

CFPB Bites of the Month - July Top 10

July 22, 2022 | [Justin B. Hosie](#) and [Eric L. Johnson](#)

In this month's Top 10 article, we share some of our top "bites" for the prior month covered during the July 20 webinar.

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

Bite #10 - The CFPB expressed concerns about credit reporting for Buy Now, Pay Later companies

On June 15th, the CFPB expressed concerns about the ways in which consumer reporting agencies planned to address buy now, pay later (BNPL) companies. Until recently, few BNPL lenders furnished information about consumers to the nationwide consumer reporting companies (NCRCs). In recent announcements, the three largest NCRCs each described plans to accept BNPL payment data. However, the CFPB indicate that the NCRCs plans vary, and that those various could result in inconsistent treatment that will limit the potential benefits of furnished BNPL data. The CFPB said that when BNPL payments are furnished, it is important that lenders furnish both positive and negative data. The CFPB appears to believe that NCRCs should adopt standardized BNPL furnishing codes and formats appropriate to the unique characteristics of the product. The CFPB indicated that it will monitor the progress in this area and [invited](#) consumers to submit complaints about both consumer reporting and BNPL products.

Bite #9 - The CFPB is collecting data on the impact of financial overdraft programs on consumers.

On June 16th, the CFPB [announced](#) that it is measuring the impact of overdraft and insufficient funds (NSF) programs on consumers. As part of collecting data, the CFPB asked over 20 institutions for data on various consumer-impact metrics including the total annual dollar amount consumers receive in overdraft coverage compared to the amount of fees charged, the annual dollar amount of overdraft fees charged per active checking account, the annual dollar amount of NSF fees charged per active checking account, the share of active checking accounts with more than 6 and more than 12 overdraft or NSF fees per year, and the share of active checking accounts that are opted into overdraft programs for ATM and one-time debit transactions.

In addition to these metrics, the CFPB's Supervision team requested information about overdraft practices, including how they assess their fees, their grace periods, the dollar thresholds above which fees are assessed, and caps on the number of fees charged per day, or per statement period. [View the complete set of questions on overdraft practices.](#) The CFPB said that it intends to use this information to identify institutions for further examination and review. It also plans to provide feedback to each institution, as well as to share this information with other regulators.

Bite #8 - The CFPB announced various rulemaking plans.

On June 17th, the Director Chopra announced that the CFPB was rethinking its approach to regulations. The CFPB's efforts include: moving away from complicated rulemaking, more clearly communicating the agency's expectations in simple and straight-forward terms, producing more durable guidance and rules, focusing on longstanding Congressional directives, working on regulations relating to PACE Financing, assessing whether to register certain nonbank financial companies, reviewing rules inherited from other agencies and older CFPB rules, increasing its interpretation of existing law, and encouraging the public to submit rulemaking petitions to petitions@cfpb.gov, which will be posted on [regulations.gov](https://www.cfpb.gov/regulations).

Bite #7 - The CFPB announced rulemaking related to credit card late fees and late payments.

On June 22nd, the CFPB published an Advance Notice of Proposed Rulemaking, the CFPB announced that it was seeking information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments, and card issuers' revenue and expenses. The CFPB is also seeking data about card issuers' revenue and expenses, the potential deterrent effect of late fees, and the role late fees play in credit card companies' profitability. Public input will inform revisions to Regulation Z, which implements the CARD Act and the Truth in Lending Act. The deadline for submitting comments is July 22, 2022.

Bite #6- The CFPB issued an Advisory Opinion addressing privacy of personal data.

On July 7th, the CFPB issued an advisory opinion indicating that companies using and sharing credit reports and background reports must have a permissible purpose under the Fair Credit Reporting Act (FCRA). The CFPB's Advisory Opinion indicates that credit reporting companies and users of credit reports have specific obligations to protect the data privacy. The advisory also reminds covered entities of potential criminal liability for certain misconduct.

The CFPB says that using insufficient matching procedures, such as name-only matching, can result in credit reporting companies providing reports to entities without a permissible purpose, which would violate consumers' privacy rights. Likewise, the CFPB indicated that companies violate the law in providing credit reports of multiple people as "possible matches." The CFPB further takes the position that disclaimers about insufficient matching procedures do not cure violations. The CFPB also said that users of consumer reports must ensure that they do not obtain a credit report when they lack a permissible purpose for doing so. The advisory opinion addresses the criminal liability provisions in the Fair Credit Reporting Act.

Bite #5 - The CFPB nudged state regulators to police credit reporting markets.

On June 28th, the CFPB issued an Interpretive Rule indicating that with limited preemption exceptions, states may enact laws that are stricter than the FCRA. Recently, the Office of the New Jersey Attorney General notified the CFPB about pending litigation that included an allegation that the FCRA preempted a New Jersey consumer protection statute. According to the Interpretive Rule, states retain broad authority to protect people from harm due to credit reporting issues, and state laws are not preempted unless they conflict with the Fair Credit Reporting Act or fall within narrow preemption categories enumerated within the statute.

Bite #4 - The CFPB says that "debt collectors" should not charge convenience fees unless expressly

authorized by the consumer contract or applicable law.

On June 29th, the CFPB issued an [Advisory Opinion](#) indicating that federal law often prohibits debt collectors from charging "pay-to-pay" fees. These charges, commonly described as "convenience fees," are charged when consumers request to make a payment in a particular way, such as online or by phone. The advisory opinion interprets Section 808 of the Fair Debt Collection Practices Act as a prohibition on debt collectors collecting any amount that is not expressly authorized by the underlying agreement or expressly authorized by law.

Bite #3 - The CFPB rescinded special regulatory treatment for an earned-wage access company.

The CFPB issued an order terminating a company's "Sandbox Approval Order" related to its earned-wage access products. The prior Sandbox Approval Order, issued in December 2020, indicated that the transactions addressed in the order would not create liability under the Truth in Lending Act. The CFPB informed the company on June 3, 2022, that it was considering terminating the approval order in light of certain public statements the company made suggesting a CFPB endorsement of its products. Then, on June 21, 2022, the company notified the CFPB that it was planning to modify its earned-wage access product fee model, and requested termination. [Read the termination order.](#) The CFPB also noted that it has received requests for clarification regarding its advisory opinion on "earned-wage access" products and plans to issue further guidance soon to provide greater clarity concerning the application of the definition of "credit" under the Truth in Lending Act and Regulation Z.

Bite #2- The CFPB sued a payday lender related to no-cost repayment plans and withdrawals of consumers' funds.

On July 12th, the CFPB [filed](#) a lawsuit accusing a lender of concealing its free repayment plan options. According to the accusations, consumers on reminder calls went through a conversational "waterfall." Allegedly, the lender first told consumers about shorter grace periods. If the consumer rejected that first option, then consumers were then told about fee-based renewals. If the consumer rejected that second option, only then were consumers told about no-cost repayment plans. The CFPB's complaint does not address various ways and times that the lender may have actually informed consumers about its no-cost payment plan options. The CFPB also alleges the lender initiated 4 debit card withdrawals from some consumers when its authorization said it would only make 3 attempts. The Company was part of a 2014 consent order with the CFPB. The CFPB is seeking monetary relief, disgorgement, injunctive relief and civil money penalties.

Bite #1 - The CFPB and the OCC fined a large bank \$225 million.

On July 14th, the CFPB fined a large national bank \$100 million related to alleged problems disbursing state unemployment benefits at the height of the pandemic. The bank allegedly froze accounts with a faulty fraud detection program. The CFPB claims that the bank engaged in unfair and abusive acts and practices when it replaced reasonable investigation practices with a faulty fraud filter, left distressed consumers in the lurch, and sent consumers back to a state unemployment department for verification in order to gain access to their benefits. The [order](#) requires the bank to undertake a process that may result in hundreds of millions of dollars in redress to consumers. The bank will also be required to provide redress to consumers and pay a \$100 million fine to the CFPB and \$125 million to the OCC.

Extra Bite: The FTC proposed a car buying rule.

The FTC is seeking comment on proposed measures that would prohibit dealers from making deceptive advertising claims, charging consumers for add-ons the FTC claims provide no benefit to consumers, charging consumers for add-ons without clear written consent. The Rule would also require dealers to provide pricing information including an "offering price," a price without optional add-ons, and other information about financing terms. The proposed rule would allow the FTC to recover money when consumers are misled or charged without their consent. The proposal was published on July 13, 2022, and the comment deadline was set for September 12, 2022.

Still hungry?

Join us for our next CFPB Bites of the Month: Back to School with the CFPB on August 17. If you missed any of our previous Bites, [request a replay on our website](#).

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