
CONSUMER FINANCE PODCAST: NEW TRENDS IN HOW THE CFPB GATHERS INFORMATION**HOST: CHRIS WILLIS****POSTED: MARCH 30, 2023****Chris Willis:**

Welcome to The Consumer Finance Podcast. I'm Chris Willis, the co-practice leader of Troutman Pepper's Consumer Financial Services regulatory practice. Today I'm going to be talking about a recent new trend with the CFPB that I've noticed about the Bureau's use of what I call Section 1022(c) information requests. We'll get into what that is in just a minute.

Before I jump into that, let me remind you to visit and subscribe to our blog, consumerfinancialserviceslawmonitor.com, where you'll see posts almost every day about what's going on in the consumer finance world. While you're at it, check out our other podcasts. We have lots of them. We have the [FCRA Focus](#), all about credit reporting, [The Crypto Exchange](#), which is of course about all things crypto, and [Unauthorized Access](#), our privacy and data security podcast. If you like this podcast, let us know. Leave us a review on your podcast platform of choice and let us know how we're doing.

Now, as I said today, it's going to be just me. I'm going to be talking about a recent change in the CFPB's operations that I've noticed that I wanted to highlight for you as our listeners. Now, the Bureau has a number of ways of gathering information from the world to do its various functions. One of the items that it has is contained in Section 1022 of Dodd-Frank, so that's why I'm going to call it a ten twenty-two request. Basically, Section 1022 is in the rulemaking and market monitoring part of Dodd-Frank, that is that part of the CFPB's operations. What it essentially says is that in support of its market monitoring or rulemaking activities, the CFPB can request information from market participants and "require them to provide certain information".

Now, what's interesting is there's a limitation in that section of Dodd-Frank too that says that the Bureau may not obtain any information under Section 1022 that has personally identifiable information in it. So it can't get borrower information that's personally identifiable through Section 1022. Now this section's been in Dodd-Frank since its inception in 2010, and when the Bureau stood up in 2011, it was already in place. In the first 10 or so years of the CFPB's existence, we really didn't see very much activity under Section 1022.

The predominant use that we saw the Bureau making of Section 1022 in the first 10 years or so of its existence was that it would send Section 1022 requests to credit card issuers in order to gather information about the market in general for the purpose of the CFPB's biannual CARD Act reports. You've seen the CFPB release those. They talk about whatever they want to that's going on in the credit card market. Those reports that come out every two years, as statutorily mandated by the CARD Act, are fed by, in part, information that the Bureau receives from 1022 requests sent to credit card issuers.

So for a long time, nobody else really had to worry about Section 1022 and never really encountered it, and a lot of financial services companies still haven't, but there's been an increase in use in Section 1022 since the new director Rohit Chopra took over the Bureau, and let me tell you about that. At first, it wasn't that widespread. There was a very public announcement right after Director Chopra was confirmed in which he sent these market monitoring orders to a number of large tech companies to ask them for information about their payment's platforms. That was publicized on the Bureau website and Director Chopra had a

press release related to it, but still that was isolated. We didn't see widespread use of 1022 requests. We just had this special use of it related to the tech companies.

Fast forward a few months later, and there was a similar series of 1022 orders put out with respect to buy now, pay later providers. Again, that's a sector of the market that the Director had talked about a lot publicly, wanting to take some action with respect to. So we saw the Bureau send 1022 orders to a number of participants in that market. The information was provided and then the Bureau actually fairly recently came out with a report about the general nature of that market that was informed, I think, largely by the information that the Bureau received from those 1022 requests, which was over a year ago that those were sent out.

Even then, after the ones went to the buy now, pay later companies, it wasn't something that we regularly saw in other areas of the industry. That's now changed and that's the reason I wanted to talk to you about it on today's podcast. Because all of a sudden, here at the beginning of 2023, we have started to see much more frequent use of Section 1022 across a lot of different sectors of the consumer financial services economy than we had been accustomed to in the prior 10 years or so. I wanted to bring that to your attention.

So for example, the CFPB publicly announced that it had sent section 1022 requests, and a copy of the request is on the CFPB's blog, to a number of auto finance companies, both banks and non-banks. We know also from our interactions with the industry that there have been a number of other 1022 requests, beyond those auto finance ones, that have been sent to various market participants in a variety of areas. So it really has become evident to us just from watching these requests come out of the Bureau, that the Bureau has decided to use its authority to engage in this market monitoring and send much more frequent requests to the industry under Section 1022(c) of Dodd-Frank.

So that I think requires all of us to get a little more familiar with Section 1022 and understand a little bit more about how it works. The thing is, when the CFPB has other ways of gathering information from a market participant, say from a civil investigative demand in the enforcement process or in a supervisory exam, there's significant procedures written either into the statute or accompanying regulations that talk about how the procedure works and what the allowable limits are, and all of that sort of thing.

Interestingly, with regard to Section 1022, there's not really much about it in the statute. All it says is that the Bureau may require financial services companies to provide information, and it doesn't give much beyond that. There's no enforcement mechanism specified. There's no consequence specified if somebody doesn't do it. There's no time limits or format or any information in Section 1022 of Dodd-Frank about how that works.

So in the absence of that information, I think market participants have to obviously look at section 1022 closely to see what types of information are and are not fair game under section 1022, and I think there are definite arguments about that to be made. Also, I think that the use of these requests is going to be a back and forth process between the industry and the CFPB. As both parties get more accustomed to them, a way of doing them, the status quo will evolve from the interactions between the Bureau and the industry.

I know that I think the Bureau intends to make these requests not a huge burden on industry. I believe that to be the case and I believe that the Bureau will be open to discussions with the industry about the scopes of these requests and timing of them and things like that. So the

industry will just have to have those interactions with the Bureau and see how these fall out in terms of a standard operating procedure coming into play through practice.

The other thing that I wanted to note was with the much greater use of Section 1022 requests all of a sudden in the past few months comes the question of, well, what is the CFPB going to do with the information that it gathers? On one hand, obviously, you would think that it is obvious that the Bureau would use them to generally take a look at what's going on in the market, spot large scale trends, and maybe write reports about it, like they did with the buy now, pay later, for example. Certainly, that's something that the Bureau does. It's written the CARD Act reports for years. It's written this buy now, pay later report recently, and we do occasionally see reports on other segments of the financial services economy from the Bureau. So maybe we're going to see a lot more of those reports generated than was the case in the past.

One thing that I think worries industry participants is if you look at the recent 1022 requests, including the ones that were made public on the Bureau's blog and website, you'll see a statement there that this information is being gathered for our market monitoring purposes, but we reserve the right to use it for other purposes as well, like supervision and enforcement.

So there's a question in the mind of industry participants of whether or not these may be used to conduct shadow examinations of entities that are not subject to the Bureau's supervisory authority, and then use the resulting information to trigger, say, an enforcement investigation or something else like that, or that they may be used as a supplement to the Bureau's ability to serve civil investigative demands and generate information on which to take enforcement actions.

That latter use certainly could be true, but I would point out of course, that the Bureau can serve civil investigative demands, and does it all the time, and has a very broad ability to obtain information through those. So, it wouldn't seem like it's really necessary for the Bureau to use 1022 requests as a substitute for civil investigative demands, because they can always just serve a civil investigative demand.

The other worry, I think, from the industry standpoint is whether or not we're going to start seeing these 1022 requests being made repetitively to the same companies. That is, I'm sending you one today, but then I'm also going to send you one every year or every two years, similar to what the Bureau does in the CARD Act context. So, it becomes a permanent ongoing monitoring of specific market participants, which arguably isn't really consistent with the purpose of Section 1022, which is general market monitoring, not conducting shadow supervisory exams periodically over specific market participants. We don't know yet whether the Bureau intends to or will serve repetitive requests on the same market participants, because not enough time has passed to see whether that is happening or not, but it is something that I think some members of the industry are concerned about.

I think the main point that I wanted to get across to you all is to let you know about this new trend in the Bureau's behavior, let you know what we know about what's going on, and then some of the concerns that exist about what may transpire going forward. I'm glad I had the opportunity to tell you about this today. Of course, we're going to be watching this as it plays out in the ensuing years as to how these current batch of requests go, in terms of how they're responded to and how the Bureau behaves with respect to them, and then what new requests the Bureau may send out in the future under Section 1022(c). I wanted to let you know that it

was going on so that everybody can be on the lookout for it and be thinking about how you may react to these requests if one of them happens to come your way.

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