# CFPB Bites of the Month: A December to Remember

January 3, 2023 | Justin B. Hosie and Eric L. Johnson

In this month's Top 10 article, we share some of our top "bites" for the prior month covered during the December 21, 2022, webinar.

**So, what happened last month?**

**Bite #10: CFPB Finds Members of the Reserves and National Guard Paying Millions of Dollars in Extra Interest Each Year**

On December 7, 2022, the CFPB released a report claiming that Reserve and National Guard members are paying an extra $9 Million a year because creditors fail to provide mandatory rate reductions. As a result, the CFPB indicated that creditors should automatically apply all benefits when a servicemember invokes their rights. For example, the CFPB indicated that creditors should apply SCRA interest rate reductions for all accounts when a servicemember invokes their rights on a single account.

**Bite #9: 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 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 indicated that it recognizes 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 does 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.

**Bite #8: CFPB Announces Efforts to Enhance Public Data on Auto Financing**

On November 17, 2022, the CFPB announced that it wants to enhance public data on auto financing. The CFPB indicated that the auto financing market has grown to become the third largest consumer credit category after mortgages and student loans. But the CFPB indicated that it knows much less about this market than other markets. Compared to other sectors, the CFPB says that auto market data is sparse, making it difficult to identify emerging risks which could lead to negative consequences. As a result, the CFPB indicated that it is now is collecting data from a sample of creditors that represent a cross-section of the market.

**Bite #7: CFPB's Fall 2022 Supervisory Highlights Find Credit Reporting Failures, Junk Fees, and Mishandling of COVID-19 Protections**

On November 16, 2022, the CFPB announced that it had released its Fall 2022 Supervisory Highlights addressing examinations 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 inaccurate information in credit reporting, the CFPB claims that some nationwide consumer reporting companies failed to report the outcome of their reviews of complaints to the CFPB. In mortgage servicing, the CFPB claims that customer service representatives charged phone payment fees but did not address those fees with borrowers. Additionally, the CFPB indicated that some auto finance furnishers were knowingly reporting inaccurate information about consumers.

Also, with respect to auto finance, the CFPB identified violations related to alleged add-on product charges, loan modifications, double billing, electronic devices that interfere with driving, debt collection tactics, and junk fees. In some cases, the CFPB claims that servicers failed to provide refunds for unearned fees related to the add-on products that consumers paid-off early.

Concerning Covid relief, some organizations were required to make refunds and changes due to garnishments or setoff practices. In addition, certain mortgage servicers allegedly failed to timely provide homeowners with CARES Act forbearances and failed to otherwise comply with CARES Act requirements.

**Bite #6: CFPB Determines NY law is not Preempted by TILA**

On December 7, 2022, the CFPB announced that it had rejected a request to say that the Federal Truth in Lending Act (TILA) preempts a state disclosure requirement applicable to commercial transactions. Recently, several states have enacted laws to require disclosures in commercial financing transactions. The CFPB's preliminary determination is that a New York commercial financing disclosure law is not preempted by TILA because the New York law regulates commercial financing transactions rather than consumer-purpose transactions. The CFPB is requesting comment on whether it should finalize its preliminary determination that the New York law - as well as potentially similar laws in California, Utah, and Virginia - are not preempted. Comments are due by January 20, 2023.

**Bite #5: CFPB Proposes Registry to Detect So-Called "Repeat Offenders"**

On December 12, 2022, the CFPB proposed to start a registry of organizations it calls "repeat offenders." The registry would include organizations involved in prior consent orders with government agencies. This proposal would require certain nonbank financial firms to register with the CFPB when they become subject to certain local, state, or federal consumer financial protection orders. The CFPB says that the registry will help unify the efforts of consumer financial protection enforcers, as well as provide the increased transparency and coordination. Comments will be due in February of 2023.

**Bite #4: CFPB and NY Attorney General Take Action Against Companies that Allegedly Cheated 9/11 Victims**

On November 23, 2022, the CFPB announced that it joined the New York Attorney General in an action against companies that allegedly cheated Sept 11th victims. According to the CFPB, these organizations deceived victims and collected money they were not entitled to, related to cash advances on settlement payouts from victim-compensation funds. The CFPB and NY AG claimed that the defendants misrepresented transaction terms, lied about their services, deceived consumers about the timing of payments, and collected money consumers did not owe. The defendants must provide over $600,000 in debt relief to harmed consumers, stop doing business with recipients of 9/11 victim compensation funds, and pay a penalty.

**Bite #3: 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.

**Bite #2: CFPB Settles with Company and Founder for $19 Million Action for Allegedly Offering Fake High-Yield Bank Accounts**

On December 1, 2022, the CFPB announced that it settled with a company and its founder for allegedly offering fake high yield bank accounts. The CFPB alleged that the company and its founder made several false, misleading, and inaccurate marketing representations in advertising its health savings CD accounts. Specifically, the CFPB claims that the company took millions of dollars from at least 400 individuals who opened and deposited money into the company's advertised savings product.

The CFPB claims that the company and its founder falsely represented that: customer deposits would originate loans for healthcare professionals, customer deposits would be secure, the company was a commercial bank, and the CD accounts had a record of paying high interest rates. The proposed settlement would require the Company and its founder to refund $19 Million to approximately 400 depositors, to stop engaging in deposit taking activities, and pay a $391,530 civil money penalty.

**Bite #1: CFPB Orders National Bank to Pay $3.7 Billion for Alleged Mismanagement of Auto Loans, Mortgages, and Deposit Accounts**

On December 20, 2022, the CFPB announced that it had ordered a national bank to pay $3.7 billion for claims related to auto, mortgage, and deposit transactions. The CFPB claims the bank: unlawfully repossessed vehicles and bungled borrower accounts, improperly denied mortgage modifications, illegally charged surprise overdraft fees, unlawfully froze consumer accounts, and and mispresented fee waivers. The CFPB is requiring the bank to provide more than $2 Billion in redress to consumers, stop charging surprise overdraft fees, provide refunds to automotive consumers for certain add-on fees, and pay $1.7 Billion in penalties.

**Still hungry?**

Please join us for our next CFPB Bites of the Month. If you missed any of our prior Bites, request a replay on our website.

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