HUDSON COOK

CFPB Bites of the Month - November Top 10

November 17, 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 November 17 webinar.

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

Bite #10 - The CFPB joined other financial regulatory agencies in issuing a statement on the discontinuation of LIBOR.

The CFPB and various other regulatory agencies issued a statement highlighting risks posed by discontinuing LIBOR. The interagency statement identified specific actions financial institutions can consider in order to prepare for the elimination of LIBOR-based loans. The CFPB urged banks and nonbanks to continue their efforts to transition to alternative reference rates to mitigate against risks.

On June 4, 2020, the CFPB issued a Notice of Proposed Rulemaking and FAQs relating to the LIBOR transition. The CFPB is continuing work on a final rule to address the anticipated expiration of LIBOR and expects to issue it in January 2022. The FAQs pertain to compliance with existing CFPB regulations for consumer financial products and services impacted by the anticipated LIBOR discontinuation and the resulting need to transition to other indices.

The CFPB indicated that banks and nonbanks should maintain risk management processes to identify and mitigate risks to consumers. The CFPB also indicated that it is committed to helping creditors transition consumers from LIBOR in a transparent and orderly manner. In June 2020, the CFPB released an updated consumer handbook on adjustable-rate mortgages to help consumers better understand these products and how their payments can change over time.

Bite #9 - The CFPB ordered tech giants to turn over information.

Pursuant to Section 1022(c)(4) of the Consumer Financial Protection Act, the CFPB issued a series of orders to collect information from large technology companies operating payments systems. The orders demand information on data harvesting and monetization, access restrictions and user choice, and other consumer protections.

Bite #8 - The CFPB, DOJ, and OCC took action against a national bank for alleged discrimination.

The CFPB, DOJ, and OCC took action against a national bank for alleged discrimination. The agencies alleged that the bank discriminated by deliberately not marketing, offering, or originating home loans to consumers in majority-Black and Hispanic neighborhoods in the Memphis metropolitan area. They also alleged that the bank discouraged consumers residing in or seeking credit for properties located in these neighborhoods from applying for credit.

The joint complaint alleged that the bank violated the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), and the Consumer Financial Protection Act of 2010 (CFPA). Specifically, the joint complaint alleges that the bank:

- Avoided locating branches in majority-Black and Hispanic communities;
- Avoided assigning loan officers to majority-Black and Hispanic communities;
- Failed to monitor its fair lending compliance; and
- Discouraged applicants and prospective applicants in majority-Black and Hispanic neighborhoods.

The proposed settlement would require the bank to put $3.85 million into a loan subsidy program for impacted neighborhoods, increase its lending presence in affected areas, and implement proper fair lending procedures. The Bank would also pay a $5 million civil money penalty and will be able to credit the $4 million in penalties collected by the OCC toward the satisfaction of this amount.

Bite #7 - CFPB Director Rohit Chopra testified before Congress.

Director Chopra testified before Congress in conjunction with the CFPB's submission of its Semiannual Report to Congress. Director Chopra noted that:

- Economic recovery has been uneven as many families are struggling to afford their mortgages and rent payments,
- Household debt is increasing at a faster rate than previously,
- Mortgage originations which include financing have hit historic highs,
- Auto loans are in high demand and Americans now owe $1.4 trillion in auto debt, and
- The CARES Act has kept delinquency rates on mortgages and student loans at low levels.

Director Chopra noted that Congress has tasked the CFPB with monitoring market conditions to spot risks, ensure compliance with existing law, and promote competition in order to protect families and honest businesses. He also outlined the CFPB's focus for the future will be on practices that impede competition, repeat offenders, and big data that leads to discrimination.

Bite #6 - The CFPB named new leadership.

The CFPB announced that Lorelei Salas will be joining the CFPB as Assistant Director for Supervision Policy and will also serve as the Acting Assistant Director for Supervision Examinations. Eric Halperin has joined the CFPB as Assistant Director for the Office of Enforcement.

Bite #5 - CFPB Director Chopra released a statement on the Report on Stablecoins.

Director Chopra released a statement regarding a "Report on Stablecoins" issued by the President's Working Group on Financial Markets, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The report highlighted how, without adequate oversight, stablecoins could be vulnerable to runs and fire-sales in ways that could create stress on the broader financial system. The CFPB was not a member of the working group that prepared the report but announced that it plans to take several steps related to this market.

The CFPB noted that it recently solicited public input on how Big Tech companies might use digital payment networks, including cryptocurrencies. The CFPB also noted that it is actively monitoring and preparing for broader consumer adoption of cryptocurrencies. Given the rapid growth in stablecoins, the CFPB indicated that it will closely engage with other members of the Financial Stability Oversight Council to determine the next steps.

Bite #4 - The CFPB finds credit report disputes are far more common in majority Black and Hispanic neighborhoods.

The CFPB released research finding that consumers in majority Black and Hispanic neighborhoods, as well as younger consumers and those with low credit scores, are far more likely to have disputes appear on their credit reports. The new research is a part of a series of reports focusing on trends in the consumer financial marketplace. The research uses data on auto loans, student loans, and credit card accounts opened between 2012 and 2019.

According to the CFPB, in nearly every credit category reviewed (auto loans, student loans, credit cards, and retail cards), consumers residing in majority Black areas were more than twice as likely to have disputes appear on their credit reports compared to consumers residing in majority-white areas. For auto loans, the CFPB indicated that consumers in majority Black areas were more than three times as likely to have disputes appear on their credit reports (0.8% of accounts with disputes in majority-white census tracts compared to 2.8% of accounts in majority Black census tracts).

Bite #3 - The CFPB took action to stop false identity matching by background screeners.

The CFPB indicated that it is concerned about the significant harms caused by false identity matching, where an applicant is disqualified from rental housing or a job based on having the same name as another individual with negative information in their credit history. The CFPB reported that the risk of mistaken identities from name-only matching is likely to be greater among Hispanic, Black, and Asian communities because there is less surname diversity in those populations compared to the white population.

According to the CFPB, both the CFPB and federal courts have consistently found that the use of name-only matching procedures, using only first and last name to determine whether a particular item of information relates to a particular consumer, without using other personally-identifying information, does not assure maximum possible accuracy of consumer information.

The CFPB indicated that the advisory opinion does not create a safe harbor to use insufficient matching procedures involving multiple identifiers. The CFPB warned that other practices, for instance, name combined with a date of birth, could also lead to cases of mistaken identity.

Bite #2 - The CFPB took action to prevent avoidable foreclosures.

The CFPB issued a joint statement with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and state financial regulators to announce the return to enforcement of certain protections for families and homeowners. Those protections, put in place in the wake of the Great Recession to prevent another foreclosure crisis, give families the chance to find alternatives to foreclosure before losing their homes.

The joint statement makes clear that the agencies will apply their respective supervisory and enforcement authorities to protect homeowners and address any compliance failures. The joint statement also provides that a previous joint statement issued in April 2020, which stated that the agencies would relax supervisory and enforcement oversight with respect to certain requirements in Regulation X, will no longer apply. The agencies believe that the servicers have had adequate time to adjust their operations to comply with the timelines and other requirements of Regulation X and that the servicers will now be expected to fully comply with the rules.

Bite #1 - The CFPB sued two pawnbrokers for allegedly unlawful transactions involving military families.

The CFPB sued two pawnbrokers for allegedly unlawful transactions involving military families. The CFPB alleges that two companies violated the Military Lending Act (MLA) by charging rates that were higher than the allowable 36% annual percentage rate in transactions with active-duty servicemembers and their dependents. The CFPB also alleged that one company violated a 2013 CFPB order against its predecessor company prohibiting MLA violations. The CFPB is seeking an injunction, redress for affected borrowers, and a civil money penalty.

Extra Bite - The CFPB seeks input on detecting discrimination in mortgage

lending.

The CFPB also issued a Request for Information (RFI) to seek input on rules implementing the Home Mortgage Disclosure Act (HMDA). The CFPB plans to review recent changes to the rule and evaluate the effectiveness of those changes.

HMDA, which was originally enacted in 1975, requires many lenders to report information about the home loans for which they receive applications or that they originate or purchase. The CFPB finalized changes to the HMDA regulations in 2015, expanding the types of data reported by lenders to improve overall market information and help with monitoring for fair lending compliance. The 2015 rule also improved the reporting process by aligning requirements with industry data standards, significantly enhancing the technological interface, and easing requirements for some small banks and credit unions. The CFPB is seeking comments on its plans to assess the effectiveness of the HMDA Rule.

Specifically, the CFPB will focus on:

- Institutional coverage and transactional coverage;
- Data points;
- Benefits of the new data and disclosure requirements; and
- Operational and compliance costs.

The RFI will remain open for 60 days after publication in the Federal Register.

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