Inside the cfpb
Consumer Financial Protection Bureau
Covering a New Era of Financial Regulation & Enforcement

Electronic Edition

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Volume 34:02 January 23, 2023

Inside the CFPB

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Annual subscription rate: $735.
Published 25 times a year.

Consumer Complaints About Mortgages Decline in 2022

Consumers filed significantly fewer complaints with the CFPB about their mortgage experiences last year, according to a new *Inside the CFPB* analysis and ranking.

Overall, gripes about mortgages fell 12.5% year over year and 11.6% from the third quarter to the fourth of 2022.

Leading the way in 2022 was a 30.3% year-over-year plunge in consumer complaints about mortgage applications. Gripes about applications totaled 4,151 in 2022, compared to 5,318 in 2020 and 5,956 in 2021.

Also, consumer gripes about closing fell substantially, down 27.8% to 2,038 in 2022. Criticisms about closing had been moving uphill for the preceding three years as mortgage originations skyrocketed between 2019 and 2021.

Complaints about mortgage servicing were down too, off 6.5% to 11,407 in 2022. On a sequential basis, servicing gripes declined 8.7% from the end of September to the end of December.

But complaints about loan modifications inched up 1.5% on an annual basis to 5,625 in 2022, despite

Trends in Mortgage-Related Complaints Filed with the CFPB

		Type of Complaint				Timely	
Period	Total	Loan Mod	Servicing	Application	Closing	Response	Closed
2012	38,109	22,141	9,676	2,729	1,326	36,336	37,909
2013	49,401	29,140	13,247	3,416	1,650	48,902	49,368
2014	42,961	21,478	15,766	2,687	1,532	42,095	42,919
2015	42,343	18,633	16,273	3,316	1,811	41,664	42,270
2016	41,465	16,247	17,034	3,800	2,005	40,812	41,395
2017	30,579	11,717	12,808	3,003	1,920	30,152	30,469
2018	24,579	8,656	11,411	2,155	1,641	24,185	24,480
2019	22,710	6,601	11,356	2,588	1,713	22,413	22,619
2020	24,664	5,204	11,663	5,318	2,477	24,180	24,570
2021	26,531	5,541	12,206	5,956	2,821	26,057	26,456
2022	23,221	5,625	11,407	4,151	2,038	22,747	22,348
1Q19	5,535	1,792	2,859	435	327	5,475	5,513
2Q19	5,796	1,677	2,931	576	440	5,736	5,777
3Q19	5,904	1,680	2,920	677	469	5,827	5,877
4Q19	5,475	1,452	2,646	900	477	5,375	5,452
1Q20	5,797	1,584	2,806	943	464	5,707	5,785
2Q20	6,115	1,556	2,830	1,240	489	6,006	6,090
3Q20	6,556	1,079	3,098	1,631	748	6,443	6,538
4Q20	6,196	985	2,929	1,504	776	6,024	6,157
1Q21	7,434	1,195	3,656	1,733	846	7,297	7,423
2Q21	7,016	1,418	3,219	1,649	727	6,911	7,001
3Q21	6,108	1,360	2,721	1,420	607	5,983	6,086
4Q21	5,973	1,568	2,610	1,154	641	5,866	5,946
1Q22	6,934	1,505	3,396	1,406	627	6,813	6,917
2Q22	5,861	1,444	2,813	1,105	499	5,724	5,847
3Q22	**5,534**	**1,380**	**2,717**	**934**	**503**	**5,383**	**5,098**
4Q22	4,892	1,296	2,481	706	409	4,827	4,486
Cumulative	367,839	151,627	143,224	39,270	20,988	360,648	366,073
Change:							
3Q22-4Q22	-11.6%	-6.1%	-8.7%	-24.4%	-18.7%	-10.3%	-12.0%
12M2021-22	-12.5%	1.5%	-6.5%	-30.3%	-27.8%	-12.7%	-15.5%

Note: Revisions in bold.

Source: Inside the CFPB analysis of CFPB data

Mortgage-Related Complaints Filed with the CFPB: 12M2022

	Lender	12M2022 Total	Type of Complaint: Loan Mod	Servicing	Loan App	Closing	Timely Response	Closed	Mkt Share
1	NATIONSTAR MORTGAGE	1,658	26.1%	58.1%	11.3%	4.5%	100.0%	99.5%	7.1%
2	WELLS FARGO & COMPANY	1,393	29.6%	38.4%	23.9%	8.0%	100.0%	97.2%	6.0%
3	OCWEN FINANCIAL CORPORATION	1,209	31.9%	50.9%	11.0%	6.2%	100.0%	99.9%	5.2%
4	SHELLPOINT PARTNERS, LLC	1,112	27.2%	55.7%	12.2%	4.9%	99.7%	99.6%	4.8%
5	FREEDOM MORTGAGE COMPANY	887	23.9%	53.3%	17.1%	5.6%	100.0%	100.0%	3.8%
6	SELECT PORTFOLIO SERVICING, INC.	868	39.9%	44.5%	9.3%	6.3%	100.0%	99.5%	3.7%
7	BANK OF AMERICA, NATIONAL ASSOCIATION	778	26.5%	40.0%	24.8%	8.7%	99.7%	95.2%	3.4%
8	TRUIST FINANCIAL CORPORATION	672	10.1%	67.7%	13.1%	9.1%	96.6%	98.7%	2.9%
9	SPECIALIZED LOAN SERVICING HOLDINGS LLC	637	36.9%	53.4%	6.0%	3.8%	99.1%	98.9%	2.7%
10	JPMORGAN CHASE & CO.	607	18.0%	46.0%	22.7%	13.3%	100.0%	99.3%	2.6%
11	U.S. BANCORP	559	29.3%	44.2%	18.8%	7.7%	100.0%	100.0%	2.4%
12	LOANCARE, LLC	538	28.8%	53.5%	12.8%	4.8%	100.0%	97.4%	2.3%
13	ROCKET MORTGAGE, LLC	500	10.2%	42.8%	33.0%	14.0%	99.4%	98.8%	2.2%
14	FLAGSTAR BANK, N.A.	483	32.1%	51.3%	11.8%	4.8%	100.0%	100.0%	2.1%
15	CARRINGTON MORTGAGE SERVICES, LLC	439	37.6%	43.1%	14.8%	4.6%	100.0%	89.5%	1.9%
16	RUSHMORE LOAN MANAGEMENT SERVICES LLC	406	41.4%	47.0%	7.6%	3.9%	99.8%	99.8%	1.7%
17	SELENE HOLDINGS LLC	403	42.4%	49.1%	5.7%	2.7%	99.8%	99.3%	1.7%
18	CITIZENS FINANCIAL GROUP, INC.	398	20.4%	54.8%	16.3%	8.5%	100.0%	95.5%	1.7%
19	PNC BANK N.A.	391	16.9%	52.7%	18.7%	11.8%	100.0%	90.5%	1.7%
20	FAY SERVICING, LLC	360	36.9%	52.8%	6.1%	4.2%	96.7%	99.4%	1.6%
21	CALIBER HOME LOANS, INC.	327	15.6%	60.9%	15.9%	7.6%	97.6%	100.0%	1.4%
22	PENNYMAC LOAN SERVICES, LLC.	325	20.3%	57.5%	16.0%	6.2%	100.0%	100.0%	1.4%
23	BSI FINANCIAL HOLDINGS, INC.	325	14.2%	73.5%	9.8%	2.5%	100.0%	100.0%	1.4%
24	FIFTH THIRD FINANCIAL CORPORATION	275	12.0%	59.6%	18.2%	10.2%	100.0%	97.8%	1.2%
25	LD HOLDINGS GROUP, LLC	261	11.9%	45.2%	27.2%	15.7%	100.0%	98.9%	1.1%
26	LAKEVIEW LOAN SERVICING, LLC	254	20.5%	63.8%	10.2%	5.5%	100.0%	99.6%	1.1%
27	DOVENMUEHLE MORTGAGE, INC.	244	34.0%	50.0%	11.1%	4.9%	97.1%	99.6%	1.1%
28	UNITED SHORE FINANCIAL SERVICES, LLC	230	7.4%	70.9%	10.4%	11.3%	99.6%	95.2%	1.0%
29	M&T BANK CORPORATION	189	34.4%	43.9%	16.9%	4.8%	99.5%	98.4%	0.8%
30	NAVY FEDERAL CREDIT UNION	185	5.4%	20.5%	52.4%	21.6%	100.0%	93.5%	0.8%
31	AMERIHOME MORTGAGE COMPANY, LLC	181	23.8%	63.5%	9.9%	2.8%	98.9%	96.1%	0.8%
32	MIDFIRST BANK	177	36.2%	39.0%	16.4%	8.5%	100.0%	96.0%	0.8%
33	AMERISAVE MORTGAGE CORPORATION	150	4.7%	36.0%	46.0%	13.3%	97.3%	100.0%	0.6%
34	PLANET HOME LENDING, LLC	147	23.8%	63.3%	11.6%	1.4%	100.0%	99.3%	0.6%
35	MONEY SOURCE, THE	146	28.8%	54.8%	11.0%	5.5%	96.6%	100.0%	0.6%
36	COMMUNITY LOAN SERVICING, LLC (FORMERLY KNOWN AS	140	32.9%	47.9%	12.9%	6.4%	99.3%	100.0%	0.6%
37	CROSSCOUNTRY MORTGAGE LLC	135	27.4%	41.5%	22.2%	8.9%	100.0%	99.3%	0.6%
38	HOME POINT FINANCIAL CORPORATION	122	8.2%	73.8%	9.8%	8.2%	100.0%	98.4%	0.5%
39	HUNTINGTON NATIONAL BANK, THE	111	8.1%	64.9%	14.4%	12.6%	100.0%	96.4%	0.5%
40	CARDINAL FINANCIAL COMPANY	105	37.1%	48.6%	8.6%	5.7%	100.0%	96.2%	0.5%
41	TD BANK US HOLDING COMPANY	97	11.3%	52.6%	28.9%	7.2%	100.0%	100.0%	0.4%
42	ROUNDPOINT MORTGAGE SERVICING CORPORATION	95	11.6%	76.8%	8.4%	3.2%	98.9%	97.9%	0.4%
43	GUARANTEED RATE INC.	91	8.8%	51.6%	14.3%	25.3%	100.0%	100.0%	0.4%
44	SN SERVICING CORPORATION	89	49.4%	39.3%	7.9%	3.4%	100.0%	100.0%	0.4%
45	PENTAGON FEDERAL CREDIT UNION	81	4.9%	28.4%	49.4%	17.3%	100.0%	100.0%	0.3%
46	BROKER SOLUTIONS, INC.	81	19.8%	22.2%	38.3%	19.8%	96.3%	100.0%	0.3%
47	KEYCORP	76	14.5%	56.6%	17.1%	11.8%	100.0%	93.4%	0.3%
48	NOVAD MANAGEMENT CONSULTING LLC	73	27.4%	38.4%	9.6%	24.7%	45.2%	100.0%	0.3%
49	ASPEN YO LLC	67	38.8%	55.2%	6.0%	0.0%	100.0%	98.5%	0.3%
50	MORTGAGE RESEARCH CENTER, LLC	65	4.6%	35.4%	32.3%	27.7%	100.0%	100.0%	0.3%
	ALL LENDERS	**23,221**	**24.2%**	**49.1%**	**17.9%**	**8.8%**	**98.2%**	**98.0%**	**100.0%**

Note: Loan mod includes late payments. Loan app includes underwriting issues.
Source: Inside the CFPB analysis of Consumer Financial Protection Bureau database of consumer complaints.

a drop of 6.1% from the third quarter to the fourth quarter.

The number of complaints that received timely responses improved in the final months of the year, increasing from 97.3% in the third quarter to 98.7% in the fourth quarter.

Meanwhile, the share of complaints closed in proportion to those received decreased marginally, going from 92.1% to 91.7%.

The companies with the highest number of mortgage-related complaints were the usual suspects: large banks and nonbanks with large servicing portfolios.

Gripes against Mr. Cooper/Nationstar Mortgage totaled 1,658 in 2022. In second place was Wells Fargo, which recently announced its retreat from the mortgage business. The bank accounted for 1,393 mortgage complaints. The third highest number of complaints went to Ocwen (1,209), and at fourth place was Shellpoint Partners (1,112).

The number of firms that managed a 100% timely response rate remained unchanged at the 12-month mark: 31 firms among the top 50. ❑

CFPB Updates Mortgage Servicing Exam Procedures

The CFPB last week released updates to its mortgage servicing examination procedures — the first since 2016 — to cover forbearance and other tools mortgage servicers have used during the COVID-19 national emergency.

"As long as these streamlined loss-mitigation options are made available to borrowers experiencing hardship due to the COVID-19 national emergency, those same streamlined options can also be made available under the temporary flexibilities in the rule to borrowers not experiencing COVID-19-related hardships," Lorelei Salas, assistant director for supervision policy at the bureau, said in a blog post.

She said the bureau expects servicers to keep using "all the tools at their disposal — including, if available, streamlined deferrals and modifications that meet the conditions of the bureau's COVID-19-related mortgage servicing rules — in their efforts to keep consumers in their homes."

The updates also include topics from the bureau's supervisory highlights reports, for example, questions about fees servicers charge borrowers, such as phone pay fee, and foreclosure-related misrepresentations by servicers.

The new guidelines also direct examiners to question how servicers communicate homeowner assistance program information to borrowers.

Examiners will now also have to review samples of the content of training materials, including training related to fair lending, regulatory requirements, products or channels of distribution and marketing.

Examiners will scrutinize whether servicers advise consumers on ways to pay with lower fees or accept referral fees from third-party companies to process payments.

They will also examine non-statutorily defined risks like whether the servicer has initiated foreclosure when it said it wouldn't or said it wouldn't during a specific time period, if the servicer told consumers it would begin foreclosure before it intended to or if it foreclosed on consumers who agreed to some form of loss mitigation before the first payment was due.

Chris Willis and Lori Sommerfield, attorneys at Troutman Pepper, in a recent blog post said the most significant change to the procedures "involves instructing examiners on how to conduct a disparate impact analysis in loss mitigation program reviews."

Willis and Sommerfield said the new procedures were the first official public statement of the bureau's intention to analyze servicing decisions using fair lending statistical analyses.

Also significant, they said: the directions omit "any discussion of controls in the analysis to allow the bureau to compare similarly-situated borrowers," such as controlling for borrowers' ability to qualify for a loss-mitigation option when assessing foreclosures.

The attorneys said it's possible the bureau's planning to expand fair lending analyses into other kinds of servicing.

Separately, the CFPB published a blog post last week noting that borrowers facing foreclosure could benefit from a traditional home sale if they have sufficient equity.

"Often, the mortgage servicer's phone representatives are the first line of communication with homeowners," the CFPB said. "For this reason, servicers are encouraged to provide information and training to representatives, so they are ready to have conversations with equity-positive homeowners facing foreclosure about the possible advantages of selling the home." ❑

CFPB Proposes Registry of Nonbanks' Contract Terms

The CFPB this month floated a rule aimed at preserving consumer rights from "one-sided" terms and conditions in form contracts signed when purchasing a product, downloading an app or signing up for a service.

Under the proposed rule, nonbanks would be required to register with the bureau if they use specific terms and conditions that attempt to waive consumers' legal protections, limit how consumers enforce their rights, restrict consumers' ability to file complaints, force arbitration or limit the company's liability to a consumer.

"Typically, [the terms and conditions] are not subject to negotiation with a consumer. Instead, they are 'take it or leave it' form contracts," CFPB Director Rohit Chopra said in a statement accompanying the draft rule. "Due to this dynamic, many contracts are one-sided and favor the company over the consumer."

Chopra cited an example of some contracts that included "gag clauses," which forbid consumers from posting a negative online review or filing a complaint.

"We have seen one company seeking to include language in its 'acceptable use' agreement that gives the company the ability to 'fine' individuals for their speech," Chopra added.

The bureau highlighted mortgage contracts that seek to waive consumer rights under the Truth in Lending Act, and agreements that lead servicemembers to waive their rights under the Military Lending Act and the Servicemembers Civil Relief Act.

Further, the CFPB noted that some firms offering short-term small-dollar loans have sought to waive liability for bank fees incurred by borrowers due to repeated payment collection attempts from an account that lacks funds.

Nonbanks would have to register each year in a system established by the CFPB and submit information about their use of covered terms. The information would be published on the bureau's website.

In a blog post, law firm Buckley noted that while "all supervised nonbanks, including those operating in payday lending, private student loan origination, mortgage lending and servicing, student loan servicing and automobile financing, would be subject to the rule, the bureau is proposing certain exemptions for nonbanks with lower levels of receipts."

The proposed rule will be open for public comment for 30 days after its publication in the *Federal Register*.

Chopra said the registry would help regulators "more easily detect" when companies are offering products and services using prohibited, void and restricted contract terms.

It would offer insight into the types of terms and conditions that are in use, and their effect on the adequacy of underlying consumer financial protection laws that are being waived or limited.

Further, the registry would inform how the bureau conducts its supervision of nonbanks.

"The CFPB would use data from the registry to identify supervised nonbanks and the risks their terms and conditions pose, prioritize which firms to examine, and plan the scope of those exams," Chopra noted.

According to Allen Denson, partner at Stroock & Stroock & Lavan and former senior attorney at the Office of the Comptroller of the Currency, the CFPB currently doesn't have a mechanism to prohibit so-called take it or leave it terms, and the proposed rule could be another attempt by the bureau to ban forced arbitration.

In 2017, the bureau issued a rulemaking prohibiting forced arbitration clauses that prevent consumers from participating in class actions. However, the Senate disapproved the rule under the Congressional Review Act. The bureau, as a result, can't pass any rule that is "substantially the same" to the 2017 rule.

House Financial Services Committee Chair Patrick McHenry, R-NC, denounced the registry, calling it "another attempt by Chopra to unilaterally expand the CFPB's authority beyond Congress' intent and to mandate what Democrats were unable to legislate."

He said the move was unprecedented as no other industry is required to make public detailed contract information. ❑

Industry Slow on Resources For Borrowers with LEP

The CFPB is pushing itself, as well as financial institutions, to provide more consumer resources, disclosures and forms in non-English languages for consumers with limited English proficiency.

In an interview, Meina Banh, senior advisor in the Office of Financial Education, said the bureau is seeking to ensure consumers with LEP have safe and equitable access to the financial marketplace and can improve their financial wellbeing.

One of CFPB Director Rohit Chopra's focus areas, Banh noted, is "reminding financial institutions of their obligations [regarding consumers with LEP] and accountability under the financial consumer protection laws, including equal opportunity and deceptive practices."

The bureau translates materials into eight languages: Spanish, Chinese, Korean, Tagalog, Vietnamese, Haitian Creole, Arabic and Russian.

The CFPB uses several "data markers" to determine how best to serve consumers with LEP, including consumer complaints and partnerships with state and local agencies, nonprofits and grassroots organizations to understand multilingual communities' challenges.

Under Chopra, Banh said, the bureau has also started engaging with industry practitioners who work directly with LEP consumers, conducting focus groups and doing usability testing with those consumers.

"The goal is to not only unearth different issue areas for different communities but also how they interact with CFPB resources," she explained. She cited as an example finding out about LEP consumers' experience when they visit the CFPB website or consumer complaint portal.

Spanish is the most common native language spoken by consumers with LEP. As of 2019, 16.1 million U.S. persons who spoke Spanish at home said they spoke English less than "very well," according to Census Bureau data.

To connect with LEP-status Spanish speakers, the CFPB maintains contact with Spanish-language media. Sometimes it also translates press releases, especially when particularly pertinent to community issues.

CFPB Public Affairs Specialist Raul Cisneros said that in the past Spanish-language publications were "hungry for in-language materials that they could literally cut-and-paste into a news article." Now, he said, "what's key is to be able to do an interview in-language, and that we can do."

He said the bureau also has the capacity to do this in languages other than Spanish. But currently the demand is for Spanish resources, he noted.

The Mortgage Industry

Laura Arce, senior vice president for economic initiatives at UnidosUS, a Hispanic advocacy group, said language access is inconsistent through the mortgage journey for borrowers with LEP.

She noted that most major lenders conduct marketing and outreach in Spanish because that's where the industry's future growth is. More loan officers speak Spanish today than 10 years ago, she added.

But as applicants proceed through the process, "things start getting more inconsistent and unreliable," Arce said. When it gets to the stage of signing legal documentation, she said, "we're not there."

"Certainly once you get to the servicing point, where you have someone potentially having a financial issue and they reach out for help, or the lender or the servicer is just trying to reach out to contact the borrower, that information isn't there," Arce said.

She said the Federal Housing Finance Agency is working to collect language preference data, which should help, but the collection is only on a voluntary basis. Arce said UnidosUS hopes the FHA will follow suit as many Latinos, especially first-time homebuyers, use FHA mortgages.

The CFPB's LEP focus has led it to issue several blank origination-related forms and mandatory disclosures in Spanish.

"But there seems to still be a disconnect, because lenders and servicers still seem reluctant to really fully adopt these translated documents," she said. She suggested lenders could be seeking a safe harbor or may be concerned about costs.

"When we look at the longer-term health of this industry and the sector, to me it seems like a no-brainer that we need to make these investments and these commitments to making sure that consumers [with LEP] are able to fully partake in our housing market," she said.

She noted that many pre-qualified Latino consumers were disqualified when mortgage rates began rising in 2022, as the cost associated with the mortgage increased significantly.

"We've heard instances where some consumers with limited English don't understand what happened," she said. "Not being able to explain that well in a way that the consumer understands, it disillusions consumers and it builds distrust."

She said LEP applicants rely "much more on trusted advisors, whether it's a loan officer, your real estate agent or someone else."

Because those advisors are often not unbiased, she said, nonprofit housing counselors can be particularly helpful for LEP consumers. But few consumers use those networks' services, Arce said, because of a lack of consistent funding. ❑

City National Bank Agrees to Settle DOJ Redlining Case

Los Angeles-based City National Bank has agreed to pay $31 million to the Department of Justice to settle charges of redlining. The DOJ said this is the largest redlining settlement in its history.

The complaint involved alleged violations of the Fair Housing Act and the Equal Credit Opportunity Act.

The DOJ said City National between 2017 and at least 2020 avoided providing mortgage lending activities in majority-Black and Hispanic neighborhoods in the LA metropolitan area and discouraged residents in those areas from obtaining mortgages.

During that time, the bank "generated disproportionately low numbers of loan application and home loans." Other banks received more than six times as many applications in majority-Black and Hispanic neighborhoods than City National in each of those years.

Further, the DOJ said the bank had opened or acquired 11 branches in the past 20 years but only one of them was in a majority-Black or Hispanic neighborhood. The bank also failed to assign an employee there to generate mortgage applications.

Under the terms of the settlement, City National will over the next five years invest at least $29.5 million in a loan subsidy fund for residents in majority-Black and Hispanic neighborhoods in LA County, $500,000 for advertising and outreach, $500,000 for a consumer education program and $750,000 for development of community partnerships.

The bank will conduct a market study to identify the credit needs of residents of in majority-Black and Hispanic census tracts.

The bank will also open one new branch in a majority-Black or Hispanic neighborhood, ensure at least four mortgage loan officers are dedicated to serving majority-Black and Hispanic neighborhoods and employ a full-time community lending manager who will oversee the continued development of lending in majority-Black and Hispanic neighborhoods.

Further, City National will launch a special purpose credit program for commercial loans and residential mortgage loans for use by underserved populations, and a small-business lending program for underserved business owners for use in operating and growing their businesses.

City National in a statement denied the allegation but said it supports the DOJ in its efforts to ensure equal access to credit for all consumers, regardless of race.

The settlement is part of the DOJ's Combating Redlining Initiative. Since the launch of the initiative in October 2021, the DOJ has announced five redlining cases and settlements with a combined $75 million in relief for victims.

Richard Horn, partner at Garris Horn and attorney for Townstone Financial, a lender sued recently for redlining by the CFPB, said the case "highlights that there's really no mercy here."

"If your data look bad, if you don't have enough bank branches in majority-minority census tracts and you're not doing some targeted marketing, then you're really at risk," he said. ❑

CFPB Says Servicemember Identity Theft on the Rise

Identity theft-related complaints filed with the CFPB by active-duty servicemembers, veterans and military family members have increased nearly five-fold in the last nine years, going from 234 in 2014 to 1,124 in 2022, the bureau said in a new report.

The bureau noted several reasons that make servicemembers targets of identity theft, including steady income and frequent relocation.

The consequences of identity theft are more dire for servicemembers. "The financial status of servicemembers with security clearances is continuously evaluated," the bureau explained. "If a review reveals a history of failing to meet their financial obligations, being in excessive debt or having a high debt-to-income ratio, the servicemember's security clearance may be revoked."

The report added, "If identity theft results in fraudulent credit accounts and past-due bills showing up on a servicemember's credit report, it can swiftly derail the servicemember's career, undermining military readiness and national security."

The CFPB said the three national credit agencies — Equifax, Experian and TransUnion — must be responsive to the identity theft and credit concerns of military consumers.

The bureau also called on financial institutions to consider how to strengthen identity theft protections. The CFPB suggested companies have procedures in place to identify possible signs of identity theft and suspicious activities, maintain a course of action for those circumstances and have a plan to keep up with emerging threats.

The bureau said any person who collects consumer information to determine eligibility for credit, insurance, employment or other purposes must properly dispose of the information.

The bureau said it will "continue to use its available tools to ensure that [the national credit agencies] and financial institutions take appropriate action when servicemembers report identity theft."

In 2021, active-duty servicemembers, veterans and military family members reported nearly 50,000 identity theft cases to the Federal Trade Commission, the bureau noted.

Citing a 2020 FTC report, the bureau said active-duty servicemembers were 22% more likely than civilians to report the theft and use of their information to open a new credit card or other account, 76% more likely to report identity theft resulting in misuse of an existing account and three times as likely to report identity theft resulting in money being taken from their accounts.

The CFPB said its own recent analysis showed difficulty managing dispute processes, especially when related to identity theft. Consumers indicated having to repeatedly file documentation, with no changes made as a result of their efforts.

The bureau recommended servicemembers regularly review their credit reports and dispute inaccuracies. Armed forces members can also request "active duty" alerts when deployed, providing for identity verification before granting new credit in the consumer's name, or request a security freeze. ❑

CFPB Supports Plaintiffs in EFTA Lawsuit Against BofA

The CFPB recently filed an amicus brief with the Fourth Circuit in favor of plaintiff-appellants seeking reversal of a district court's decision in a lawsuit against Bank of America.

In its brief, the bureau said that Electronic Fund Transfer Act protections apply to prepaid card accounts that are used to distribute government benefits, including pandemic-related unemployment assistance.

In July 2020, plaintiff Yagoub Mohamed applied for pandemic unemployment insurance, and opted to receive the funds on a prepaid card, available only from BofA. He received his card in the mail after five months, but with a zeroed-out balance.

BofA told him that his account had been subject to numerous unauthorized charges. Mohamed then filed a claim to notify the bank of the error.

BofA froze his account due to "irregular, unauthorized or unlawful activities." He called the bank several times, seeking aid to no avail. One representative said BofA had stopped processing his claim, and another said they denied it twice. Mohamed received no explanation for the denials.

Mohamed sued BofA under EFTA for failure to follow error resolution requirements by not investigating his claim in good faith, not providing provisional credit for claims unresolvable within 10 business days, not crediting him with interest, freezing his account to delay the investigation and preventing his access to the funds.

The EFTA requires financial institutions investigate when consumers inform them of an error on a covered account.

Mohamed was credited for the lost benefits in June 2021, after he'd sued.

BofA moved to dismiss his case, arguing the payment fell under an exception for "qualified disaster relief payments," meaning they were excluded from the EFTA-implementing Regulation E's prepaid account definition.

The District Court of Maryland agreed and dismissed the case. Mohamed filed an appeal in September 2022.

The CFPB's amicus brief said his prepaid card account should have been considered a government benefit account subject to EFTA's and Reg. E's error resolution requirements. It argued that the lower court's ruling isn't supported by statute or regulation and undermines EFTA protections.

The bureau said prepaid accounts under Reg. E include specific categories of accounts, including government benefit accounts, which it said aren't covered by prepaid account exclusions under the plain text of Reg. E.

"Since Mr. Mohamed's account meets the definition of a government benefit account, no exclusions apply, and no further analysis is necessary. The district court's entire discussion of whether PUA benefits could be considered 'qualified disaster relief payments' is thus irrelevant," the bureau wrote.

CFPB General Counsel Seth Frotman said a contrary reading of the law "would create an exception that the law's regulations don't provide," and that the protections "are especially important when people don't have much choice about doing business with a particular company."

In its brief, the bureau noted that last year it fined BofA $100 million for "mishandling the disbursement of state unemployment benefits on prepaid cards at the height of the pandemic," and had brought enforcement actions in other cases regarding government benefit prepaid cards.

This month, a few days after the CFPB's filing, the bank's attorneys requested extra time to reply to Mohamed's opening brief in the appellate court, citing other obligations. The request was granted, so BofA now has until early March to answer. ❑

Other News in Brief

Individual Liability: The Ninth Circuit has affirmed a ruling holding Jawad Nesheiwat liable under the Fair Credit Reporting Act, for his alleged "central role" in a scheme to illegally obtain individuals' credit reports and for charging advance fees for debt-relief service.

Nesheiwat was chief operating officer of Monster Loans, a mortgage lender that settled with the CFPB over similar charges in May 2020.

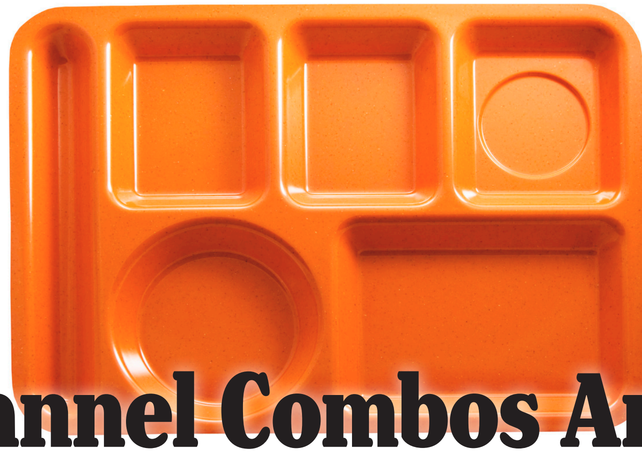
Subscription Programs on Alert: In a recent circular, the CFPB warned companies offering "negative option" subscription services against violations of federal consumer protection laws.

The bureau said companies risk violating the law if they do not clearly and conspicuously disclose the terms of their subscription services or make it unreasonably difficult for consumers to cancel services.

Law Firm Settles: The CFPB recently reached a $100,000 settlement with New York-based law firm Forster and Garbus related to illegal debt-collection practices.

"Forster and Garbus bombarded its customers with sketchy lawsuits on behalf of big lenders like Discover and Citibank," CFPB Director Rohit Chopra said in a statement. "The CFPB will be scrutinizing large financial companies that enlist debt collection outfits operating lawsuit mills."

Scholarship Marketer Penalized: The Ninth Circuit Court of Appeals affirmed the granting of summary judgement in a CFPB enforcement action alleging Armond Aria, the owner of Global Financial Support, had deceived students in marketing scholarship assistance services. ❑



What Channel Combos Are Lenders Using to Fill Their Plates?

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