HUDSON COOK

# CFPB Bites of the Month - April Top 10

April 28, 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. In this month's article, we share some of our top "bites" for the prior month covered during the April 20 webinar.

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

**Bite #10 - The CFPB encouraged 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
- 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, in particular, 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.

**Bite #9 - The CFPB is pursing discrimination in consumer finance, beyond credit transactions, using its unfairness authority.**

The CFPB announced changes to its supervisory operations to address discrimination, including in situations where fair lending laws do not apply. The CFPB indicated that in examinations, it plans to scrutinize discriminatory conduct related to advertising, pricing, and other areas to ensure that companies are testing for and eliminating discrimination.

Government regulators and private plaintiffs have commonly relied on the Equal Credit Opportunity Act (ECOA), a fair lending law which covers extensions of credit. However, under this new approach, certain discriminatory practices may also trigger liability under the Consumer Financial Protection Act (CFPA), which prohibits unfair, deceptive and abusive acts and practices (UDAAPs).The CFPB published an updated exam manual for evaluating UDAAPs, which notes that discrimination may meet the criteria for "unfairness."

The CFPB said it will examine for discrimination in all consumer finance markets, including credit, servicing, collections, consumer reporting, payments, remittances, and deposits. CFPB examiners will require supervised companies to show their processes for assessing risks and discriminatory outcomes, including documentation of customer demographics and the impact of products and fees on different demographic groups.

**Bite #8 - The CFPB issued reports addressing medical debt for seniors, credit card late fees, complaints, its Minority and Women Inclusion Annual Report, a report on payday loans, and a report on debt collection.**

**Report #1: Data Spotlight Report on Medical Debt Among Older Adults Before the Pandemic**

The CFPB analyzed the most recent survey data from the FINRA Foundation's National Financial Capability Study (NFCS). This report is studies financial capabilities across various demographic groups every three years. According to this year's report:

- About 10% of adults ages 65 and older had medical debt, and many experienced significant hardships
- 75% of older adults with medical debt are retired.
- Medical debt is more common among older people of color, older adults with incomes near the poverty line, people who are uninsured, who are currently unmarried, and who don't own a home.
- Medical debt is strongly related to skipping medical care and other hardships.
- Many older adults with medical debt carry other debts, have low credit standing

and are contacted by collectors.

**Report #2:** Credit Card Late Fees Report

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) created various protections for cardholders, including limiting charges for penalties and limits on interest rate increases. According to the CFPB:

- Many major issuers charge the maximum late fee allowed by law.
- Borrowers on subprime cards and private label cards are particularly susceptible to late fee charges.
- Late fee volume fell when stimulus checks arrived in 2020 and 2021, particularly for households with lower credit scores.
- Low-income areas, areas with high shares of Black Americans, and areas with lower economic mobility all bear more of the late fee burden.

**Report #3:** 2021 Consumer Response Annual Report

The CFPB's 2021 Consumer Response Annual Report analyzes complaints submitted by consumers between January and December 2021. During this period, the CFPB indicated that it relayed more than 750,000 complaints to approximately 3,400 companies for review and response. Complaints about credit or consumer reporting increased in 2021 and accounted for more than 70% of all consumer complaints. However, the consumer reporting industry also had the best track record for providing timely responses, responding over 99% of the time. Debt collection complaints also increased in 2021, accounting for more than 10% of all consumer complaints. Two types of products and services saw declines in complaint volume. Prepaid cards saw a 17% decline in complaints, and payday loans saw an 11% decline in complaints. All other products and services saw an increase in complaints by volume.

**Report #4:** FY 2021 Office of Minority and Women Inclusion Annual Report to Congress

The FY 2021 OMWI Annual Report to Congress provided detailed information about the diversity and inclusion work over the past fiscal year, highlighting workforce diversity, workplace inclusion, supplier diversity, inclusion in business activities, and work related to regulated entities.

With respect to regulated entities, OMWI is required to develop standards for assessing diversity and inclusion at the financial entities the CFPB regulates. According to the report, the CFPB engaged in analysis of public data to gain a better understanding of diversity and inclusion within the financial services sector. As a result of those efforts, the CFPB published the Diversity and Inclusion within Financial Services Report back in January 2022.

**Report #5**: Report on Payday Loan Rollovers State-Level Protections and Payment Plans

The CFPB's report on payday loans addresses state-mandated payment plans offered by payday lenders at no additional cost to consumers. Sixteen state laws expressly provide payday loan borrowers with the right to a no-cost payment plan. In addition, some payday loan companies make payment plans available to consumers as part of industry best practices, but the report generally does not include data about those payment plans.

The report indicates that borrowers elect to enter payday loan rollovers and pay related costs, instead of choosing to enter no-cost payment plans. The report also noted state no-cost extended payment plans vary substantially in those 16 states. The CFPB commented that lenders are "leaving borrowers in the dark" about payment plan options, and addressed state-by-state requirements to "offer" the payment plans. One "key finding" says the CFPB is not aware of studies about consumer awareness of payment plans.

**Report #6**: Fair Debt Collection Practices Act (FDCPA) Annual Report to Congress

The CFPB published its annual report to Congress summarizing the CFPB's (and FTC's) activities to administer the Fair Debt Collection Practices Act (FDCPA) in 2021. According to the CFPB, approximately one-third of the 220 million consumers with credit files have collections tradelines on their credit reports. The most common collections tradeline involves allegedly unpaid medical bills. According to the report, consumers are far more likely to dispute the accuracy of collections tradelines than of other information contained in their credit reports.

**Bite #7 - The CFPB issued a policy on contractual "gag" clauses and fake review fraud.**

The CFPB issued policy guidance regarding potentially illegal practices related to consumer reviews, seeking to ensure that customers can write reviews, particularly online reviews, that accurately reflect their opinions and experiences. According to the guidance, practices such as posting fake reviews or inserting clauses that forbid a customer from publishing an honest review may violate the Consumer Financial Protection Act.

The CFPB's guidance describes certain business practices related to customer reviews that are generally unlawful under the Consumer Financial Protection Act, including contractual 'gag' clauses, fake reviews, and review suppression/manipulation. The CFPB indicated that this guidance was related to the FTC's efforts to deter fake reviews and related fraud across the digital economy.

**Bite #6 - 2021 HMDA data on mortgage lending is now available.**

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, later this year, 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.

**Bite #5 - The CFPB extended the opportunity for the public to provide input on fees it calls "junk fees."**

The CFPB received more than 25,000 comments from their Request for Information on fees the CFPB calls "junk fees" through mid-March. The CFPB is extending the deadline for the public to share input and stories on their experiences with such fees through April 11, 2022. The public can comment through the Federal Register. The CFPB said that it wants to hear from stakeholders - including consumers and small business owners - from across the financial marketplace about their experiences with fees associated with financial products and services, including:

- Fees for things people believed were covered by the baseline price of a product or service
- Unexpected fees for a product or service
- Fees that seemed too high for the purported service
- Fees where it was unclear why they were charged

**Bite #4 - CFPB Director Chopra promises to rein in repeat offenders.**

In public remarks Director Chopra said that regulators face a problem stopping "large dominant firms" from repeatedly violating the law as some large institutions see laws as "mere expenses on their income statements." He gave examples of organizations penalized multiple times by the CFPB and the FTC's record-setting $5 billion settlement with a well-known online social media platform.

According to Director Chopra, the CFPB plans to establish dedicated units in its supervision and enforcement divisions to hold repeat offenders and corporate recidivists accountable. The Director also said that the CFPB will also be looking at remedies that are more structural in nature, seeking "limits on the activities or functions" for firms with violations. This could include:

- Caps on size or growth
- Bans on certain types of business practices

- Divestitures of certain product lines
- Limitations on leverage or requirements to raise equity capital
- Revocation of government-granted privileges

**Bite #3 - The CFPB sanctioned a student loan servicer for allegedly lying to students about student loan cancellation.**

The CFPB sanctioned a student loan servicer for allegedly misrepresenting loan forgiveness and repayment options. The servicer allegedly deceived borrowers with Federal Family Education Loan Program loans about their eligibility for public service loan forgiveness. The CFPB claims that the company violated the CFPA by:

- Misrepresenting that borrowers could not receive public service loan forgiveness;
- Misrepresenting that borrowers were making payments towards public service loan forgiveness before loan consolidation;
- Misrepresenting to borrowers that certain jobs were not eligible for public service loan forgiveness; and
- Describing forgiveness programs to borrowers without mentioning public service loan forgiveness.

The CFPB ordered the company to contact all affected borrowers, provide them with accurate information, and pay a $1 million civil money penalty.

**Bite #2 - The CFPB proposed a rule to halt negative credit reporting for survivors of human trafficking.**

The proposed rule would protect survivors of human trafficking by preventing CRAs from including negative information resulting from abuse. Congress required the CFPB to use its rulemaking authorities to implement the Debt Bondage Repair Act through rule changes to Regulation V, which ensures consumers' credit information is fairly reported by CRAs. Signed by President Biden in December 2021, the Debt Bondage Repair Act prohibits CRAs from providing consumer reports that contain any negative item of information about a survivor of trafficking from any period the survivor was being trafficked.

The CFPB is proposing a rule that, if enacted, will include guidelines to help survivors understand how to report their status, require CRAs to block adverse information, and make rules applicable to CRAs. The Notice of Proposed Rulemaking is published in the Federal register. The public comment period will close on May 9, 2022.

**Bite #1 - The CFPB alleged that a nationwide consumer reporting agency and a senior executive violated a 2017 consent order.**

The CFPB filed a lawsuit against a nationwide consumer reporting agency, two related companies, and one of its senior executives for allegedly violating a 2017 consent order. The lawsuit alleges that the companies failed to implement required measures from the 2017 order and committed additional violations of certain federal laws. The CFPB claims they failed to implement specific remedial measures, deceptively marketed credit-related products, and used hidden tricks or trapdoors (which the CFPB called "digital dark patterns") to deceive customers.

According to the CFPB complaint, violations of the 2017 order include:

- continuing to mislead consumers about their credit-monitoring product;
- failing to add a checkbox to trial offer subscription products to ensure enrollment consent; and
- failing to provide an appropriate way for consumers to cancel their subscriptions and obtain refunds.

The complaint seeks monetary relief for consumers, injunctive relief, and civil money penalties. The complaint is not a final finding or ruling that defendants have violated the law.

**Still hungry?**

Join us for our next CFPB Bites of the Month: Mayday, mayday, mayday! CFPB on May 18. If you missed any of our previous Bites, request a replay.

HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

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

**hudsoncook.com**