

## CFPB Bites of the Month - January 2023 - May Old Compliance Acquaintances be Forgotten

January 23, 2023 | [Eric L. Johnson](#) and [Justin B. Hosie](#)

In this month's article, we share some of our top "bites" for the prior month covered during the January 18, 2023, webinar.

### **Bite # 8: The CFPB Publishes Civil Penalty Inflation Adjustments Rule in Federal Register**

On January 3, 2023, the CFPB [announced](#) the adjustments for inflation for the maximum amount of each civil penalty within the CFPB's jurisdiction. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). According to the CFPB, the inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

### **Bite #7: The CFPB Claims Servicemember Reports About ID Theft are Increasing**

On January 12, 2023 the CFPB [announced](#) that it had released an "Issue Spotlight" addressing servicemember reports about identity theft. The Issue Spotlight indicates that activity duty servicemembers are 22% more likely than their civilian counterparts to report that an identity thief has used their stolen information to open an account. The Issue Spotlight also addresses how identity theft can threaten servicemembers' security clearances and housing options. The Issue Spotlight claims that between 2014 and 2022, military complaints to the CFPB about identity theft increased nearly fivefold, from just over 200 annually in 2014, to more than 1,000 in 2022. The Issue Spotlight also indicates that financial institutions are the first line of defense, and must maintain procedures to identify suspicious activities. Finally, the Issue Spotlight outlines how military consumers can protect their credit and address identity theft.

### **Bite #6: The CFPB Issues Report on Nationwide Consumer Reporting Agencies**

On January 3, 2023 the CFPB [announced](#) that it had issued a report on nationwide consumer reporting agencies (NCRAs). The report addressed improvements and alleged deficiencies in NCRAs' responses to consumer complaints. The CFPB indicated the NCRAs have changed how they respond to complaints by providing more substantive and tailored responses. Likewise, the CFPB reported greater rates of relief in response to

complaints. The report indicated that the CFPB expects NCRAs to continue improving how they serve consumers. Specifically, the CFPB recommended the NCRAs: consider consumer burdens to automated processes, recognize the benefits of technologies consumers may use, and consider increased consumer participation on the data side of consumer reporting.

#### **Bite #5: The CFPB Files Amicus Brief in Government Benefits / Prepaid Card Case**

On January 10, 2023 the CFPB announced that it had filed a friend-of-the-court brief in the U.S. Court of Appeals for the Fourth Circuit in a case involving unemployment benefits on a government benefit card. In the case, a consumer had sought to receive pandemic related unemployment benefits on a prepaid government benefit card. The plaintiff alleges there was a \$0 balance due when the card arrived, due to unauthorized charges. The plaintiff further claims that the bank denied the plaintiff's claim to the funds and offered no explanation for the denial. The plaintiff sued the bank claiming the bank violated the Regulation E error resolution requirements. The District Court ruled that the card was not a "prepaid account" because it was established through a third party and loaded with qualified disaster relief payments. In the appeal the CFPB's friend-of-the-court brief argues that the card is a "prepaid account" subject to Regulation E. The CFPB argues that a government benefit account is not subject to the prepaid account exclusions, so upon determining an account is a government benefit account, no further analysis is needed to conclude that the account is a covered account.

#### **Bite #4: The CFPB and New York Attorney General Sue a National Auto Finance Company**

On January 4, 2023, the CFPB and the NY AG announced that they had sued a national automotive finance company. The joint complaint alleges that, among other things, the company hid costs in "loan" agreements and sets consumers up to fail. The lawsuit seeks to force the company to cease certain practices, reimburse consumers, and pay a penalty. The company publicly responded that it "intends to vigorously defend itself" in the matter.

#### **Bite #3: The CFPB Proposes Rule to Establish Public Registry of Terms and Conditions in Form Contracts**

On January 11, 2023, the CFPB announced that it was proposing a rule to establish a public registry of terms and conditions used in form contracts. The proposed rule would establish a public registry of supervised nonbanks' terms and conditions. The registry would include those terms provided in "take it or leave it" form contracts that claim to waive or limit consumer rights and protections. The proposed rule would apply to nonbanks subject to CFPB supervisory jurisdiction, including payday lenders, private student loan lenders, and mortgage lenders and servicers. Larger participants operating in student loan servicing, automobile financing, consumer reporting, consumer debt collection, and international remittances would also be subject to the proposed rule.

Examples of terms and conditions that would be included in the registry are those that:

waive servicemembers' legal protections, "undermine" credit reporting rights, limit lender liability for bank fees caused by a lender's repeated debit attempts, and mislead consumers by using unenforceable waivers in mortgage contracts. In addition to the terms and conditions published on the registry, the CFPB would also require company information to be published such as the company's legal name, state of incorporation or organization, headquarters and principal place of business addresses, and unique identifiers. Additional information would also be required. The public comment period will remain open for 60 days following publication of the proposed rule on the CFPB's website or 30 days following publication of the proposed rule in the Federal Register, whichever period is longer.

## **Bite #2: The CFPB Takes Action to Halt Debt Collection Law Firm Activities**

On January 11, 2023, the CFPB announced a settlement with a debt collection law firm that the CFPB claims bombarded consumers with "junk" lawsuits. The CFPB claims that fewer than a dozen attorneys filed more than 99,000 debt-collection lawsuits, while having documents to support only a fraction of those debts. The CFPB further alleges that the law firm falsely represented that attorneys were meaningfully involved in preparing and filing the lawsuits, violating the FDCPA and CFPA. The proposed settlement prohibits the law firm from filing any new lawsuit against a consumer unless it has specific documents supporting the debt and certifies that an attorney reviewed those documents. The order also requires the law firm to dismiss any pending lawsuit where it cannot satisfy these requirements. The law firm will also be required to pay a penalty of \$100,000, which would be deposited into the CFPB's victims relief fund. The CFPB also warned that it will be scrutinizing large financial companies that enlist debt collection outfits operating "lawsuit mills."

## **Bite #1: The CFPB Issues Order Against International Remittance Company to Refund Fees and Pay Penalty**

On December 22, 2022, the CFPB announced that it issued an order against an international remittance company, requiring it to refund fees and pay a penalty. According to the CFPB, consumers paid to send money to their families overseas, but when the money did not arrive on time, the company did not provide appropriate refunds. As a result, the CFPB claims the international remittance company failed to provide accurate disclosures to senders as required by the Electronic Funds Transfer Act, and failed to provide required refunds. The CFPB's order requires the company to refund approximately \$30,000 to consumers, comply with the Electronic Fund Transfer Act and its Remittance Transfer Rule, and pay a \$700,000 fine.

## **"Extra Bite" - Justice Department Reaches Agreement to Address Discriminatory Delivery of Housing Advertisements**

On January 9, 2023, the Department of Justice announced that it had reached an agreement with a large social media platform, requiring changes in the platform's advertisement delivery system. According to the DOJ, the social media platform deployed discriminatory advertising in violation of the Fair Housing Act (FHA). The lawsuit alleged that the social media platform used algorithms in determining which users received

housing advertisements, and alleged that those algorithms relied in part, on characteristics protected by the FHA. The social media platform will be subject to court oversight and regular review of its compliance with the settlement through June 27, 2026. The social media platform has since developed a new system to reduce variances between the eligible audiences and the actual audiences. The new system will be used for housing advertisements across the social media platform, and the agreement with the DOJ requires the social media platform to comply with certain requirements in stages.

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