

Key Takeaways From CFPB's Year-End Enforcement Flurry

By **Rachel Rodman and Kendra Wharton** (January 26, 2021, 3:15 PM EST)

The U.S. Consumer Financial Protection Bureau announced 11 enforcement actions in December 2020. The year-end flurry of enforcement activity includes everything from a multimillion-dollar settlement with the nation's largest mortgage servicing company to a \$600,000 settlement with a home security system provider, reflecting the broad sweep of the bureau's enforcement jurisdiction.

December's actions also continue to demonstrate the bureau's more restrained approach to remediation and penalties during the Trump administration — the majority of settlements included no remediation to consumers and penalties in the low seven figures.

As the Biden administration takes the helm alongside a Democratic-controlled Congress, industry should prepare for an even quicker pace of enforcement actions, more regulation by enforcement, and significantly larger fines and penalties against companies that the bureau finds to have violated the law.

Mortgage Servicing

Two of the bureau's most significant actions in December included settlements with Nationstar Mortgage LLC, the largest nonbank mortgage servicer in the U.S., and Seterus Inc., a North Carolina-based mortgage servicer Nationstar acquired in 2019.

On Dec. 7, 2020, the bureau announced a settlement with Nationstar as part of a multiyear effort among the bureau, state attorneys general and state bank regulators to address concerns that the servicer violated multiple consumer financial laws, causing substantial harm to its borrowers, including distressed homeowners.[1]

The bureau alleged that, between January 2012 and January 2016, Nationstar acquired mortgage servicing rights for thousands of distressed loans that were subject to trial modification agreements but failed to honor those agreements and improperly foreclosed on numerous borrowers.

These actions, the bureau alleged, constituted unfair, deceptive or abusive acts and practices — or UDAPs — in violation of the Consumer Financial Protection Act.[2] The bureau also alleged that



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Nationstar misrepresented when borrowers were eligible to have their private mortgage insurance premiums canceled and otherwise failed to properly analyze and manage borrowers' escrow accounts in violation of the Homeowners Protection Act,[3] the Real Estate Settlement Procedures Act and Regulation X,[4] and the CFPA.[5]

The settlement, if approved, will require Nationstar to pay approximately \$73 million in redress to more than 40,000 harmed borrowers and pay a \$1.5 million civil penalty.

Eleven days later, the bureau announced a settlement with Seterus Inc. and its former parent company Kyanite Services Inc. to address widespread failures in the company's handling and processing of borrowers' applications for loss mitigation options intended to avoid foreclosure.[6]

The bureau alleged that, between January 2014 and April 2018, Seterus systematically failed to accurately review, process and track borrower applications. Moreover, the bureau alleged, Seterus sent thousands of notices that misrepresented the status of borrowers' applications and failed to identify the information required for borrowers to complete their applications.

The bureau alleged these actions constituted UDAAPs[7] and violated Regulation X.[8]

Kyanite, as Seterus's successor-in-interest, will pay \$4.9 million in total redress to more than 11,000 borrowers and pay a \$500,000 civil money penalty.

The bureau's actions against Nationstar and Seterus serve as reminder of the agency's significant enforcement authority over nonbank mortgage servicers. Notably, neither consent order plows new ground — both largely address historical practices dating back to 2012 and focus on traditional enforcement priorities in mortgage servicing, i.e., protecting borrowers from improper foreclosures and fees.

Today, many consumers are under tremendous financial stress due to the pandemic, and servicers are tasked with administering foreclosure relief provided under the Coronavirus Aid, Relief and Economic Security Act, including up to 12 months of forbearance on qualifying mortgage loans.[9]

The bureau already has signaled that enforcement of borrower protections under the CARES Act is a supervisory priority,[10] and we expect the bureau will continue to focus resources on this issue under the Biden administration.

Actions Against Banks

The bureau has brought relatively few enforcement actions against banks since its inception almost 10 years ago. However, in 2020, the bureau brought six actions against banks or their affiliates, capped by a year-end settlement with Discover Bank.[11]

Discover Bank, the bureau alleged, misrepresented the minimum periodic payments owed by consumers and other material information and withdrew payments from consumers' accounts without a valid authorization, violating a 2015 consent order,[12] the Electronic Fund Transfer Act and Regulation E,[13] and the CFPA.[14]

Under the consent order, Discover must pay at least \$10 million in consumer redress and a \$25 million civil penalty.

Actions Against Nonfinancial Institutions

The CFPB generally exempts merchants, retailers and sellers of nonfinancial goods or services from the bureau's enforcement authority, except in certain circumstances such as when the merchant is subject to other enumerated consumer laws.[15]

With some notable exceptions, such as the 2015 consent orders against Sprint Corp. and Verizon Communications Inc.,[16] bureau enforcement has not generally focused on non-financial services companies that offer ancillary consumer financial products or services.

But on Dec. 11, 2020, the bureau and the state of Arkansas settled with Alder Holdings LLC, a Utah-based company that sells home-security and alarm systems.[17] According to the bureau, Alder offered consumers the option to defer payment for its equipment over the life of a long-term contract but charged higher activation fees to customers with lower credit scores without providing those customers the notice required under the FCRA and Regulation V.[18]

Under the proposed judgment, Alder must pay a \$600,000 civil penalty to the bureau. While the penalty is relatively low, the fact that the bureau would direct enforcement resources to a non-financial services company is a reminder of its enforcement authority over a broad array of companies that are not primarily engaged in providing financial services to consumers.

Military Lending Act Sweep

On Dec. 4, 2020, the bureau filed a federal lawsuit against Oakland-based fintech LendUp Loans LLC, an online lender specializing in installment loans, for alleged violations of the Military Lending Act's usury cap.[19] A settlement was subsequently announced on Jan. 19, 2021, under which LendUp is expected to pay \$300,000 in redress to consumers and a \$950,000 civil money penalty.[20]

In connection with the initial filing, the bureau announced the action was "part of a broader Bureau sweep of investigations of multiple lenders that may be violating the MLA." [21] The bureau also announced a \$2.175 million settlement with Omni Financial of Nevada Inc. on Dec. 30, 2020, in connection with the sweep.[22]

These actions represent a significant development given the bureau's stated position in 2019 that the CFPB lacks supervisory authority of the MLA — a position that was not shared by Director Richard Cordray during the Obama administration.[23] In addition, the action against LendUp enforces the MLA's 36% interest rate cap,[24] an authority the agency does not enjoy under any other law within its enforcement jurisdiction.

Under the Biden administration, we expect more enforcement actions focused on protecting service members, as well as increased scrutiny on fintech installment lenders.

Consumer Debt Collection

The bureau continued to bring enforcement actions to address unfair and deceptive consumer debt collection activities. The bureau filed federal lawsuits against DMB Financial LLC, a debt-settlement service provider, for violations of the Telemarketing Sales Rule and the CFPB,[25] and BounceBack Inc., a company that operates bad-check pretrial-diversion programs on behalf of more than 90 district

attorneys' offices, for violations of the Fair Debt Collection Practices Act and the CFPB.[26]

The bureau also announced a settlement with RAB Performance Recoveries LLC to address concerns that the company used deceptive means to collect consumer debts purchased from debt brokers.[27]

Taken together, these actions reflect continued focus on cleaning up the debt collection industry — a priority we expect to continue in the next administration.

Fair Lending

Absent from the bureau's December 2020 actions was enforcement of the Equal Credit Opportunity Act, which prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status and age, among other protections.[28]

President Biden has indicated that fair lending, including CFPB enforcement of the ECOA, will be at the top of his consumer protection agenda.[29] This commitment may prove particularly significant given the bureau's authority to review small-business loans made through the Paycheck Protection Program for compliance with ECOA and its implementing regulation, Regulation B.[30]

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[1] Press Release, CFPB, Consumer Financial Protection Bureau and Multiple States Enter into Settlement with Nationstar Mortgage, LLC for Unlawful Servicing Practices (Dec. 7, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-multiple-states-enter-settlement-nationstar-mortgage-llc-unlawful-servicing-practices/>.

[2] 12 U.S.C. §§ 5531, 5536(a)(1)(B).

[3] 12 U.S.C. § 4902.

[4] 12 U.S.C. §§ 2605, 2617; 12 C.F.R. § 1024 et seq. (Mortgage Servicing Rule).

[5] 12 U.S.C. §§ 5531(a), 5536(a)(1)(A), 5536(a)(1)(B).

[6] Press Release, CFPB, Consumer Financial Protection Bureau Settles with Mortgage Servicer for Illegal Practices that Impeded Borrowers' Attempts to Avoid Foreclosure (Dec. 18, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-mortgage-servicer-for-illegal-practices-that-impeded-borrowers-attempts-to-avoid-foreclosure/>.

[7] 12 U.S.C. §§ 5531, 5536(a)(1)(B).

[8] 12 C.F.R. § 1024.41 (Loss mitigation procedures).

[9] 15 U.S.C. § 9056 (Foreclosure moratorium and consumer right to request forbearance).

[10] See CFPB, Prioritized Assessments FAQs (last updated Jul. 20, 2020), https://files.consumerfinance.gov/f/documents/cfpb_prioritized-assessment_frequently-asked-questions.pdf.

[11] Consent Order, In the Matter of Discover Bank, the Student Loan Corp., and Discover Products, Inc., No. 2020-BCFP-0026 (CFPB Dec. 22, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_discover-bank-et-al_consent-order_2020-12.pdf.

[12] Consent Order, In the Matter of Discover Bank, the Student Loan Corp., and Discover Products, Inc., No. 2015-CFPB-0016 (CFPB Jul. 22, 2015), available at https://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf.

[13] 15 U.S.C. §1693e(a) and (b); 12 C.F.R. § 1005.10(b) and (d).

[14] 12 U.S.C. §§ 5531, 5536(a)(1)(A), 5536(a)(1)(B).

[15] 12 U.S.C. § 5517(a), §5481(12).

[16] Press Release, CFPB Takes Action to Obtain \$120 Million in Redress from Sprint and Verizon for Illegal Mobile Cramming (May 12, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-obtain-120-million-in-redress-from-sprint-and-verizon-for-illegal-mobile-cramming/>.

[17] Press Release, CFPB, Consumer Financial Protection Bureau and Arkansas Attorney General Settle with Home-Alarm Company for Using Consumers' Credit Scores Without Proper Notice (Dec. 11, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-arkansas-attorney-general-settle-home-alarm-company-using-consumers-credit-scores-without-proper-notice/>.

[18] 15 U.S.C. § 1681m; 12 C.F.R. § 1022.70 et seq. (Risk-Based Pricing Rule).

[19] Complaint, CFPB v. LendUp Loans LLC, No. 20-cv-8583 (N.D. Ca. Dec. 4, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_lendup-loans-llc_complaint_2020-12.pdf.

[20] Press Release, CFPB, Consumer Financial Protection Bureau Settles with LendUp Loans, LLC for Military Lending Act Violations (Jan. 19, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-lendup-loans-llc-for-military-lending-act-violations/>.

[21] Press Release, CFPB, Consumer Financial Protection Bureau Sues LendUp Loans, LLC for Allegedly Violating the Military Lending Act (Dec. 4, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-sues-lendup-loans-llc-allegedly-violating-military-lending-act/>.

[22] Press Release, CFPB, Consumer Financial Protection Bureau Settles with Omni Financial of Nevada, Inc. for Violations of the Military Lending Act, Electronic Fund Transfer Act, and Consumer Financial

Protection Act (Dec. 30, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-omni-financial-of-nevada-inc-for-violations-of-the-military-lending-act-electronic-fund-transfer-act-and-consumer-financial-protection-act/>.

[23] See Testimony of Director Kathleen Kraninger, Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau, Before the House Committee on Financial Services, 116th Cong. (Mar. 7, 2019), available at <https://www.govinfo.gov/content/pkg/CHRG-116hhrg36461/html/CHRG-116hhrg36461.htm>.

[24] 10 U.S.C. § 987 (b).

[25] Complaint, CFPB v. DMB Fin. L.L.C., Case No. 20-cv-12147 (D. Mass Dec. 1, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_dmb-financial-llc_complaint_2020-12.pdf.

[26] Complaint, CFPB v. BounceBack Inc., No. 20-cv-6179 (W.D. Mo. Dec. 9, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_bounceback-inc_complaint_2020-12.pdf.

[27] Press Release, CFPB, Consumer Financial Protection Bureau Settles with Debt Collector for Engaging in Deceptive Debt Collection Practices in Three States (Dec. 8, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-debt-collector-engaging-deceptive-debt-collection-practices-three-states/>.

[28] 15 U.S.C. § 1691 et seq.

[29] The Biden Plan for Investing in our Communities Through Housing, <https://joebiden.com/housing/>.

[30] See CFPB, Prioritized Assessments FAQs (last updated Jul. 20, 2020), https://files.consumerfinance.gov/f/documents/cfpb_prioritized-assessment_frequently-asked-questions.pdf.