HUDSON COOK

CFPB Bites of the Month - January 2024 - A Hazy Shade of Winter With the CFPB

January 18, 2024 | Justin B. Hosie and Eric L. Johnson

In this month's article, we share some of our top "bites" for the prior and current month covered during the January 2024 webinar.

Bite 10: CFPB Report on College-Sponsored Financial Products

On December 19, 2023, the CFPB issued a report on college sponsored financial products, which the CFPB warned could have higher fees and worse terms. The report addressed college sponsored credit cards and deposit accounts, noting that some of the college-sponsored deposit accounts include NSF and overdraft fees, two types of fees that many large banks have stopped charging. The CFPB claimed that as a result, organizations may be steering students into products that cost them more than they would pay on the open market. The report also found that the fees students paid varied by institution type; students at Historically Black Colleges and Universities, for-profit colleges, and Hispanic-servicing institutions all paid higher than average fees per account. Some students also faced unexpected fees upon graduation. The report found that some financial institutions imposed additional fees when a student graduates or reaches a certain age, relying on what the CFPB characterized as "sunset clauses" that change the terms of the account. The report noted that the CFPB will continue to examine these practices for potential violations of federal consumer protection law.

Bite 9: CFPB Reports on Challenges in Student Loan Repayment

On January 5, 2024, the CFPB published an issue spotlight on the CFPB's oversight of student loan servicing practices. After a three-year pause of required payments due to the COVID-19 emergency, student loan repayments resumed in the fall of 2023. The report found that borrowers are experiencing long hold times of more than an hour and that average call wait times for a borrower to speak to a representative reached 70 minutes in October 2023. The CFPB claims that borrowers abandoned about half of all calls to servicers that month. Consumers submitted millions of applications for new income-driven repayment plans, and by October, 1.25 million applications were pending, with more than 450,000 pending for more than 30 days. The report also claimed that borrowers are receiving incorrect and confusing bills from their servicers. The errors include listing premature due dates before the end of the payment pause, inflating monthly payment amounts due to the servicer using outdated poverty guidelines, or using the incorrect income when calculating a borrower's new income-driven repayment plan payment.

Bite 8: CFPB Issues Report on Neighborhoods and Mortgages

On December 21, 2023, the CFPB announced that staff have analyzed recent HMDA data to explore how the numbers of mortgage originators per capita varied on the neighborhood level. They also analyzed how that variation could impact lending outcomes. According to the CFPB, the data suggests that there is wide variation across neighborhoods in originators per capita, and that this measure was correlated with neighborhood-level characteristics like poverty, income, internet access, and racial and ethnic composition. Different financial institution types responded to these variations differently; credit unions originated a similar number of loans across all percentiles of originators per capita, bank originations fell with originators per capita, and originations by non-depository institutions increased with originators per capita. The report showed that even with groups of transactions that posed a similar credit risk, loan applications in neighborhoods with a larger number of originators per capita were less likely to be rejected. Additionally, consumers that took out mortgages in neighborhoods with more originators paid lower origination charges and lower total loan costs.

Bite 7: CFPB Report on Consumer Experience with Overdraft and NSF Fees

On December 19, 2023 the CFPB issued a new report that found many consumers are still experiencing unexpected overdraft and NSF fees, despite recent changes by many banks and credit unions to eliminate some of these fees. According to the report, more than 25% of consumers stated that financial institutions charged their household an overdraft or NSF fee in the past year, and that only 22% of those households expected the most recent overdraft. Many of these consumers appeared to have access to cheaper alternatives - like available balance on a credit card - when the overdraft occurred. The report also found that some of the consumers who experienced overdraft fees appear to use overdrafts intentionally and frequently; in households that experienced more than 10 overdrafts in a year, more than half said they expected the fees. The CFPB says that low-income households were the most likely to experience an overdraft or NSF fee. Financial institutions only charged 10% of households with over $175,000 in income with an overdraft fee in the past year, compared with 34% of households with an income below $65,000. Finally, the CFPB also noted that most account overdrafts are exempt from Regulation Z, which is designed to promote informed use of credit and allow consumers to compare the cost of credit products.

Bite 6: CFPB Issues Guidance on Credit Reporting Issues

On January 11, 2024, the CFPB issued guidance to credit reporting companies through two advisory opinions. The opinions address inaccurate background check reports and credit file sharing practices. The CFPB's advisory opinion on background check reports highlighted that credit reporting companies must maintain reasonable procedures to avoid producing reports with false or misleading information. These procedures should prevent the publication of expunged, sealed, or other legally restricted information. They should also report disposition information for arrests, criminal charges, and evictions, and prevent the reporting of duplicative information. The advisory opinion on credit file sharing explained that individuals who are requesting their credit files only need to make a request and provide identification, and they do not need to use specific language or jargon to obtain their report. The CFPB says the organization providing the report must provide the complete file with information sources, with clear and accurate information presented in an understandable way, in a format that will help the recipient address inaccuracies.

Bite 5: FDIC Finalizes New Rule on Use of Name and Logo

On December 20, 2023, Director Rohit Chopra issued a statement on the FDIC's new rule concerning use of its name and logo by nonbanks, saying that this rule is necessary to conform the FDIC framework with the modern banking experience. Chopra said that nonbanks are increasingly offering deposit-style products in partnership with banks, and that these nonbanks then state that the consumer funds benefit from FDIC insurance on a pass-through basis. According to the CFPB director, however, this pass-through protection is not automatic or guaranteed and it does not protect the public from risks associated with the possible failure of the nonbank, such as the potential for frozen funds. The new FDIC rule establishes a new official digital sign that banks will need to display near the name of the bank on all bank websites and mobile applications, and requires the signs to differentiate insured deposits from non-deposit products across banking channels and to indicate that certain financial products "are not insured by the FDIC, are not deposits, and may lose value." The rule also clarifies that marketers may not use FDIC-associated terms or images to inaccurately imply or represent that any uninsured financial product or non-bank entity is insured or guaranteed by the FDIC.

Bite 4: New Proposed Rule on Overdraft Fees

On January 17, 2024, the CFPB proposed a new rule that it says is aimed at changing the way overdraft fees are disclosed. The CFPB indicated that the Truth in Lending Act has long exempted overdraft services from many of its provisions, which the CFPB now calls a "loophole" that financial institutions take advantage of. The CFPB says that this proposed rule is part of a continued effort by the CFPB to rein in "junk fees" and spur competition in the consumer financial product marketplace. Under the current Truth in Lending Act rules, the CFPB noted that banks do not need to disclose the cost of credit when they extend a loan to cover the difference on an overdrawn account. The proposed rule would require large financial institutions with more than $10 billion in assets to treat overdrafts like credit cards or lines of credit and provide clear disclosures to consumers about the cost of these credit products, including an interest rate. Alternatively, the institutions would be able to charge a flat fee at a cost that calculated based on demonstrated data. Comments on this proposed rule are due by April 1, 2024.

Bite 3: CFPB Files Amicus Brief in Debt Collection Case

On January 2, 2024, the CFPB filed a friend-of-the-court brief in a debt collection case, responding to a debt collector's FDCPA argument. In that case a consumer filing for bankruptcy had received a letter from a debt collector during the bankruptcy process demanding payment and threatening a lawsuit. The individual sued the debt collector for this alleged misrepresentation. The debt collector argued that it was only responsible for intentional false statements, and that at the time it sent the letter, it was unaware that the consumer had filed for bankruptcy. According to the CFPB's brief, that argument is incorrect and a debt collector can be liable under the FDCPA even if they claim that they did not know that their statement was false; however, a debt collector will not be held responsible in a lawsuit brought by an individual if they can show that they didn't intend to make the false representation and that they had effective procedures in place designed to prevent the mistake.

Bite 2: CFPB Sues Lender-Developer

On December 20, 2023, the CFPB sued a lender-developer in Texas for alleged predatory lending. The CFPB announced that it joined the Department of Justice to sue the Texas-based lender-developer, alleging that the company operated an illegal land sales scheme that targeted Hispanic borrowers with false statements and predatory loans. The lawsuit alleges that the company sold flood-prone land without water, sewer, or electrical infrastructure, despite advertising claims that the homes came with all city services and that the lots have never flooded. The CFPB also alleged that the company advertised in Spanish, but only made important sale documents available in English. The CFPB further alleged that the company was "churning" borrowers through cycles of foreclosure and then re-selling the foreclosed properties at a profit. According to the CFPB, deed records show that the lender-developer repurchased at least 40% of the properties and resold them between two and four times over three years. The CFPB alleged that the company violated the ECOA, the Interstate Land Sales Full Disclosure Act, and implementing regulations. The DOJ joined the CFPB in its ECOA claims and separately alleged violations of the Fair Housing Act. The lawsuit seeks an injunction, consumer redress, and a civil penalty.

Bite 1: CFPB To Distribute Relief to Veterans

On January 2, 2024, the CFPB announced that it has distributed $6 million in financial relief to consumers that were harmed by alleged illegal lending practices that targeted veterans. According to the CFPB, five connected companies misled consumers, including veterans, into selling their pension and disability payments, which is illegal under federal and state law. The CFPB alleged that these transactions were not sales, but illegal, high-interest loans. These payments stem from years-old enforcement actions. In 2019, the CFPB and the state of Arkansas reached an agreement with one of the companies, and three others faced a lawsuit filed by the CFPB and the state of South Carolina. The 5th named defendant worked along with the others named in these actions. He settled with the CFPB in 2019 in response to allegations that he violated the CFPA by misleading consumers about interest rates and the validity of the contracts, as well as when the consumers would receive their funds from the transactions. The harmed consumers received a distribution in December 2023 that totaled $6 million, partially funded from the CFPB's civil penalty fund.

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