

CFPB Bites of the Month - January Top 10

January 27, 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 January 26 webinar.

So what happened at the CFPB in the past month? A whole lot.

Bite #10 - Settled with a mortgage servicer.

The CFPB settled with a mortgage servicer over alleged violations of the Consumer Financial Protection Act and Regulation Z in relation to processing loss mitigation applications. The CFPB claimed that the mortgage servicer violated the CFPA by:

- systematically failing to accurately review, process, track, and communicate information to borrowers regarding their applications; and
- sending numerous borrowers acknowledgment notices regarding their applications that misrepresented the status of borrower documents and provided inaccurate due dates for submission of borrower documents.

The CFPB claimed that the mortgage servicer violated Regulation X, which implements the Real Estate Settlement Procedures Act, by:

- sending numerous acknowledgment notices that failed to state the additional documents and information borrowers needed to submit to complete their loss mitigation applications or failed to provide a reasonable due date for submission of borrower documents;
- not exercising reasonable diligence in obtaining documents and information necessary to complete borrowers' loss mitigation applications and by failing to properly evaluate borrowers who submitted complete loss mitigation applications for all loss mitigation options available to the borrower; and
- failing to treat certain applications as "facially complete" when required.

The CFPB ordered nearly \$5 million in consumer redress and a \$500,000 civil penalty.

Bite #9 - Issued a second debt collection rulemaking.

The CFPB issued a final rule to implement Fair Debt Collection Practices Act (FDCPA) requirements regarding certain disclosures for consumers. This final rule follows the CFPB's recent FDCPA rulemaking concerning collection communications. The rule:

- requires debt collectors to provide, at the outset of collection communications, detailed disclosures about the consumer's debt and rights in debt collection, along with information to help consumers respond;
- requires debt collectors to take specific steps to disclose the existence of a debt to consumers, orally, in writing, or electronically, before reporting information about the debt to a consumer reporting agency (CRA); and
- prohibits debt collectors from making threats to sue, or from suing, consumers on time-barred debt.

The rule is effective November 30, 2021.

Bite #8 - Settled with a remittance transfer provider.

The CFPB settled with a remittance transfer provider for violations of the Electronic Fund Transfer Act (EFTA) and the Remittance Transfer Rule. The CFPB claimed that, since the 2013 effective date of the Remittance Transfer Rule, the provider engaged in "thousands of violations" of the Remittance Transfer Rule. Specifically, based on its investigation, the CFPB claimed that the provider violated the EFTA and the Remittance Transfer Rule by:

- failing to honor cancellation requests and failing to refund certain fees and taxes when funds were not available on time;
- failing to maintain appropriate error resolution policies and procedures, to adhere to error resolution requirements, and to provide consumers with reports of investigation findings; and
- failing to treat international bill pay services as remittance transfers and to make proper disclosures in numerous instances.

The CFPB imposed a \$750,000 civil money penalty.

Bite #7 - Settled with an auto creditor.

The CFPB settled with an auto creditor over violations of the Fair Credit Reporting Act (FCRA). The CFPB claimed that the creditor violated the FCRA and its implementing regulation, Regulation V, by:

- furnishing consumer account information to CRAs that it knew or reasonably should have known was inaccurate, including failing to furnish accurate information regarding whether accounts were open or closed and whether consumers were carrying a balance or obligated to make future payments;
- failing to promptly update and correct information it furnished to CRAs that it later determined was incomplete and failed to provide the date of first delinquency on certain delinquent or

charged-off accounts; and

- failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information provided to CRAs.

These violations also constituted violations of the Consumer Financial Protection Act. The consent order imposes a \$4,750,000 civil money penalty and requires the creditor to take certain steps to prevent future violations.

Bite #6 - Settled with a student loan servicer.

The CFPB issued a consent order against a student loan servicer for violations of a prior CFPB consent order, the Electronic Fund Transfer Act (EFTA), and the Consumer Financial Protection Act. The CFPB issued a consent order in 2015 against the servicer, based on the CFPB's finding that the servicer misstated the minimum amounts due on billing statements as well as tax information consumers needed to get federal income tax benefits, in addition to engaging in illegal debt collection practices.

In this settlement, the CFPB claimed that the servicer violated the CFPA (unfairness), the EFTA, and Regulation E by withdrawing payments from more than 17,000 consumers' accounts without valid authorization and by canceling or not withdrawing payments for more than 14,000 consumers without notifying them. The CFPB also claimed that the servicer violated the CFPA (deceptiveness) by misrepresenting to more than 100,000 consumers the minimum payment owed and to more than 8,000 consumers the amount of interest paid. Some consumers ended up paying more than they owed, others became delinquent because they could not pay the overstated amount, while others may have filed inaccurate tax returns.

The servicer must pay a \$25 million penalty and at least \$10 million in consumer redress.

Bite #5 - Released the Taskforce report.

The CFPB Taskforce on Federal Consumer Financial Law, chartered in January 2020, examined the existing legal and regulatory environment facing consumers and financial services providers by engaging with external stakeholders, including consumer advocates, the CFPB's combined advisory boards, state and federal regulators, and industry. The Taskforce's two-volume report discusses what it learned during its examination and outreach to stakeholders and offers recommendations for the future of consumer financial protection.

In its report, the Taskforce makes approximately 100 recommendations to the CFPB, Congress, and state and federal regulators to strengthen consumer protection related to:

- Alternative data
- CFPB organization
- Competition
- Consumer credit reporting
- Consumer empowerment

- Cost-benefit and CFPB activities analysis
- Deposit accounts
- Disclosures
- Electronic signature and document requirements
- Emergency authority
- Enforcement
- Equal access to credit
- Financial inclusion
- FinTech regulation
- Privacy
- Regulatory coordination
- Regulatory principles
- Small-dollar credit
- Supervision

Please [join our colleagues Lucy Morris and Jean Noonan on Thursday, January 28 for a webinar](#) that should provide a great perspective for interpreting the report and help you focus on the recommendations that could have the most impact on your business in 2021 and beyond.

Bite #4 - Sued a mortgage lender.

The CFPB sued a mortgage lender for alleged violations of the Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA), the Mortgage Acts and Practices—Advertising Rule (MAP Rule), and the Consumer Financial Protection Act (CFPA).

The CFPB alleged that the mortgage lender violated TILA and Regulation Z by:

- using unlicensed employees to engage in mortgage-origination activities and interactions with consumers that required them to be licensed under state law; and
- requiring consumers to submit documents verifying information relating to the consumer's residential-mortgage-loan application before providing them a Loan Estimate.

The CFPB further alleged that the lender's use of unqualified sales employees to deprive consumers of critical, accurate, and timely loan information was an unfair practice under the CFPA. The CFPB alleged that the lender's employees denied credit to consumers based on information in their consumer report

or in response to their application but did not give consumers the "adverse action" notice required under FCRA and ECOA. The CFPB also alleged that the lender's representatives engaged in misleading representations, omissions, or practices toward consumers in violation of the MAP Rule and CFPB, including:

- whether employees were licensed, mortgage-loan originators;
- whether the consumer had been preapproved or guaranteed for a particular program or term; and
- whether and on what terms the consumer was likely to obtain refinancing.

Bite #3 - Settled with an online lender.

The CFPB settled with an online lender making single-payment and installment loans for violations of the Military Lending Act (MLA). The CFPB specifically alleged that the company's violations of the MLA included extending loans with an MAPR that exceeded the MLA's 36% cap, extending loans that required borrowers to submit to arbitration, and failing to make certain required loan disclosures, including a statement of the applicable MAPR. The action was part of a broader CFPB sweep of investigations of multiple lenders that may be violating the MLA. The CFPB alleged that the online lender made over 4,000 single-payment or installment loans to over 1,200 covered borrowers in violation of the MLA.

The proposed settlement would:

- require the lender to provide \$300,000 in redress to consumers and to pay a \$950,000 civil money penalty;
- enjoin the lender from committing future violations of the MLA and from collecting on, selling, or assigning any debts arising from loans that failed to comply with the MLA; and
- require the lender to correct or update the information it provided to consumer reporting agencies about affected consumers.

Bite #2 - Issued approval orders on dual-usage credit cards and earned wage access products.

The CFPB issued a compliance assistance sandbox (CAS) approval order to Synchrony regarding their proposal to develop a "dual-feature credit card." The card is designed for consumers with a limited or damaged credit history as a tool that can be used to establish or reestablish a favorable credit history. Synchrony intends to offer a lower rate on secured use with the opportunity for eligible account holders to graduate to unsecured use after 12 months. The terms of both secured use and unsecured use will be disclosed at the opening of the dual-feature credit card account. The terms will then be redisclosed with the opportunity to opt-in to unsecured use. The duration of the approval, in this case, is 3 years. A copy of the CAS approval order issued to Synchrony can be found [here](#).

The CFPB also issued a compliance assistance sandbox (CAS) approval order to PayActiv regarding specific aspects of some of its earned wage access (EWA) products. EWA products allow employees access to their earned but unpaid wages before payday. The duration of the approval, in this case, is 2 years. A copy of PayActiv's CAS application can be found [here](#). A copy of the CAS approval order issued

to PayActiv can be found [here](#).

Bite #1 - Director Kraninger resigned from her post.

Upon request by the Biden Administration, CFPB Director Kathy Kraninger resigned from her post at the CFPB. President Biden has tapped FTC Commissioner Rohit Chopra to lead the CFPB.

In addition, CFPB Deputy Director Tom Pahl retired before President Biden's inauguration, leaving another senior post to fill. Other political appointees and employees have also resigned. President Biden has named David Uejio, the CFPB's Chief Strategy Officer, as the acting director.

Still hungry?

Tune in each month for our [CFPB Bites of the Month webinars](#) or [request to view the recording](#) of any of our previous webinars.

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