

CFPB Bites of the Month - April Top 10

April 22, 2021 | [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 Consumer Financial Protection Bureau (CFPB) for financial services providers to consider. In this month's article, we share some of our top "bites" covered during the April 21 webinar.

So what happened at the CFPB in the past month?

Bite #10 - The CFPB submitted its FDCA report to Congress and took various FDCA enforcement actions

The CFPB released the 2020 annual report to Congress on the administration of the Fair Debt Collection Practices Act (FDCA). Among other highlights, the report notes the following CFPB accomplishments:

- Identified several issues that raise the risk of consumer harm during the COVID-19 pandemic through its supervisory Prioritized Assessments;
- Published content to help consumers financially navigate the COVID-19 pandemic, including on debt collection, that has been accessed by users approximately 4.3 million times;
- Provided consumer debt collection educational materials - In 2020, "Ask CFPB," an interactive online consumer education tool logged 1.9 million pageviews and/or downloads in English and 220,000 in Spanish for its debt collection questions;
- Released a report highlighting servicemembers' complaint data from 2019;
- Published information about debt collection activity during the pandemic for student loans; and
- Published results of a quantitative online survey of over 8,000 respondents to test several versions of disclosures to support the understanding of time-barred debt and revival that informed the CFPB's final rules on debt collection.

The CFPB also engaged in 4 public enforcement actions arising from alleged FDCA violations, resolving 2 of these cases for nearly \$15.2 million in consumer redress and \$80,000 in civil money penalties, while 2 cases remain in active litigation.

Bite #9 - Acting Director David Uejio signaled more scrutiny regarding small-dollar lending

CFPB Acting Director David Uejio wrote a post addressing the CFPB's focus on *small-dollar lending*,

stating that he believes that harms identified by the CFPB's 2017 small-dollar lending rule still exist. In 2020, the prior administration revoked parts of a 2017 CFPB rule addressing payday, title, and certain installment loans. Acting Director Uejio stated that the CFPB's brief in litigation challenging the rulemaking focused on jurisdiction, and does not address the merits of the underlying rule. The Acting Director indicated that the CFPB's filing should not be regarded as an indication that the CFPB is satisfied with the status quo in this market.

He also stated that the CFPB will use vigorous market monitoring, supervision, enforcement, and rulemaking to address perceived harms. According to the post, the CFPB continues to believe that ability to repay is an important underwriting standard, and if business models rely on consumers' inability to repay, those practices must be addressed by the CFPB.

Bite #8 - The CFPB released two annual reports to Congress

The CFPB released two annual reports to Congress. The first addressed consumer responses and the second addressed fair lending. The Fair Lending Report highlighted the CFPB's work in 2020 to promote its fair lending mission. The report noted that, in 2020, the CFPB:

- conducted prioritized assessments to gain a greater understanding of industry responses to pandemic-related challenges;
- announced 2 public enforcement actions involving fair lending laws;
- issued an interpretive rule related to special-purpose credit programs;
- hosted a Tech Sprint, bringing together stakeholders to develop creative and innovative solutions to compliance challenges, enabling the CFPB to better understand the complex intersection of emerging technologies and existing fair lending laws; and
- engaged with stakeholders in more than 90 outreach events to (1) educate them about fair lending compliance and access to credit issues and (2) hear their views on the CFPB's work to inform policy decisions.

In 2021 and beyond, the CFPB stated that it will place greater emphasis on fair lending and efforts to address racial equity for underserved communities, and will report on those efforts in 2022.

The Consumer Response Annual Report for 2020 addressed the impact of the COVID-19 pandemic on the consumer financial marketplace. According to the report, the CFPB handled approximately 542,300 complaints last year—a nearly 54% increase over the number of complaints handled in 2019. According to the CFPB report:

- Credit and consumer reporting complaints accounted for more than 58% of complaints received, followed by debt collection (15%), credit card (7%), checking or savings (6%), and mortgage complaints (5%).
- Beginning in April 2020, consumers began to submit more than 3,000 complaints mentioning coronavirus keywords nearly every month. Consumers submitted approximately 32,100 complaints mentioning coronavirus or related keywords in 2020. The absence of coronavirus as a keyword in a complaint does not necessarily mean the complaint was not related to the

financial impact of the pandemic.

- Consumers from Florida submitted more complaints per capita than consumers from any other state (309 complaints submitted per 100,000 in population).

The report also highlighted multi-year complaint trends that pre-date the pandemic, as well as how companies have responded to complaints. The report indicated that:

- The CFPB received more complaints from consumers about inaccurate information on their credit and consumer reports in 2020 than in 2019.
- Consumers primarily submitted these complaints about the three largest Nationwide Credit Reporting Agencies (NCRAs).
- While the NCRAs typically provided substantive and comparatively detailed responses to the majority of complaints in prior years—including providing details of dispute investigations and outlining steps taken for consumers that are attempting to address identity theft—this year, the CFPB observed that the NCRAs stopped providing complete and accurate responses in many of these complaints.
- The NCRAs provided closure responses noting that a dispute would be filed on the consumer's behalf but otherwise failed to address the issues consumers raise in their complaints.
- The NCRAs mentioned suspected third-party activity in their responses to consumers, but did not detail steps taken to authenticate consumers or to address the issues raised in their complaints.

The CFPB indicated that it will issue a separate report later this year regarding complaints submitted about the NCRAs that are related to incomplete or inaccurate information on the consumers' credit reports pursuant to the Fair Credit Reporting Act.

Bite #7 - The CFPB and FTC acting leaders released a joint statement

CFPB Acting Director Dave Uejio and FTC Acting Chairwoman Rebecca Slaughter issued a joint statement regarding their agencies' work to help stop illegal evictions and protect consumers facing economic hardship due to COVID-19. The statement noted that the Agencies will be monitoring and investigating eviction practices, particularly by major multistate landlords, eviction management services, and private equity firms, to ensure that they are complying with the law. The Agencies indicated that violations of the CDC, state, or local moratoria, or evicting or threatening to evict renters without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices, including under the Fair Debt Collection Practices Act and the Federal Trade Commission Act. The CFPB has a relatively new website aimed at educating renters affected by the pandemic, which can be found here: www.consumerfinance.gov/renters.

Bite #6 - The CFPB and other agencies requested information from financial institutions on how they are using AI

The CFPB, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit

Union Administration, and the Office of the Comptroller of the Currency issued a request for information and comment ("RFI") on financial institutions' use of artificial intelligence ("AI"), including machine learning. The Agencies noted that financial institutions are using AI-based applications in various beneficial ways, including for credit decisions, fraud prevention, and risk management. But, the Agencies noted that AI presents risk management challenges related to explaining algorithms, types of data used, and dynamic updating (or "machine learning"). To learn more about how financial institutions use AI and manage the associated risks, the Agencies issued the RFI to ask 17 questions, covering several topics related to AI and its use. Comments are due June 1.

Bite #5 - The CFPB rescinded several policy statements

The CFPB rescinded 7 policy statements issued last year that provided temporary flexibilities to financial institutions related to mortgages, credit reporting, credit cards, and prepaid cards. The 7 rescinded statements are:

1. Statement on Supervisory and Enforcement Response to COVID-19 Pandemic (March 26, 2020)
2. Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (March 26, 2020)
3. Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers (March 26, 2020)
4. Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act (April 1, 2020)
5. Statement on Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J (April 27, 2020)
6. Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic (May 13, 2020)
7. Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (June 3, 2020)

The CFPB also rescinded its 2018 Bulletin on supervisory communications and replaced it with a revised Bulletin (2021-01) describing its use of "matters requiring attention" (MRAs) to effectively convey supervisory expectations.

Bite #4 - The CFPB released a compliance bulletin and proposed rule changes aimed at preventing foreclosures

The CFPB issued a compliance bulletin warning mortgage servicers to take all necessary steps now to prevent a wave of avoidable foreclosures when the pandemic-related federal emergency mortgage protections expire this summer and fall. The CFPB will pay particular attention to how well servicers are:

- Being proactive. Servicers should contact borrowers in forbearance before the end of the forbearance period so they have time to apply for help.

- Working with borrowers. Servicers should work to ensure borrowers have all necessary information and should help borrowers in obtaining documents and other information needed to evaluate the borrowers for assistance.
- Addressing language access. The CFPB will look carefully at how servicers manage communications with borrowers with limited English proficiency and maintain compliance with the Equal Credit Opportunity Act and other laws.
- Evaluating income fairly. Where servicers use income in determining eligibility for loss mitigation options, servicers should evaluate borrowers' income from public assistance, child support, alimony, or other sources in accordance with the Equal Credit Opportunity Act's anti-discrimination protections.
- Handling inquiries promptly. The CFPB will closely examine servicer conduct where hold times are longer than industry averages.
- Preventing avoidable foreclosures. The CFPB will expect servicers to comply with foreclosure restrictions in Regulation X and other federal and state restrictions in order to ensure that all homeowners have an opportunity to save their homes before foreclosure is initiated.

In addition, the CFPB proposed a set of rule changes intended to help prevent avoidable foreclosures as the emergency federal foreclosure protections expire. The CFPB's proposal, if finalized, would:

- Give borrowers time. The proposed rule would provide a special pre-foreclosure review period that would generally prohibit servicers from starting foreclosure until after December 31, 2021.
- Give servicers options. The proposed rule would permit servicers to offer certain streamlined loan modification options to borrowers with COVID-19-related hardships based on the evaluation of an incomplete application.
- Keep borrowers informed of their options. The CFPB also proposes temporary changes to certain required servicer communications to make sure that, during this crisis, borrowers receive key information about their options at the appropriate time.

The CFPB is requesting comments be submitted before May 11, 2021.

Bite #3 - The CFPB issued a consent order against a debt collector

The CFPB issued a consent order against a debt collector and its owner for violations of the Fair Debt Collection Practices Act and the Consumer Financial Protection Act. The CFPB alleged that the debt collector mailed letters to consumers threatening litigation, though it had no intention of filing any lawsuits. The consent order permanently bans the debt collector and its owner from the debt collection business, and orders restitution in a suspended amount of \$860,000 and penalties.

Bite #2 - The CFPB proposed a 60-day delay of its debt collection rules

The CFPB proposed extending the effective date of two recent debt collection rules to give affected parties more time to comply due to the ongoing COVID-19 pandemic. The final rules, issued under the

Fair Debt Collection Practices Act in late 2020, are scheduled to take effect on November 30, 2021. The CFPB issued a Notice of Proposed Rulemaking (NPRM) to delay the effective date by 60 days. The proposal will be open for comment until May 19.

Bite #1 - The CFPB settled with a debt settlement company

The CFPB entered into a consent order with an online debt settlement company for alleged abusive acts or practices under the Consumer Financial Protection Act and for violations of the Telemarketing Sales Rule. According to the CFPB, the company presented itself as an independent debt settlement company, but instead had affiliations with certain creditors—and even had shared ownership with 1 creditor. The CFPB alleged that the company engaged in abusive acts or practices by:

- charging fees to negotiate settlements that favor those affiliates,
- steering distressed consumers into taking out expensive loans with affiliates while hiding the fact that the company took its debt settlement fees from these loan proceeds, and
- kept consumers in the dark about its affiliate relationships, and included language in call scripts saying, "we are not owned or operated by any of your creditors."

The consent order requires the company to return at least \$646,000 in fees to consumers, pay a \$750,000 civil penalty, and stop settling debts for creditors with which it shares an ownership interest.

Bonus Bite - The CFPB issued an interim final rule under the FDCPA in support of the CDC's eviction moratorium.

The CFPB issued an interim final rule under the Fair Debt Collection Practices Act (FDCPA) in support of the Centers for Disease Control and Prevention (CDC)'s eviction moratorium. The CFPB's rule requires debt collectors to provide written notice to tenants of their rights under the eviction moratorium and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium.

The CDC order generally prohibits landlords from evicting tenants for non-payment of rent, if the tenant submits a written declaration that they are unable to afford full rental payments and would likely become homeless or have to move into a shared living setting.

Under the FDCPA interim final rule, debt collectors, including attorneys, seeking to evict tenants for non-payment of rent must provide tenants who may have rights under the CDC order with clear and conspicuous written notice of those rights. The notice must be provided on the same date as the eviction notice, or if no eviction notice is required by law, on the date that the eviction action is filed.

Debt collectors must provide the notice in writing.

- Phone calls or electronic notices such as text messages or emails are not sufficient.
- The CFPB is providing debt collectors with sample language to satisfy the rule's disclosure requirements.

Failure to provide the required notice to tenants is a violation of the FDCPA.

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

www.hudsoncook.com

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