

## CFPB Bites of the Month - 2024 Annual Review - Credit Cards

January 29, 2025 | [Daniel J. Laudicina](#), [Eric L. Johnson](#), [Justin B. Hosie](#) and [Kristen Yarows](#)

In this article, we share a timeline of our monthly "bites" for 2024 applicable to the credit card industry. The year saw the CFPB give a fair amount of attention to credit card products, with a focus on pricing. The proposed rule to limit late fees on credit cards became final (Bite 5), though is now stayed by a preliminary injunction in response to a challenge pending in federal court in Texas (Bites 3 and 4). CFPB Director Rohit Chopra also made good on his promise (see our 2023 Annual Review) to scrutinize card rewards programs (Bite 9), and was joined by the Department of Transportation in that effort (Bite 8). While we expect continued attention on rewards programs, we predict that the Trump Administration's CFPB and other federal agencies are likely to take a more "hands-off", laissez faire approach to regulation, in general, and card pricing and rewards, in particular. That said, there is ongoing resistance from merchants to card interchange fees, and it would be a boon to small businesses were the Trump Administration to take action to reduce their burden. States may attempt to do so, as well, as evidenced by Illinois' passage of the Interchange Fee Prohibition Act, which prohibits charging such fees on state and local taxes and tips/gratuities (though this law, set to become effective July 1, 2025, is currently under challenge in federal court, which has temporarily enjoined enforcement against national banks due to possible National Bank Act preemption).

### **Bite 13: 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 12: Report on Credit Card Rates by Institution Size**

On February 16, 2024, the CFPB's Office of Markets issued a report based on results from its Terms of Credit Card Plans survey. The survey has been running since 1990, but the CFPB recently enhanced the survey to collect more details on the types of credit card plans issuers offer. According to the CFPB, larger banks offer credit card products with worse terms and interest rates than smaller banks and credit unions, regardless of the borrower's credit risk. The report found that the 25 largest credit card issuers charged customers interest rates of 8 to 10 points higher than small- and medium-sized banks and credit unions. The CFPB claimed that larger credit card issuers were also more likely to charge annual fees; 27% of these cards carried an annual fee, compared with 9.5% for cards offered by smaller issuers. The CFPB concluded that a lack of competition is likely responsible for the higher rates and charges at the largest issuers. The top 30 credit card companies represent about 95% of credit card debt, and, according to the CFPB, the top 10 dominate the market. The CFPB noted that these reports are a part of the CFPB's larger push to jumpstart competition in the credit card market, which will include the development of rules on open banking and increased scrutiny on comparison websites.

### **Bite 11: Director Chopra's Prepared Remarks on Credit Cards**

On March 27, 2024, CFPB Director Rohit Chopra delivered remarks at CBA LIVE on the CFPB's work towards ensuring that consumer financial markets, including the credit card market, are competitive. Director Chopra said that the credit card industry has grown rapidly, fueled by advances in automated underwriting and technology, but that despite this success, the fees and interest on credit cards have never been higher. He claimed that the large discrepancy between the costs of credit cards offered by large institutions and smaller ones is a sign that the marketplace is not competitive, and suggested that this may be due to difficulty in shopping for cards and comparing rates. Director Chopra said that the CFPB is going to issue a rule addressing personal financial data rights to "jumpstart competition across banking" by making it easier for consumers to access their data and switch providers. He said that the CFPB is also working on another initiative to improve the costs of credit cards through its newly finalized rule that limits credit card late fees, which he said the CFPB will continue to defend against court challenges.

### **Bite 10: CFPB Issues New Guidance on Comparison Shopping**

On February 29, 2024, the CFPB issued a new circular explaining how comparison-shopping tools may violate consumer protection laws when they steer consumers due to incentives like "kickbacks." According to the CFPB, consumers often encounter manipulated results or practices the CFPB calls "digital dark patterns" when using comparison-shopping tools for financial services including credit cards. The CFPB claims that manipulated results appear because some providers pay financial kickbacks, sometimes referred to as "bounties" to create the lists of results that consumers see. According to the Circular, comparison-shopping tools may violate the federal prohibition on abusive conduct, because these comparison sites may take "unreasonable advantage" of consumers relying on the comparison-shopping tool to act in their

interests.

### **Bite 9: CFPB Issues Report on Credit Card Reward Programs**

On May 9, 2024, the CFPB issued a report addressing credit card reward programs noting that they were the subject of numerous consumer complaints. The CFPB noted that it received over 1,200 complaints involving credit card rewards in 2023, which was more than a 70% increase over pre-pandemic levels. The report identified four themes underlying complaints that consumers did not receive promised rewards. First, consumers complained that the reward programs term and conditions did not match the marketing materials. Second, consumers complained that they lost benefits that they previously earned when providers devalued rewards. Third, consumers complained that they faced obstacles in receiving their preferred redemptions when companies failed to quickly resolve rewards-related issues. Fourth, consumers complained that they suddenly lost rewards when issuers unilaterally revoked previously earned balances.

### **Bite 8: CFPB Issues Statement on DOT Airline Reward Inquiry**

On September 5, 2024, the U.S. Department of Transportation announced an inquiry into the four largest U.S. airlines' rewards programs. CFPB Director Chopra commented on the inquiry and said it is "a key step to prevent deceptive devaluation tactics that can plague these alternative currencies held by tens of millions of families." Director Chopra also stated that the "CFPB will continue to scrutinize the relationship between big credit card companies and big airlines." This inquiry comes after the CFPB and the U.S. Department of Transportation jointly hosted a hearing on airline and credit card reward programs in May 2024. After the joint hearing, the CFPB issued a new report that we discussed in our May Bites finding that consumers encounter numerous problems with credit card reward programs.

### **Bite 7: CFPB Director Makes Statement on DOJ Lawsuit**

On September 24, 2024, CFPB Director Chopra commented on a recent lawsuit by the Department of Justice involving a card payment network conglomerate, saying that it "stifled new payment technologies." The Department of Justice lawsuit alleges that the payment network engaged in illegal conduct to prevent competition in the debit card market. Previously, the DOJ blocked a potential merger by the payment network, with a competitor. The companies abandoned the proposed deal after the DOJ action. Director Chopra said that for too long the payment network "has taken a big cut out of most debit card transactions in the economy, pushing prices higher and siphoning away funds from families and small businesses." He also said that the network's "alleged violations of our nation's fair dealing laws have stifled new payment technologies and prevented lower-cost alternatives from gaining traction at checkout counters and online. Blocking smaller challengers from offering cheaper ways to move money undermines our country's economic dynamism."

### **Bite 6: Court Dismissed Case in Which CFPB Filed Amicus for Bank**

On October 4, 2024, a judge in the U.S. District Court of Northern Illinois dismissed a proposed class action lawsuit that alleged that two banks failed to provide repayment

disclosures to borrowers. Uniquely, the CFPB had filed an amicus brief favoring the bank's position. The judge had asked the CFPB to comment on whether the bank violated federal requirements to provide the borrower with disclosures, including the disclosure of how long it would take him to pay his loan if he only paid the monthly minimum payment. The borrower alleged that the banks violated the Truth in Lending Act and Regulation Z by failing to provide disclosures for his open-end line of credit and attempted to pursue the claim on behalf of all persons in Illinois who had this particular credit line. The CFPB's amicus brief indicated that the type of line of credit (an open-end line of credit not a credit card) was exempt from such requirements. In its brief, the CFPB said that since 2010, the disclosure obligations have only applied to credit card accounts under an open-end consumer credit plan. The judge agreed with the CFPB and found that the bank's omission of minimum repayment disclosures for the borrower's account was consistent with Regulation Z. So, he dismissed the proposed class action case.

#### **Bite 5: CFPB Issues Final Rule on Credit Card Late Fees**

On March 5, 2024, the CFPB announced that it finalized a rule to cut credit card late fees for large card issuers, a move that the CFPB says will save consumers more than \$10 billion annually. In 2009, the CARD Act banned credit card companies from charging excessive penalty fees. In 2010, the Federal Reserve Board issued an implementing regulation, stating that under the CARD Act, banks could only charge fees to recover costs associated with a late payment, with safe harbor amounts that would adjust with inflation. According to the CFPB these safe harbor amounts have "ballooned" to \$30 for a first late payment and \$41 for subsequent late payments, even though credit card companies have moved to cheaper forms of payment processing. The new rule lowers the immunity provision fee to \$8 for large card issuers and eliminates the automatic annual inflation adjustment. Instead, the CFPB will monitor market conditions and claims it will adjust the threshold. The CFPB also claims that covered issuers can charge higher fees if they can show they are necessary to cover costs. The CFPB says this new rule is part of a continued effort to address problems and foster competition in the credit card market.

#### **Bite 4: CFPB Sued Over Credit Card Late Fee Cap Rule**

On March 7, 2024, several industry groups sued the CFPB over the credit card late fee rule. Banking groups and trade organizations sued the CFPB, asserting that the new rule capping credit card late fees punishes consumers who pay on time. According to the plaintiffs, the CFPB exceeded its authority and ignored Congressional intent. The plaintiffs note that Congress intended the fees to be high enough to deter late payments, ensure accountability, and compensate card issuers for the costs to process late payments. According to the complaint, the new rule will cause irreparable harm through losses and costs, including the costs to service accounts that issuers would have never opened with this late fee cap, and will push the associated servicing costs on to all card holders, including those who have never made a late payment. The CFPB promised to defend the rule, saying that it will save consumers significant money and close a loophole that has turned late fees into a major revenue stream, and characterized late charges as "junk fees." The CFPB also said that the plaintiffs engaged in "forum shopping" when they brought their case in the Northern District of Texas. The parties

have been asked to submit briefs to address their positions on the appropriate venue.

### **Bite 3: CFPB Loses Appeal to Move Credit Card Late Fee Case**

On May 10, 2024 media outlets reported that Judge Pittman in the Northern District of Texas issued a preliminary injunction, ruling against the CFPB in the ongoing credit card fee litigation, staying the rulemaking indefinitely. Back in March of 2024, several organizations filed a lawsuit in the U.S. District Court for the Northern District of Texas challenging the CFPB's credit card late fee rule. The plaintiffs claimed that the new rule capping credit card late fees punishes customers who pay on time. The plaintiffs also asked the court to enjoin the CFPB from implementing the Final Rule, which was granted. The CFPB argued that the venue in the Northern District of Texas is improper and asserted that the case should be moved to the U.S. District Court for the District of Columbia. The district court granted the CFPB's motion and ordered that the case be transferred to the U.S. District Court for the District of Columbia. On May 3, 2024, the Fifth Circuit denied the CFPB's petition reasoning that transferring the case while an appealable order was pending altered the status of the case as it rests before the Court of Appeals and therefore, the district court lacked jurisdiction to transfer the case.

### **Bite 2: CFPB Takes Action Against Company Selling its Membership Card**

On September 13, 2024, the CFPB sued a company and its CEO/sole shareholder over an alleged expensive membership card. The CFPB alleged that the company and its CEO tricked customers into signing up for the company's credit card. The CFPB alleges that card charged almost \$300 in annual fees, on a card with a \$500 credit limit, and could only be used to purchase goods from the company's overpriced online store. The CFPB alleged that between 2017 and 2021, the company enrolled nearly 900,000 consumers in its membership program who collectively paid more than \$51 million in fees. The CFPB alleged that 93% of these consumers never used any of the company's products but accounted for over \$45 million in fees. The complaint alleges that the company violated the Consumer Financial Protection Act and the Truth in Lending Act. The complaint alleges that the company failed to mention the membership card's considerable limitations, that the company's fees exceeded the caps set by TILA and regulation Z, and that customers had a hard time canceling their memberships. The CFPB is requesting an injunction and an order to pay a civil money penalty and provide redress to consumers.

### **Bite 1: CFPB Takes Action Against Technology Company and Financial Firm**

On October 23, 2024, the CFPB issued consent orders against a technology company that partnered with a financial institution to provide a credit card. The CFPB alleged the company unfairly failed to send transaction disputes to the financial institution and that the financial institution delayed in resolving the disputes. The CFPB alleged that the companies deceptively mislead consumers to automatic enrollment in monthly installments through the card with interest-free payments. The CFPB alleged the parties abusively failed to display the interest-free installment in certain circumstances. The consent order requires the technology company to pay a civil money penalty of \$25 million and the financial institution to pay a \$45 million civil money penalty. The consent order also requires the financial institution to pay at least \$19.8 million in redress to

victims and cannot introduce a new credit card without providing the CFPB with a plan of how it will comply with the law.

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