-minute action by the CFPB in the mortgage space in the waning days of the Biden Administration, which is covered in our most recent monthly Bites. We expect to see a significant slowdown in mortgage guidance from the CFPB in the coming year (e.g., FAQs, Circulars, Advisory Opinions, etc.). It is also questionable whether the CFPB will finalize the pending mortgage servicing rule, at least in its current form.

Bite 23: CFPB Director Issues Statement at Housing Conference

On September 9, 2024, Director Chopra spoke at a housing conference about streamlining the refinancing process for consumers. Specifically, Director Chopra spoke to the National Housing Conference on the mortgage refinancing market, certain obstacles, and the steps that the CFPB and the market can take. Director Chopra noted that mortgage interest rates in October of 2023 hit highs that we have not seen since 2000. He also said that some analyses show that in past refinancing cycles, minority homeowners were less likely to benefit, even when considering differences in income, home equity, and credit profiles. Director Chopra noted that the CFPB is concerned that closing costs can prove to be a significant obstacle to refinancing. According to Director Chopra, the CFPB is closely watching the implementation of new mortgage technology that may help lenders lower costs and reach more individuals who may qualify for refinancing. Additionally, he indicated that the CFPB is exploring whether it should make certain changes to the existing mortgage regulations to streamline the refinancing process and reduce closing costs.

Bite 22: CFPB Director Speaks at Center for American Progress Housing Summit

On September 19, 2024, CFPB Director Chopra spoke at a half-day Housing Summit in Washington D.C., hosted by the Center for American Progress. Senators Tina Smith and Representative Alexandria Ocasio-Cortez were the Summit's keynote speakers. Director Chopra discussed the Federal Reserve's vote to cut the target federal funds rate by 0.5 % and the impact that refinancing mortgages can have on homeowners. Director Chopra said, "With lower rates expected on the horizon, we see a path for significant savings for the millions holding a mortgage with an interest rate above five percent, and especially positive for the seven million mortgages with rates greater than six percent." However, he indicated that the CFPB is concerned that many homeowners, such as minority homeowners, will not benefit from the lower rates, either by choice or by circumstance. Director Chopra said that the CFPB is exploring whether it should amend existing mortgage regulations to streamline the refinancing process and to reduce closing costs. Director Chopra also spoke on a "looming crisis" facing homeowners throughout the country with cancellation and steep premium increases on homeowners insurance. He talked about this trend which started in California, Florida, and Louisiana but is now spreading across the country. He believes this problem will require greater involvement from financial regulators, housing policymakers, and fiscal authorities at the state and federal level, and suggested possible approaches to tackle the problem.

Bite 21: CFPB Asks for Public Input on Closing Costs and Fees

On March 8, 2024, the CFPB announcedthat it is seeking consumer input and market research to better understand how closing costs impact households and families. According to the CFPB, total loan costs for mortgage loans, which include origination fees, appraisal and credit report fees, title insurance, discount points, and other fees rose sharply, increasing by 21.8% on home purchase loans from 2021 to 2022, to a median amount of nearly $6,000. The CFPB said that these fixed costs do not fluctuate based on loan amount, and therefore have an outsized impact on borrowers with smaller mortgages. According to the CFPB, high closing costs increasing due to a lack of competition in the market. The CPFB noted that it will continue to analyze data and consumer input, which it may use to issue rules and guidance, while continuing to use its supervision and enforcement tools in this industry.

Bite 20: CFPB Launches Inquiry Into "Junk Fees" in Mortgage Closing Costs

On May 30, 2024, the CFPB announced that it launched an inquiry into so called "junk fees" in mortgage closings, which the CFPB claims increase closing costs. The inquiry includes a Request for Information Regarding Fees Imposed in Residential Mortgage Transactions. The request seeks input about how mortgage closing costs may be inflated and constraining the mortgage lending market. The CFPB asked which fees are subject to competition, how fees are set, who profits from the fees, how fees are changing, and how they affect consumers. Comments are due on or before August 2, 2024. The announcement came 10 days after Director Chopra addressed the Mortgage Bankers Association, focusing on credit reports and credit scores on May 20, 2024.

Bite 19: CFPB Receives Petition to Treat Housing Rental Leases as Credit

On August 12, 2024, a consumer advocacy group submitted a petition to the CFPB requesting rulemaking under the Equal Credit Opportunity Act to define residential real estate leases as "credit" and landlords as "creditors" under the ECOA for two limited purposes. One is related to the adverse action requirement in Section 1691(d) of the ECOA. The consumer advocacy group argued that extending the ECOA notice requirements to rental housing could help improve tenants' chances to be approved for the next rental application by potentially exposing errors in credit screening reports or weaknesses that they can address ahead of time. Finally, the consumer advocacy group argued that the CFPB has the authority to advance ECOA's anti-discrimination objectives.

Bite 18: CFPB Releases Data Spotlight: Trends in Discount Points

On April 5, 2024, the CFPB's Office of Mortgage Markets released a data spotlight on its analysis of data collected pursuant to the Home Mortgage Disclosure Act (HMDA). The CFPB used quarterly data to look at characteristics of homeowners that paid discount points over the past few years. According to the CFPB's data, most recent borrowers, including nearly 90% of cash out refinance borrowers, paid discount points. More borrowers paid discount points as interest rates rose over this period, and borrowers with lower credit scores were more likely to pay discount points. According to the CFPB, discount points may provide advantages to some borrowers, but the financial tradeoffs involved in discount points are complex and may create risks for consumers. The data spotlight claims that lenders may be offering borrowers with low credit scores mortgages with discount points to ensure that these borrowers qualify for a mortgage by lowering their monthly payments, and therefore lowering debt-to-income ratio. The CFPB says it will continue to analyze the data to understand the factors driving the increase in discount points and how borrowers end up paying for them.

Bite 17: The CFPB Announces 2023 Data on Mortgage Lending

On July 11, 2024, the CFPB and federal banking agencies announced publication of the 2023 Home Mortgage Disclosure Act ("HMDA") data. The data covered 2023 mortgage lending transactions reported under the HMDA. The CFPB noted that for 2023, the number of reporting institutions increased by about 14.6% from 4,460 in the previous year to 5,113. For 2023, the data include information on 10 million home loan applications, a decrease from the 14.3 million reported in 2022. The share of mortgages originated by non-depository, independent mortgage companies accounted for 63.1% of first lien, one- to four-family, site-built, owner-occupied closed-end home-purchase loans in 2023, up from 60.2% in 2022. In 2023, Black or African American applicants were denied for first lien, one- to four-family, site-built, owner-occupied conventional, closed-end home purchase loans at a rate of 16.6%. Hispanic-White applicants had a denial rate of 12.0%. Asian applicants were denied in 9% of transactions. Non-Hispanic-White applicants were denied in 5.8% of transactions.

Bite 16: CFPB Issues Report on Neighborhoods and Mortgages

On December 21, 2023, the CFPB announced that staff have analyzed recent HMDA data to explore how the numbers of mortgage originators per capita varied on the neighborhood level. They also analyzed how that variation could impact lending outcomes. According to the CFPB, the data suggests that there is wide variation across neighborhoods in originators per capita, and that this measure was correlated with neighborhood-level characteristics like poverty, income, internet access, and racial and ethnic composition. Different financial institution types responded to these variations differently; credit unions originated a similar number of loans across all percentiles of originators per capita, bank originations fell with originators per capita, and originations by non-depository institutions increased with originators per capita. The report showed that even with groups of transactions that posed a similar credit risk, loan applications in neighborhoods with a larger number of originators per capita were less likely to be rejected. Additionally, consumers that took out mortgages in neighborhoods with more originators paid lower origination charges and lower total loan costs.

Bite 15: Director Chopra Submits Letter on Appraisal Foundation

On March 18, 2024, Director Chopra issueda public letter to other federal financial regulators after a recent hearing hosted by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC). The letter concerned the Appraisal Foundation, which is a not-for-profit corporation that sets qualifications and standards for appraisers. Congress established the FFIEC's Appraisal Subcommittee in 1989 to monitor and review the Appraisal Foundation. Last year, the Subcommittee started a series of hearings focused on appraisal bias. Following a hearing on February 13th, Director Chopra claimed that the Appraisal Foundation serves as a lawmaking body but is not accountable to the public or subject to competitive market forces. Director Chopra alleged deficiencies in the foundation's conflict of interest policies, an insular governance structure that favors private interests, and a lack of transparency. Director Chopra stated that the foundation plays a controlling role in the key issues that may contribute to appraisal bias.

Bite 14: CFPB Issues New Spring 2024 Supervisory Highlights

On April 24, 2024, the CFPB released its newest issue of the Supervisory Highlights. This issue focused on mortgage servicing.The CFPB's examiners indicated supervised mortgage servicers were charging illegal "junk fees" among other violations, and that because homeowners cannot switch their mortgage service providers, the CFPB takes extra care to detect and deter violations of law. According to the CFPB, some servicers illegally charged or obscured prohibited fees, and charged homeowners fees during the pandemic that servicers should have waived. In addition, some servicers missed deadlines to pay property tax and home insurance, leading some borrowers to incur penalties. The CFPB also noted that some servicers deceived homeowners about their repayment options or the status of their accounts. In response to these findings, the CFPB indicated that mortgage servicers are taking corrective actions, including making changes to their practices and providing remediation for fee-related violations.

Bite 13: Statement of Principles on Appraisal Bias

On February 12, 2024, the Federal Financial Institutions Examination Council (FFIEC) issued a statement of principles to its member entities, which include the CFPB along with the other prudential regulators like the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, National Credit Union Administration, and the FFIEC's State Liaison Committee. The FFIEC noted that these principles were being communicated to mitigate risks that may arise due to potential discrimination or bias in appraisal and evaluation practices and to promote credible valuations. The statement focused on consumer compliance and safety and soundness examination principles. The FFIEC noted that valuation discrimination and bias can cause consumer harm, lead to violations of law, have a detrimental impact on communities, undermine an institution's credit decisions, and negatively impact its safety and soundness. Lastly, according the FFIEC, this statement of principles should not be interpreted as new guidance to supervised institutions or as evidence of an increased focus on appraisal practices. Rather, the statement is meant to offer transparency into the examination process and to support risk-focused examination work.

Bite 12: CFPB Finalizes Interagency Guidance on ROVs

On July 18, 2024, the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and CFPB issued interagency guidance on reconsiderations of value ("ROVs") of residential real estate transactions. ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to *reassess* the value of residential real estate. The guidance advises on policies and procedures that financial institutions may implement to permit consumers to provide information that may not have been considered during an appraisal or if deficiencies are identified. The guidance offers examples of policies and procedures to help identify, address, and mitigate discrimination risk. The agencies largely finalized the guidance as initially proposed back in July 2023, with some edits based on the public comments received, including clarifying the guidance's scope.

Bite 11: CFPB Issues an Advisory Opinion Addressing Contract-for-Deed Investors

On August 13, 2024, the CFPB issued an advisory opinion to address "contract for deed investors." These transactions, also called "land contracts," "installment land contracts," "land sales contracts," or "bonds for deed," involve a seller agreeing to turn over a home's deed only after the buyer completes a series of payments. According to the advisory opinion, federal home lending rules and laws, such as the Truth in Lending Act, cover contracts-for-deed deals. The CFPB says that these transactions can harm housing markets by causing or perpetuating substandard housing stock, inflated home prices, and less access to mainstream mortgage credit.

Bite 10: CFPB Proposes Mortgage Servicing Rules

On July 10, 2024, the CFPB proposed new mortgage servicing rules. In 2022, the CFPB requested information from the public regarding improving protections for borrowers facing financial hardship. The CFPB claims that both the mortgage industry and borrower advocates responded that a simpler, more flexible approach to mortgage assistance would be helpful. Many commenters noted that both borrowers and servicers benefited from the adjustments made during the COVID-10 pandemic that allowed leniency from the 2014 regulatory framework. The CFPB's proposal, if finalized, would limit the fees a servicer can charge a borrower while the servicer is reviewing possible options to help the borrower avoid foreclosure. The proposal would also allow servicers to have more flexibility to review borrowers for each option individually through streamlined loan modifications and fewer paperwork requirements. Moreover, the proposal would require servicers to provide more tailored notices to borrowers, including changing the notices that borrowers receive shortly after missing a payment to include information about who the loan investor is and how to get information regarding available assistance. The proposal would also require servicers to provide notices in English and Spanish. It would also give borrowers who received marketing materials in another language the option to request mortgage assistance communications in that same language. The CFPB invited public comments on the rule through September 9, 2024.

Bite 9: CFPB Issues Final Rule on Automated Valuation Models

On July 17, 2024, the CFPB and five other agencies issued a final rule on automated valuation models. The agencies, including the OCC, FRB, FDIC, NCUA, and FHA indicated that the rule was designed to help ensure credibility and integrity of models used in valuations for certain housing mortgages. The rule requires adoption of compliance management systems to ensure a high level of confidence in estimates, protect against data manipulation, avoid conflicts of interest, randomly test and review the processes, and comply with nondiscrimination laws. The rule will become effective about 12 months after publication in the Federal Register.

Bite 8: CFPB and FTC Write Amicus Brief in Mortgage Case

On February 27, 2024, the CFPB **announced**that it joined the FTC in writing an Amicus Brief in an appeal case, arguing against fees that the agencies characterized as "unlawful junk fees." In the original case, two mortgage borrowers separately sued their servicer over fees charged for making telephone and online payments. Allegedly, the creditor did not disclose those fees in the credit agreement, and applicable law did not expressly authorize the fees. The borrowers argued that the Fair Debt Collection Practices Act prohibits charging fees of this type. After the borrowers won, the servicer appealed to the Eleventh Circuit, arguing that the FDCPA's protections do not apply to such fees, and that the borrowers agree to the fees upon payment. The CFPB and FTC argued that the FDCPA applies to all collection, and that servicers can only charge fees that lenders previously disclosed in the credit agreement or are expressly authorized by law. According to the agencies, this interpretation aligns with Congressional intent.

Bite 7: CFPB Sues Lender-Developer

On December 20, 2023, the CFPB sued a lender-developer in Texas for alleged predatory lending. The CFPB announced that it joined the Department of Justice to sue the Texas-based lender-developer, alleging that the company operated an illegal land sales scheme that targeted Hispanic borrowers with false statements and predatory loans. The lawsuit alleges that the company sold flood-prone land without water, sewer, or electrical infrastructure, despite advertising claims that the homes came with all city services and that the lots have never flooded. The CFPB also alleged that the company advertised in Spanish, but only made important sale documents available in English. The CFPB further alleged that the company was "churning" borrowers through cycles of foreclosure and then re-selling the foreclosed properties at a profit. According to the CFPB, deed records show that the lender-developer repurchased at least 40% of the properties and resold them between two and four times over three years. The CFPB alleged that the company violated the ECOA, the Interstate Land Sales Full Disclosure Act, and implementing regulations. The DOJ joined the CFPB in its ECOA claims and separately alleged violations of the Fair Housing Act. The lawsuit seeks an injunction, consumer redress, and a civil penalty.

Bite 6: CFPB Settles Case with Mortgage Company over Alleged Discrimination

On November 1, 2024, the CFPB settled a case involving a mortgage company that allegedly discouraged potential applicants based on race or racial composition. The lawsuit alleged that the mortgage company violated the Equal Credit Opportunity Act, Regulation B, and the CFPA. The trial court granted the mortgage company's motion to dismiss, and the Seventh Circuit reversed the decision. The Seventh Circuit's decision held that "an analysis of the ECOA as a whole makes clear that the text prohibits not only outright discrimination against applications for credit, but also the discouragement of prospective applications for credit." The proposed order prohibits the mortgage company from engaging in any acts or practices that violate the ECOA, requires the mortgage company to maintain a compliance management system, and requires the mortgage company to provide ongoing educational training for its employees. The proposed order also requires the mortgage company to pay a $105,000 civil money penalty.

Bite 5: CFPB Takes Action Against Mortgage Lender

On August 29, 2024, the CFPB issued a consent order in an action involving a mortgage lender alleging that the company violated the CFPA by deceiving consumers.The CFPB alleged that the company, provided misleading information about the cost of its cash-out refinances. According to the consent order, the company provided side-by-side comparisons that included only principal and interest payments for its refinance loans, whereas the original loan payment amount included principal, interest, taxes, and insurance. The company did not admit nor deny the allegations but agreed to pay a $2.25 million civil money penalty and to come into compliance with all applicable laws that the CFPB enforces. In 2015, the CFPB entered into a consent order with the Company for allegedly deceiving consumers about a veterans' organization's endorsement of its products and participating in a kickback scheme for customer referrals. The previous consent order terminated in 2020.

Bite 4: CFPB Settles with a Nonbank Mortgage Company

On June 18, 2024, the CFPB reached a proposed settlement with a nonbank mortgage originator and servicer to resolve allegations that the company violated the HMDA, its implementing Regulation C, the Consumer Financial Protection Act, and a 2019 CFPB consent order. In the 2019 CFPB consent order, the CFPB alleged that the company intentionally misreported certain data fields concerning borrower race, ethnicity, and sex from 2014 through 2017. In the current case, the CFPB alleged that the company's HMDA data continued to be deficient after the 2019 settlement, and that the company did not implement adequate changes to its compliance management system. The nonbank mortgage company agreed to pay a $3.95 million penalty, and agreed to regularly audit, test, and correct its HMDA data among other remedial actions.

Bite 3: CFPB Takes Action Against a Mortgage Servicer

On August 21, 2024, the CFPB issued a consent order against a residential mortgage servicer alleging that the company violated a 2017 Consent Order with the CFPB, the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Homeowners

Protection Act, and the Consumer Financial Protection Act for prohibited foreclosure actions against borrowers and interfering with loss mitigation relief options. The CFPB alleged that the company: flouted the 2017 consent order and continued to engage in prohibited foreclosure activities, failed to timely place holds on foreclosures, and failed to develop written policies and procedures to ensure compliance. Failed to provide full information to borrowers about their loss mitigation options Overcharged for private mortgage insurance and late fees higher than allowed by the mortgage contract. The consent order requires the company to pay $3 million in consumer redress and a $2 million penalty, to be deposited into the CFPB's victims relief fund. The consent order also includes "corporate responsibility provisions" requiring the company to invest $2 million to update its servicing technology and compliance management systems. The consent also puts limits on compensation to the company's Chairman of the Board and CEO if he doesn't take actions necessary to ensure compliance with the Order.

Bite 2: CFPB and DOJ Take Action Against Mortgage Company

On October 15, 2024, the CFPB and DOJ announced an action against a mortgage company, alleging it redlined in Birmingham, Alabama, violating the Equal Credit Opportunity Act, the Consumer Financial Protection Act, and the Fair Housing Act. The CFPB alleged that the mortgage company's own data showed that it was failing to serve majority-Black neighborhoods around Birmingham, but before October 2022, did not take any steps to address redlining risks, other than telling loan officers not to discriminate. The complaint also alleged that the company predominantly directed its marketing to majority-white areas, including locating its three retail loan offices and three loan production desks in majority-white areas. The proposed order requires the company to pay a $1.9 million penalty to the CFPB's civil penalty fund, provide $7 million for a loan subsidy program, and pay at least $1 million to serve neighborhoods it redlined. The $1 million to serve the neighborhoods it redlined includes: spending at least $500,000 on advertising and outreach, spending at least $250,000 on consumer education, and spending at least $250,000 on partnerships with one or more community-based or governmental organizations.

Bite 1: CFPB Takes Action Against Reverse Mortgage Servicing Contractor and its Affiliates

On June 18, 2024, the CFPB took an action against a reverse mortgage servicing contractor and its affiliates alleging violations of the CFPA and RESPA. In this action, the CFPB alleged that the companies failed to maintain staffing adequate to handle as many as 150,000 borrowers per year, preventing borrowers from fulfilling their annual occupancy requirements, obtaining loan payoff statements, and finding foreclosure alternatives. The consent orders permanently ban three of the four servicers from reverse mortgage servicing and requires the remaining entity to develop a compliance plan before engaging in reverse mortgage servicing again. The consent order requires the subcontracting entities to pay $11.5 million in consumer redress and a $5 million civil money penalty, the entity that was holder of the reverse mortgage servicing contract must pay a nominal civil penalty of $1, based on its inability to pay.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our lineup for

2025. If you missed any of our prior Bites, request a replay on our website

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

hudsoncook.com